



SDBA Legislative Update

Volume 18, Issue 7

February 24, 2017

Update/Continuing Request on HB1179

Over the opposition of the SDBA and compelling testimony by banking industry supporters, the SD House of Representatives approved HB1179 on Tuesday afternoon by a vote of 40-28. You will recall that HB1179 proposes to exempt a certain amount of nonresidential lending from state licensing and taxation requirements. Rep. David Lust (R-Rapid City) introduced HB1179 on behalf of a Rapid City constituent who has been loaning money to startup businesses for some time. Per testimony offered in the House Commerce Committee on Monday, this individual's loan portfolio has been as high as \$6 million and currently sits at about \$2.5 million. Interest rates on those loans have ranged from 5 to 15 percent. HB1179 proposes an exception to existing laws that would allow an entity to make five or fewer loans in any 12-month period, and as long as those loans totaled less than \$3 million in a 12-month period and \$8 million overall, the lender would not be required to hold a mortgage or money lending license. In addition, the net income from the non-licensed entity would not be subject to South Dakota's bank franchise tax.

The next step for HB1179 is a hearing in the Senate Taxation committee next Wednesday, March 1. SDBA will continue to lobby against this measure, and we are currently making arrangements for several bankers to appear as industry witness opposing expansion of untaxed lending by unlicensed entities. But what we need in addition to solid committee testimony is for lots of bankers to make personal contacts with the seven members of the Senate Taxation Committee. Here is the contact for those Senators:

- Chairman Jeff Monroe (R-Pierre): 605-224 0264 or Jeff.Monroe@sdlegislature.gov
- Vice Chairman Jack Kolbeck (R-Sioux Falls): 605-332-6490 or Jack.Kolbeck@sdlegislature.gov
- Gary Cammack (R-Union Center): 605-985-5591 or Gary.Cammack@sdlegislature.gov
- Jason Frerichs (D-Wilmot): 605-938-4273 or Jason.Frerichs@sdlegislature.gov
- Ernie Otten (R-Tea): 605-368-5716 or Ernie.Otten@sdlegislature.gov

- Sen. Lance Russell (R-Hot Springs): 605-745-3228, 605-745-6871 or Lance.Russell@sdlegislature.gov
- Sen. Jim Stalzer (R-Sioux Falls): 605-838-0354 or Jim.Stalzer@sdlegislature.gov

If we are going to be successful in defeating this legislation, every one of those committee members must hear concerns directly from bankers. Here are some suggestions to frame that conversation:

- Bankers do not oppose the lending activities of non-bank entities that support HB1179. We simply believe that entities in the business of lending should be licensed and their net income should be subject to the bank franchise tax. HB1179 is being touted as necessary to keep capital flowing to small businesses that generally can't qualify for a bank loan because of the underlying risk characteristics of the business. It is important for legislators to know that hometown banks do make riskier loans to main street businesses because it is good for their communities. They don't ask for exemptions from regulation or taxation in return. Why should the subjects of HB1179 get special treatment?
- Other providers of financial products and services, like insurance or investments, must be licensed. You can't sell up to five insurance policies with premiums totaling less than \$3 million dollars and not have an insurance agent license. You can't sell up to five investment instruments with a face value of up to \$3 million and not have an investment advisor license. HB1179 seeks those exemption levels for lenders. Why should money or mortgage lenders get special treatment?
- The process of obtaining a mortgage lender license is not complex or expensive, especially considering the amount of income being earned by the lender who is seeking these exemptions. He and his company are large and sophisticated enough to have mortgages and financing documents created and to hire a lobbyist but don't want to be bothered with a license

Published Weekly During Session by the
South Dakota Bankers Association - P.O. Box 1081 - Pierre, SD 57501 - 605-224-1653
Visit www.sdba.com

application and tax returns. Is that a good reason to carve exceptions to laws and regulations designed to make sure that lending gets done the right way and that taxes are assessed and collected fairly?

- Failure to enact HB1197 will not prevent farmers, ranchers, business owners or home owners from financing the sale of their own farm, ranch, business or home. The laws of South Dakota already allow that. The same is true for a parent or grandparent who decides to make a loan to a son, daughter or grandchild for any reason. Our laws already allow that to happen without a license.

Update on Other Bills

Early this week, SDBA Counsel Brett Koenecke and I took a second look at a proposal to modify one section of South Dakota code dealing with the interaction between the owners of repair shops and other parties with interest in motor vehicles which are abandoned by owners without paying the repair shop's bill. As introduced and in the form passed by the Senate, **SB97** could have effectively put repair shop owners in the front of the line for the distribution of proceeds from the sale of an abandoned vehicle, moving them ahead of prior properly secured creditors. At a minimum, the language of SB97 would have created conflicts between motor vehicle mechanics lien statutes and general mechanics lien laws.

During a hearing earlier today in the House Judiciary Committee, Koenecke did a tremendous job of explaining the nuances and problems associated with passage of SB97. He made sure that committee members understood that bankers believe that auto mechanic shops should get paid for appropriate services, but that automatically moving those service providers to the head of the line would create unwanted consequences. Because SB97 had passed the full Senate without opposition, we knew that odds of defeating the bill were quite long. But as would be appropriate for a graduate of the University of Wisconsin School of Law, just like Green Bay's Aaron Rogers, Koenecke completed the Hail Mary pass. On a vote of 8-5, the committee deferred SB97 to the mythical 41st legislative day. I would be remiss if I didn't give considerable credit to Rep. David Lust (R-Rapid City) for clearing laying out the flaws inherent in SB97 from the standpoint of secured creditors.

By the close of the committee hearing, it was apparent to committee members, proponents and opponents of SB97

that some additional analysis of both the motor vehicle title and lien sections of SD Code along with the general statutes governing the handling of mechanics liens are needed. I anticipate that the SDBA will end up being involved in a working group with other stakeholders including auto dealers, auto repair shops, auto body shops and auto insurers at a minimum. I will be looking for bankers and bank lawyers with a working knowledge of these areas of the law and related banking industry practice to participate in such a work group during the 2017 off-season.

SB86, the bill to allow counties to shop their deposits with any bank located in South Dakota, passed another step in the legislative process when it was approved on Tuesday in the House Local Government Committee by a unanimous 11-0 vote. I again informed committee members of the importance of local deposits of all kinds to the business model of hometown banks. Once again though, I could not overcome the proponents' argument that counties ought to have the same flexibility as cities and school districts.

HB1065 proposed to repeal a section of the chapter of South Dakota law dealing with debts owned by the current and previous owners of business operating under fictitious names. Koenecke appeared again yesterday to raise banking industry concerns about eliminating an area of the law which holds that persons interested in business at any time shall be at all times liable for any contracts of obligations incurred prior to the filing of a verified statement showing that they are no longer interested.

After a considerable amount of discussion among the lawyers in the room, a non-lawyer, Sen. Brock Greenfield (R-Clark), suggested an amendment reshaping this section of law into a single sentence stating that "all persons interested in a business described in § 37-11-1 at any time shall be at all times liable for any contracts or obligations incurred while they were so interested."

Proponents and opponents were happy and HB1065 was sent to the full Senate on a 7-0 vote.

Wrapup

That's it for this week. As always, please feel free to contact me any time you have questions or concerns.

- Office Phone: 605.224.1653
- Cell Phone: 605.280.7985
- Email: ceverson@sdba.com

Published Weekly During Session by the
South Dakota Bankers Association - P.O. Box 1081 - Pierre, SD 57501 - 605-224-1653
Visit www.sdba.com