



SDBA Legislative Update

Volume 18, Issue 5

February 9, 2017

ACTION ALERT

HB1179 carves out loopholes in South Dakota's mortgage lending license requirements exempting any company that originates, sells or services less than six nonresidential mortgage loans in a 12-month period from licensing requirements. The bill also proposes a similar exemption from mortgage loan originator licensing for any individual who offers or negotiates terms of five or fewer nonresidential mortgage loans in a 12-month period. This proposed exemption from licensing carries with it a corresponding exemption from liability for payment of South Dakota's bank franchise tax. All for-profit licensed money and mortgage lenders are currently subject to tax.

I have been told that an amendment will be offered that would put a \$3 million cap on the amount of loans that could be made in a 12-month period without having a license. I don't think that matters to the membership of the SDBA.

This bill has been brought on behalf of Sodak Holdings, located in Pennington County, an entity that apparently makes a relatively small number of loans in support of non-residential real estate transactions.

SDBA's Board of Directors and Legislative Committee decided yesterday to oppose HB1179. The SDBA has a long-standing position to oppose the expansion of unregulated, untaxed lending in South Dakota and will testify against HB1179 as appropriate. While SDBA legal counsel Brett Koenecke and I have already started talking to members of the House Commerce and Energy Committee about our opposition, we believe it is important for committee members to hear directly from bankers back home. This bill will be heard at 10 a.m. CST Monday, Feb. 13, in the House Commerce and Energy Committee. While I know that you are all capable of framing your own arguments against HB1179, here are a few talking points:

- Public policy in South Dakota is that lenders need to be licensed, regulated and that net income from lending activities should be subject to the bank franchise tax.

- Banks already compete with plenty of untaxed competitors like credit unions and the farm credit system. We don't need more.
- HB1179 creates an exemption for any company that doesn't exceed the five loan, \$3 million threshold. There is no limit to the number of companies that any individual could create and operate under this exemption. That is bad public policy.

Please contact members of the House Commerce Committee prior to Monday's hearing.

- **Chair Tim Rounds:** Tim.Rounds@sdlegislature.gov, 605-224-6588 or 605-222-0695
- **Vice Chair Larry Zikmund:** Larry.Zikmund@sdlegislature.gov, lzikmund@sio.midco.net or 605-373-0975
- **Arch Beal:** Arch.Beal@sdlegislature.gov, H 605-336-3034 or B 605-336-2988
- **Spencer Gosch:** Spencer.Gosch@sdlegislature.gov or 605-230-0313
- **Lana Greenfield:** Lana.Greenfield@sdlegislature.gov, H 605-635-6932 or B 605-635-6996
- **Spencer Hawley:** Spencer.Hawley@sdlegislature.gov, spencer.hawley@mchsi.com, H 605-692-9716 or B 605-692-6223
- **David Johnson:** David.Johnson@sdlegislature.gov, H 605-355-0757 or B 605-923-3333
- **Elizabeth May:** Elizabeth.May@sdlegislature.gov, H 605-455-2588 or B 605-455-2824
- **Steven McCleerey:** Steven.McCleerey@sdlegislature.gov, steven.mccleerey@gmail.com, H 605-698-7478 or B 605-698-3749
- **John Mills:** John.Mills@sdlegislature.gov, mills4sd@gmail.com, H 605-826-4290 or B 605-697-3118
- **Tom Pischke:** Tom.Pischke@sdlegislature.gov or 605-999-2948
- **Wayne Steinhauer:** Wayne.Steinhauer@sdlegislature.gov, repsteinhauer@gmail.com, H 605-526-4269 or B 605-359-6298

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

- **Mark Willadsen:** Mark.Willadsen@sdlegislature.gov,
H 605-361-6104 or B 605-332-2130

Action on Prior Bills

HB1073, the bill to set forth state policy with regard to lobbyists, gifts and elected or appointed state officials, was significantly amended during its hearing in the House State Affairs Committee on Monday. One of the amendments removed concerns about the potential award of all South Dakota Bankers Foundation-sponsored scholarships and Business Plan Competition prizes to the son or daughter of a covered state official. Another amendment took care of most of our concerns regarding the SDBA's long-standing practice of hosting state legislators and other elected and appointed state officials at a reception during our annual State Legislative Day. SDBA and other membership organizations are still working with legislators to clean up some language with regard to the applicability of HB1073's gift provisions on members of those organizations' boards of directors. HB1073 as amended was sent down to the House floor on a vote of 13-0. Final action in the House will occur sometime next week.

HB1166 would have mandated that any settlement of a civil or criminal proceeding between a private party and any governmental entity could not be deemed confidential by consent of both parties. Only the court could deem such a settlement as confidential. During its initial committee hearing on Wednesday, lobbyists representing five governmental entities and eight business concerns, including the SDBA, testified in opposition to the measure. The committee deferred the bill to the mythical 41st legislative day on a vote of 8-3.

HB1079, the measure that proposed to allow cities to create and levy a special assessment against the owner of property to collect monies owed for past due utility bills, had its first hearing in the House Local Government Committee on Tuesday. Koenecke worked with the prime sponsor, Rep. Timothy Johns (R- Lead) and officials with the South Dakota Municipal League on an amendment that essentially replaced the concept of a special assessment that would take priority over a prior secured creditor's interest in the real property with a lien by operation of law holding priority according to SDCL 44-2-1 which is South Dakota's first-in-time, first-in-right lienholder statute. As amended, HB1079 is no longer of concern to the SDBA and subsequently was sent to the full House by a committee vote of 7-6.

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