



# SDBA Legislative Update

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## Update on HB1179 – Call to Action

On Wednesday morning, the members of the Senate Committee on Taxation added an interesting chapter to the history of this bill to exempt certain companies engaged in the business of lending from licensing, regulation and taxation. I want to give a big shout out to SDBA Chairman-Elect Dave Rozenboom and long-time SDBA Legislative Committee member Roger Porch for coming to Pierre and delivering excellent opponent testimony. SD Division of Banking Director Bret Afdahl and I also offered opponent testimony. After more than an hour of testimony and Q A, the committee took three different votes on HB1179:

- Do-Pass Motion: failed on a 3-4 vote
- Deferral to 41<sup>st</sup> Day Motion: failed on a 3-4 vote
- Report to the full Senate without Recommendation Motion: passed on a 4-3 vote

Then on Thursday, by a vote of 25-8, members of the Senate decided to put HB1179 on their debate calendar for Monday, March 6.

One of the reasons why a couple of committee members voted to keep HB1179 alive was because, while they didn't support the bill in its current form, they felt that the parties of interest should be given more time to try to strike a balance between too-much and too-little regulation of the type of occasional or casual lending that is going on in South Dakota. Because there is some interest in amending HB1179, I communicated a set of basic principles that, if incorporated in an amendment, could eliminate the SDBA's opposition to this measure. Those principles are:

- Clearly stated exemption for family member-to-member loans and property owner financing of asset sales. Exempt from licensing, registration, reporting and taxation.
- Registration process for occasional lenders (multiple loans, either personally or through a business). No diminimus exemption. Short form disclosure of terms. Affirm responsibility to pay tax.

At this writing, I don't have a good feel for how legislators would view an amendment that incorporated those principles. I am somewhat frustrated that many legislators don't seem to want to discuss the issue of the reach of South Dakota's bank franchise tax.

All of that said, one thing certain is that we continue to oppose HB1179 in its current form. Bankers need to communicate that opposition to all 35 members of the South Dakota Senate. Here is a simple message that you can deliver:

Allow fair competition in the marketplace. Allow people to lend money as they wish, but keep the playing field level as to taxation. Regulate as necessary to ensure fair equitable taxation.

If you want to be more specific in your conversations with senators, here are some concerns about HB1179:

- HB1179 creates a multi-million dollar loophole in our law for the benefit of a limited number of well-heeled individuals who want to make loans, earn interest income, but not be bothered with any regulation or taxation.
- Even in business lending, there are good reasons for laws that protect struggling farmers, ranchers or small business owners against unscrupulous people with money to lend.
- Any company or individual in the business of lending, whether on a full or part-time basis, needs to be licensed and pay the bank franchise tax on the net proceeds from that lending activity.
- SDBA has suggested an alternative to HB1179 that:
  - Create a simpler licensing or registration process for occasional lenders that requires disclosure of all loans made, no exceptions.
  - Affirm the lender's responsibility to pay the bank franchise tax.

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**PLEASE CONTACT MEMBERS OF THE SOUTH DAKOTA SENATE BEFORE THE AFTERNOON OF MONDAY, MARCH 6.**

Here is their contact information. Just click on emails.

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

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