



SDBA Legislative Update

Volume 11, Issue 2

January 22, 2010

Legislative News

Bills numbers increased slowly this week as only 74 new bills had been introduced by Friday noon. Legislators worked a short day today due to weather related travel concerns. Committee and floor activity continues to be pretty light. The exception to the general rule is the Joint Committee on Appropriations where members continue daily meetings with state agencies, discussing their requested budgets for FY2011.

Legislation of Interest to Banking

HB1070 comes as a result of a 2009 decision by the South Dakota Supreme Court in the matter of Neve v. Davis (2009 SD 97). Mr. Neve lost about \$1,500 to Mr. Davis playing cards at the Sioux Falls Elks Club in 1992. Mr. Davis subsequently loaned Mr. Neve money to help cover various business, medical and tax debts incurred by Mr. Neve. A promissory note was ultimately executed between Neve and Davis, making no official mention of any gambling debt. For more than 100 years (predating legalization of any form of gambling, the Legislature has provided that *if any part of the consideration* for a note is for the repayment of money lost in gambling, the entire note is absolutely void. In this case, the Supreme Court effectively decided that under South Dakota law, principal and interest owed by Neve to Davis totaling more than \$85,000 was nullified because about \$1,500 of the principal was attributable to gambling.

The prime sponsor of HB1070, Rep. Rich Engels (D-Hartford) brings this legislation because he believes the application of current statute results in an unjust result for a creditor like Mr. Davis. An amendment has been prepared and has been discussed with Mr. Engels, which would exempt any contract where the creditor is a regulated lender from the application of this 100-year-old section of South Dakota law.

HB1081 is brought on behalf of the state's Unified Judicial System, proposing to double the UJS Court Automation Surcharge from \$20 to \$40. The reason for the legislation is to better recover costs associated with the Court's automation systems, reflecting a user-pay philosophy.

HB1092 comes courtesy of Rep. Mark Kirkeby (R-Rapid City) and seeks to increase the time allowed to a plaintiff to place a continuing lien on wages by garnishment from 60 to 90 days.

SB81 seeks to exempt open-loop prepaid debit cards from the state's unclaimed property statutes. It comes from a bank with South Dakota operations which has a significant presence in this marketplace. This legislation has already been enacted in at least one other state, creating a competitive issue for South Dakota-based issuers.

Lastly, I was asked by Sen. Corey Brown (R-Gettysburg) to review a bill he may introduce which seeks to exempt non-profit lenders, like local economic development corporations, from money lender licensing requirements under SDCL Chapter 54-4. Several years ago, the State Division of Banking began receiving inquiries from out-of-state, non-profit entities seeking to establish lending operations in South Dakota regarding the applicability of our mortgage and money lending license laws. Those inquiries prompted the Division to contact existing in-state, non-profit lending entities, informing them of the licensure requirements. The non-profit development corporations responded in 2005 by bringing legislation seeking a specific exemption from money and mortgage lending license, fee, bond and taxation requirements. Per board direction, I raised objections about that legislation. Ultimately, a compromise was reached, exempting non-profits from everything except the requirement to be licensed.

I have explained the basis for the SDBA's previous opposition to this type of legislation to Sen. Brown. Based on feedback received this week from the SDBA's Board of Directors, I will continue to voice our opposition based primarily on our continuing concern about the potential consequences created by unlicensed, unregulated lenders. Sen. Brown seeks an exemption for local development corporations, but hasn't figured out a way to narrow his legislative proposal to accomplish only that objective.

As always, please contact me with any questions or concerns.

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

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