



SDBA Legislative Update

Volume 11, Issue 4

February 5, 2010

Legislative News

Thursday's deadline for introduction of new bills yielded a grand total of 474 for the 2010 session, 30 fewer than last year's total. Projected budget shortfalls no doubt contributed to the smaller bill count.

Legislation of Interest to Banking

HB1070 passed the House of Representatives on Monday by a vote of 66-3. As amended in the House Judiciary Committee, regulated lenders would be exempt from the provisions of this seldom used, antiquated provision of contract law which generally voids any contract where any part of said contract involves the repayment of money lent or advanced for the purpose of gambling. HB1070 now moves to the Senate Judiciary Committee.

According to its title, **HB1221 seeks to expand the authority of the state auditor and the state treasurer to monitor public funds in local bank accounts.** Brought by Rep. Bernie Hunhoff (D-Yankton), the bill repeals language added to SDCL 4-4-3 in 2002 which restricted the account signatory authority of both elected officials and which also required state agencies holding state funds in local bank accounts to provide quarterly activity statements on each account to the State Treasurer and State Auditor. At this writing, the impetus for this legislation is unknown.

HB1109 proposes several revisions to the Uniform Limited Liability Company act. The bill passed out of the House Judiciary Committee unanimously on Monday after it was amended a couple of times. One of the amendments added three new fees for LLC corporate filings with the Office of the Secretary of State. Those fees were:

- Filing Articles of Domestication - \$150
- Filing Articles of Organization Surrender - \$150
- Filing a Plan of Conversion - \$150

Banks are allowed to organize as LLCs in South Dakota, but I am not aware of any which are organized in that manner. I will continue to monitor this legislation as it moves through the process.

HB1229 proposes enactment of the Uniform Real Property Transfer on Death Act. This act was finalized in 2009 by the National Conference of Commissioners on Uniform State Laws (NCCUSL). My quick review of this proposed legislation indicates that creditor interests in real property which might be transferred to a named beneficiary upon the death of the current property owner would not be diminished in any way by passage of HB1229. I have forwarded the bill to L.H. Wilson, the ABA's resident Uniform Laws expert, for his review.

SB173 proposes to cap the allowable APR for a payday or title loan at 72 percent. Sen. Sandy Jerstad (D-Sioux Falls) brings this year's version of a usury limitation. Even though SB173 would not impact the lending activities of any South Dakota bank governed by the provisions of SDCL Chapter 51A, the SDBA has consistently opposed attempts to put the South Dakota Legislature back in the business of setting the price of credit as a matter of law. Members of the SDBA's Legislative Committee and Board of Directors will discuss this bill during next Wednesday's State Legislative Conference and will develop our Association's position on this bill.

SB190 proposes to revise certain provision regarding the opt-out rights of credit card customers. Last year's Congressional action on the Credit Card Act and related changes to Regulation Z create the need for SB190. Prior to 2009, both federal and state law in South Dakota allowed card holders to decline or opt-out of a change in terms which resulted in an increase in the amount of their minimum monthly payment. New federal statutes and regulations require issuers to propose changes in credit card contracts which are designed to make card holders retire a higher percentage of their outstanding principal balance with each monthly payment. This bill aims to sync South Dakota law with the terms of revised Reg Z. The SDBA Board of Directors will finalize our position on this legislation next week.

SB119, the bill to permit auctioneers to offer a written opinion regarding the value of real or personal property on a fee for service basis, had its first hearing on Thursday in the Senate Commerce Committee. Sen.

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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Margaret Gillespie (D-Hudson) brought this bill on behalf of auctioneer/constituents who believe that since real estate broker-associates can already render such opinions on value, similarly trained auctioneers should be able to do likewise. Certified, licensed appraisers oppose this legislation. Proponents for the legislation offered a couple of letters of support for SB119 which were written by local bankers. Sen. Gillespie proposed an amendment to SB119 which stated that "auctioneers value opinions may not be used for the purpose of obtaining a loan." Final action on SB119 was deferred to a subsequent committee meeting. To this point, the SDBA has taken no official position on SB119.

I look forward to seeing many of you in Pierre at next Wednesday's conference. As always, please contact me with any questions or concerns.

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Have a great (snowy) weekend!

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