

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

195B0451

HOUSE COMMERCE COMMITTEE

ENGROSSED NO. **HB1221** - 2/6/98

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Representatives Schaunaman, Cutler, Duxbury, Hunt, Sperry, and Waltman and Senators Lawler, Dennert, and Munson (David)

1 FOR AN ACT ENTITLED, An Act to define and regulate a qualified education loan insurer, to  
2 provide for the investment of certain funds, to allow surety student loan insurance, and to  
3 declare an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. The term, qualified education loan insurer, means a domestic stock insurer formed  
6 under chapter 58-5 for the principal purposes of transacting surety insurance, in this state only,  
7 in the education loan market and principally or beneficially owning or through a wholly-owned  
8 subsidiary investing in education loans, including loans originated in accordance with the terms  
9 of the Higher Education Act of 1965, as amended.

10 Section 2. Any qualified education loan insurer is subject to the provisions of Title 58 except  
11 as otherwise specifically provided in this Act. Notwithstanding any other provision of Title 58,  
12 a qualified education loan insurer is not subject to the following provisions of Title 58 and any  
13 rules promulgated to implement any such provisions:

14 (1) Sections 58-4-48, 58-5-85, and 58-27-63;

- 1       (2)    Subdivision 58-5-7(5) to the extent that this subdivision permits only one class of
- 2            authorized voting common stock or otherwise restricts the authorization of preferred
- 3            stock, with or without voting rights;
- 4       (3)    Section 58-5-92 to the extent that this section prohibits agreements with respect to
- 5            investments permitted under section 4 of this Act; and
- 6       (4)    Chapter 58-5A.

7       Section 3. Notwithstanding any other provision of Title 58 and in addition to any investment  
8 permitted pursuant to chapter 58-27, a qualified education loan insurer may invest funds in the  
9 following, and any such investment made by a qualified education loan insurer is not subject to  
10 any aggregate amount limitations or other investment limitations except as specifically provided  
11 below:

- 12       (1)    A loan originated under the terms of the Higher Education Act of 1965, as amended;
- 13       (2)    An education loan not originated under the Higher Education Act of 1965, as
- 14            amended, the principal and interest of which may be insured or uninsured;
- 15       (3)    A direct obligation of the United States of America or an obligation with respect to
- 16            which the full and timely payment of principal and interest is unconditionally
- 17            guaranteed by the United States of America;
- 18       (4)    An interest bearing time or demand deposit, certificate of deposit, or a similar banking
- 19            arrangement with any bank, trust company, national banking association, or other
- 20            depository institution, provided that, at the time of deposit or purchase, if the
- 21            investment is for a period exceeding one year, the depository institution shall have
- 22            long-term unsecured debt rated by at least one nationally recognized statistical rating
- 23            organization in a permitted rating category or, if the investment is for a period of less
- 24            than one year, shall have short-term unsecured debt rated by at least one nationally
- 25            recognized statistical rating organization in a permitted rating category;

- 1       (5) An obligation issued or guaranteed as to the principal and interest by any of the  
2       following:
- 3       (a) The Government National Mortgage Association;
- 4       (b) The Federal National Mortgage Association; or
- 5       (c) A Federal Farm Credit Bank, a Federal Intermediate Credit Bank, the Export-  
6       Import Bank of the United States, a Federal Land Bank, the Student Loan  
7       Marketing Association, the Federal Financing Bank, a Federal Home Loan  
8       Bank, the Federal Home Loan Mortgage Corporation, the Rural and  
9       Community Development Administration, or the Federal Farm Mortgage  
10      Acceptance Corporation, provided that any obligation described in this  
11      subdivision shall be rated by at least one nationally recognized statistical rating  
12      organization in a permitted rating category;
- 13      (6) A repurchase agreement or reverse repurchase agreement with any bank which is a  
14      member of the Federal Deposit Insurance Corporation or with any government bond  
15      dealer insured by the Securities Investor Protection Corporation, which agreement  
16      with a bank or government bond dealer is secured by any government obligation  
17      described in subdivision (3) of this section at a level sufficient to obtain a rating by at  
18      least one nationally recognized statistical rating organization in a permitted rating  
19      category, or with any broker or dealer the unsecured long-term debt of which is rated  
20      by at least one nationally recognized statistical rating organization in a permitted  
21      rating category;
- 22      (7) Any money market fund, including a qualified regulated investment company  
23      described in the Internal Revenue Service Notice 87-22, rated by at least one  
24      nationally recognized statistical rating organization in a permitted rating category;
- 25      (8) Any debt instrument, provided that the debt instrument is rated by at least one

1 nationally recognized statistical rating organization in a permitted rating category; and  
2 (9) Any investment agreement constituting a general obligation of an entity whose debt,  
3 unsecured securities, deposits, or claims paying ability is rated by at least one  
4 nationally recognized statistical rating organization in a permitted rating category.

5 For the purposes of this section, a permitted rating category is one of the four highest rating  
6 categories assigned long-term debt or an equivalent short-term category within either of which  
7 there may be subcategories or gradations indicating relative standing.

8 Section 4. In addition to any investment permitted pursuant to section 3 of this Act, a  
9 qualified education loan insurer may also invest any amount in common stock, preferred stock,  
10 debt obligations, and other securities, including without limitation, membership in a limited  
11 liability company, of any subsidiary engaged or organized to engage in any of the following:

- 12 (1) The principal or beneficial ownership and management of assets authorized as  
13 investments for the qualified education loan insurer under section 3 of this Act; or
- 14 (2) The origination, administration, and servicing of education loans, the provision of  
15 services to any school, lender, student, and borrower and otherwise providing services  
16 for any educational purposes.

17 Section 5. Notwithstanding § 58-4-43 or any other provision of Title 58, a qualified  
18 education loan insurer's subsidiary investment permitted under section 4 of this Act shall be  
19 counted fully as an admitted asset on the qualified education loan insurer's balance sheet and may  
20 not be disregarded as an admitted asset by the director of the Division of Insurance in enforcing  
21 the provisions of §§ 58-4-39 to 58-4-43, inclusive, and chapter 58-29B, and any rule  
22 promulgated to implement such provisions.

23 Section 6. Notwithstanding the other provisions of chapter 58-29B, for the purposes of  
24 determining:

- 25 (1) If a qualified education loan insurer has, in any transaction involving the transfer of

1 any education loans or other assets, sold such education loans or other assets or  
2 pledged such education loans or other assets to secure indebtedness of the qualified  
3 education loan insurer; and

4 (2) If a wholly owned subsidiary of a qualified education loan insurer shall be treated as  
5 a separate entity, distinct from the qualified education loan insurer, or the subsidiary's  
6 assets and liabilities shall be consolidated with the assets and liabilities of the qualified  
7 education loan insurer;

8 chapter 58-29B shall be construed as referring to available and analogous case law under the  
9 federal bankruptcy code for making determinations in any receivership, rehabilitation, or  
10 liquidation of the qualified education loan insurer.

11 Section 7. The director of the Division of Insurance may promulgate rules, pursuant to  
12 chapter 1-26, to provide any qualified education loan insurer with additional exemptions from  
13 the provisions of Title 58 or to provide additional investment authority.

14 Section 8. Whereas, this Act is necessary for the support of the state government and its  
15 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
16 force and effect from and after its passage and approval.

1 **BILL HISTORY**

2 1/21/98 First read in House and referred to Commerce. H.J. 155

3 2/5/98 Scheduled for Committee hearing on this date.

4 2/5/98 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 399