

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

195B0451

HOUSE BILL NO. 1221

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 a qualified education loan insurer and to provide
2 for the investment of certain funds and to allow surety student loan insurance.

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

4 Section 1. That chapter 58-5 be amended by adding thereto a NEW SECTION to read as
5 follows:

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

11 Section 2. That chapter 58-5 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Notwithstanding any other provision of title 58, a qualified education loan insurer is not
14 subject to the following provisions of title 58 and any rules promulgated to implement any such
15 provisions:

- 1 (1) Sections 58-4-48, 58-5-85, and 58-27-63;
- 2 (2) Subdivision 58-5-7(5) to the extent that this subdivision permits only one class of
- 3 authorized voting common stock or otherwise restricts the authorization of preferred
- 4 stock, with or without voting rights;
- 5 (3) Section 58-5-92 to the extent that this section prohibits agreements with respect to
- 6 investments permitted under section 4 of this Act; and
- 7 (4) Chapter 58-5A.

8 Section 3. That chapter 58-5 be amended by adding thereto a NEW SECTION to read as
9 follows:

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

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

1 organization in a permitted rating category or, if the investment is for a period of less
2 than one year, shall have short-term unsecured debt rated by at least one nationally
3 recognized statistical rating organization in a permitted rating category;

4 (5) An obligation issued or guaranteed as to the principal and interest by any of the
5 following:

6 (a) The Government National Mortgage Association;

7 (b) The Federal National Mortgage Association; or

8 (c) A Federal Farm Credit Bank, a Federal Intermediate Credit Bank, the Export-
9 Import Bank of the United States, a Federal Land Bank, the Student Loan
10 Marketing Association, the Federal Financing Bank, a Federal Home Loan
11 Bank, the Federal Home Loan Mortgage Corporation, the Rural and
12 Community Development Administration, or the Federal Farm Mortgage
13 Acceptance Corporation, provided that any obligation described in this
14 subdivision shall be rated by at least one nationally recognized statistical rating
15 organization in a permitted rating category;

16 (6) A repurchase agreement or reverse repurchase agreement with any bank which is a
17 member of the Federal Deposit Insurance Corporation or with any government bond
18 dealer insured by the Securities Investor Protection Corporation, which agreement
19 with a bank or government bond dealer is secured by any government obligation
20 described in subdivision (3) of this section at a level sufficient to obtain a rating by at
21 least one nationally recognized statistical rating organization in a permitted rating
22 category, or with any broker or dealer the unsecured long-term debt of which is rated
23 by at least one nationally recognized statistical rating organization in a permitted
24 rating category;

25 (7) Any money market fund, including a qualified regulated investment company

1 described in the Internal Revenue Service Notice 87-22, rated by at least one
2 nationally recognized statistical rating organization in a permitted rating category;

3 (8) Any debt instrument, provided that the debt instrument is rated by at least one
4 nationally recognized statistical rating organization in a permitted rating category; and

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

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

11 Section 4. That chapter 58-5 be amended by adding thereto a NEW SECTION to read as
12 follows:

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

17 (1) The principal or beneficial ownership and management of assets authorized as
18 investments for the qualified education loan insurer under section 3 of this Act; or

19 (2) The origination, administration, and servicing of education loans, the provision of
20 services to any school, lender, student, and borrower and otherwise providing services
21 for any educational purposes.

22 Section 5. That chapter 58-5 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Notwithstanding § 58-4-43 or any other provision of title 58, a qualified education loan
25 insurer's subsidiary investment permitted under section 4 of this Act shall be counted fully as an

1 admitted asset on the qualified education loan insurer's balance sheet and may not be disregarded
2 as an admitted asset by the director of the Division of Insurance in enforcing the provisions of
3 §§ 58-4-39 to 58-4-43, inclusive and chapter 58-29B, and any rule promulgated to implement
4 such provisions.

5 Section 6. That chapter 58-5 be amended by adding thereto a NEW SECTION to read as
6 follows:

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