

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0350      SENATE EDUCATION COMMITTEE ENGROSSED NO.  
**SB 41 - 01/17/2002**

Introduced by: The Committee on State Affairs at the request of the Investment Council

1    FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the higher education  
2        savings plan and to declare an emergency.

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

4        Section 1. That § 13-63-11 be amended to read as follows:

5        13-63-11. Account owners may withdraw all or part of the balance from an account ~~on sixty~~  
6    ~~days' notice, or a shorter period as may be authorized by the council, by policies, guidelines, or~~  
7    ~~procedures, or~~ under rules promulgated by the council pursuant to chapter 1-26. ~~These rules~~  
8    ~~shall include provisions that will generally enable the council or program manager to determine~~  
9    ~~if a withdrawal is a nonqualified withdrawal. The rules may require one or more of the following:~~

10    ~~(1) Account owners seeking to make a withdrawal other than a nonqualified withdrawal~~  
11        ~~shall provide certifications, copies of bills for qualified higher education expenses, or~~  
12        ~~other supporting material;~~

13    ~~(2) Qualified withdrawals from an account shall be made only by a check payable jointly~~  
14        ~~to the designated beneficiary and a higher education institution as designated by the~~  
15        ~~account owner, except as expressly otherwise permitted by section 529 of the Internal~~



1 Revenue Code and related regulations;

2 ~~(3) Withdrawals not meeting requirements established by the council shall be treated as~~  
3 ~~nonqualified withdrawals by the program manager, and if these withdrawals are not~~  
4 ~~nonqualified withdrawals, the account owner must seek refunds of penalties directly~~  
5 ~~from the council.~~

6 Section 2. That § 13-63-18 be amended to read as follows:

7 13-63-18. No contributor to, account owner of, or designated beneficiary of, any account  
8 may, directly or indirectly, direct the investment of any contributions to an account or the  
9 earnings from the account, except to the extent permitted under section 529 of the Internal  
10 Revenue Code and related regulations.

11 The council, as trustee, may offer participants a choice of several investment options, some  
12 of which may require investment counseling prior to participation. Any investment vehicle  
13 offered by the council shall be in accordance with policies of the council adopted pursuant to this  
14 chapter and shall be consistent with the investments of a prudent person with similar objectives  
15 and shall further be separate from, and not commingled with, other investment programs of the  
16 council.

17 Section 3. That § 13-63-21 be amended to read as follows:

18 13-63-21. The council shall adopt policies, guidelines, procedures, or rules pursuant to  
19 chapter 1-26 to prevent contributions on behalf of a designated beneficiary in excess of ~~those~~  
20 ~~necessary to pay the qualified higher education expenses of the designated beneficiaries and to~~  
21 ~~satisfy the safe harbor requirements~~ the maximum amounts permitted under section 529 of the  
22 Internal Revenue Code and related regulations.

23 Section 4. That § 4-5-26 be amended to read as follows:

24 4-5-26. Money made available for investment may be invested in the following classes of

1 securities and investments and, except as provided by § 3-12-117, chapter 3-13, the South  
2 Dakota Cement Plant retirement fund, chapter 13-63, and the permanent trust fund containing  
3 the net proceeds from the sale of state cement enterprises, not otherwise:

- 4 (1) Direct and indirect obligations of the United States government;
- 5 (2) Agencies and instrumentalities of the United States government;
- 6 (3) Direct obligations of the State of South Dakota and any of its political subdivisions;
- 7 (4) Obligations consisting of notes, bonds, debentures, and certificates which are direct  
8 obligations of a solvent corporation or trust existing under the laws of the United  
9 States or any state thereof, if such investments are rated in the four highest  
10 classifications established by at least two standard rating services; or
- 11 (5) Savings accounts, share accounts, certificates of deposit of banks, savings and loan  
12 associations, building and loan associations, and bankers' acceptances;
- 13 (6) In addition to the investments authorized by subdivisions (1) to (5) of this section,  
14 inclusive, the investment council may also allocate a sum certain of state public funds  
15 for investment in the accounts and certificates of South Dakota banks and  
16 associations. This sum shall initially be offered to South Dakota banks and  
17 associations, and if not initially fully subscribed, the investment officer shall  
18 immediately reoffer the unsubscribed sum to other qualified public depositories  
19 defined by subdivision 4-6A-1(7).

20 Section 5. That ARSD 6:01:06:01 be amended to read as follows:

21 6:01:06:01. Definitions. Words and phrases defined in SDCL chapter 13-63 have the same  
22 meaning when used in this chapter. Terms used in this chapter mean:

- 23 (1) "Cash," currency, bills, and coin in circulation, or converting a negotiable instrument to  
24 cash by endorsing and presenting to a financial institution for deposit. An automatic transfer,

1 cashier's check, certified check, money order, payroll deposit, traveler's check, personal check,  
2 and wire transfer are cash;

3 (2) "Investment direction," specifying or attempting to specify the particular financial  
4 instruments or ownership interests either individually, or within a fund family or other group of  
5 financial instruments or ownership interests held as an investment group, into which the  
6 contributions or earnings are invested. Investment direction does not mean selecting an initial  
7 type of investment program if more than one program is offered;

8 (3) "IRC," section 529 of the Internal Revenue Code as amended on ~~August 1, 2001~~  
9 January 16, 2002;

10 (4) "Program manager," any financial institution selected by the council to act as the  
11 depository and manager for the higher education savings plan.

12 Section 6. That ARSD 6:01:06:04 be repealed.

13 ~~6:01:06:04. Withdrawals--Reporting of nonqualified withdrawals--Penalties. An account~~  
14 ~~owner may withdraw funds from an account on 30 days notice. The designated beneficiary of~~  
15 ~~an account does not have any authority to withdraw funds from an account unless the account~~  
16 ~~is structured to give the designated beneficiary such right of withdrawal upon matriculation or~~  
17 ~~upon incurring qualified higher education expenses.~~

18 ~~— (1) Withdrawals. Types of withdrawals include:~~

19 ~~— (a) Qualified withdrawals. In order to make a qualified withdrawal, the account holder~~  
20 ~~or the account holder's designee must complete a certification, on a form provided by the~~  
21 ~~program manager, declaring that the funds will be used for the purposes set forth in subdivision~~  
22 ~~SDCL 13-63-1(13). The form shall include a statement advising the designated beneficiary and~~  
23 ~~account owner to report, in accordance with IRC, refunds received from a higher education~~  
24 ~~institution. In addition to the certification, a withdrawal is deemed qualified only if:~~

1 ~~—————(i)————— The financial institution is provided with a copy of an invoice from the~~  
2 ~~higher education institution or other supporting material; and~~

3 ~~—————(ii) The distribution is made only by check payable jointly to the designated~~  
4 ~~beneficiary and a higher education institution as designated by the account owner, or the higher~~  
5 ~~education institution only, or except as expressly permitted by IRC;~~

6 ~~—————(b) Withdrawal based on death, disability, or scholarship. A withdrawal may be made~~  
7 ~~as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation~~  
8 ~~is provided. Written substantiation must be from a party other than the designated beneficiary~~  
9 ~~or the account owner that can independently confirm the circumstances of the withdrawal. For~~  
10 ~~a scholarship, the withdrawal may not exceed the amount of the scholarship;~~

11 ~~—————(c) Nonqualified or unsubstantiated withdrawals. Any penalty that exceeds zero percent~~  
12 ~~would be considered more than de minimis based on IRC, therefore the council has determined~~  
13 ~~that no penalty will be imposed pursuant to SDCL 13-63-15; and~~

14 ~~————(2) Substantiation procedures. Before treating any withdrawal as qualified, the program~~  
15 ~~manager shall confirm that substantiation is provided for the amount of a withdrawal that the~~  
16 ~~account owner or designated beneficiary asserts is qualified; that the substantiation complies with~~  
17 ~~IRC, and, in the case of a withdrawal to pay qualified higher education expenses, that the~~  
18 ~~substantiated expenditures are of a nature and in amounts that can be treated as qualified higher~~  
19 ~~education expenses. If the program manager determines that substantiation is inadequate, it shall~~  
20 ~~notify the account owner and defer making any distribution with respect to an inadequately~~  
21 ~~substantiated request until proper substantiation is provided or the account owner instructs the~~  
22 ~~financial institution to make the requested distribution.~~

23 Section 7. Whereas, this Act is necessary for the support of the state government and its  
24 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full

1 force and effect from and after its passage and approval.