

AN ACT

ENTITLED, An Act to revise certain provisions regarding the higher education savings plan and to declare an emergency.

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

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

13-63-11. Account owners may withdraw all or part of the balance from an account as may be authorized by the council, by policies, guidelines, or procedures, or under rules promulgated by the council pursuant to chapter 1-26.

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

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

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

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

13-63-21. The council shall adopt policies, guidelines, procedures, or rules pursuant to chapter 1-26 to prevent contributions on behalf of a designated beneficiary in excess of the maximum amounts permitted under section 529 of the Internal Revenue Code and related regulations.

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

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

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

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

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

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

- (1) "Cash," currency, bills, and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire

transfer are cash;

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

(3) "IRC," section 529 of the Internal Revenue Code as amended on January 16, 2002;

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

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

Section 7. That § 13-63-1 be amended to read as follows:

13-63-1. Terms used in this chapter mean:

- (1) "Account," an account established as prescribed in this chapter;
- (2) "Account owner," the person who, under this chapter or rules promulgated by the council pursuant to chapter 1-26, is entitled to select or change the designated beneficiary of an account, to designate any person other than the designated beneficiary to whom funds may be paid from the account, or to receive distributions from the account if no such other person is designated;
- (3) "Contribution," any payment directly allocated to an account for the benefit of a designated beneficiary or used to pay late fees or administrative fees associated with an account, and that portion of any rollover amount treated as a contribution under section 529 of the Internal Revenue Code and related regulations;
- (4) "Contributor," any person making a contribution to an account;
- (5) "Council," the South Dakota Investment Council;

- (6) "Designated beneficiary," except as provided in § 13-63-25, the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with § 13-63-12, 13-63-13, or 13-63-14, the replacement beneficiary;
- (7) "Eligible education institution," an institution that is eligible to participate in any financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended through January 1, 2001, and that is any of the following as permitted by section 529 of the Internal Revenue Code and related regulations:
- (a) An institution described in the Higher Education Act of 1965 (P.L. 89-329, 79 stat. 1219; 20 United States Code sections 1001 through 1150);
  - (b) An area vocational educational school as defined in section 521(3), subparagraph (C) or (D) of the Carl D. Perkins Vocational Education Act (P.L. 98-524; 98 stat. 2435; 20 United States Code sections 2301 through 2471);
  - (c) An institution accredited for private postsecondary education;
- (8) "Financial institution," any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, an insurance company, brokerage firm, or other similar entity that is authorized to do business in this state;
- (9) "Member of the family," any of the following:
- (a) A son or daughter of an individual or a descendant of the son or daughter of the individual;
  - (b) A stepson or stepdaughter of an individual;
  - (c) A brother, sister, stepbrother, or stepsister of an individual. For purposes of this subsection, the terms, brother and sister, include a brother or sister by the half-blood;

- (d) The father or mother of an individual or an ancestor of the father or mother of an individual;
  - (e) A stepfather or stepmother of an individual;
  - (f) A son or daughter of an individual's brother or sister. For purposes of this subsection, the terms, brother and sister, include a brother or sister by the half-blood;
  - (g) A brother or sister of an individual's father or mother. For purposes of this subsection, the terms, brother and sister, include a brother or sister by the half-blood;
  - (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of an individual;
  - (i) The spouse of an individual or the spouse of an individual described in this subdivision;
  - (j) Any individual who meets the criteria to be a member of the family as described in this subdivision as a result of legal adoption;
  - (k) Any other individual who is considered a member of the family under section 529 of the Internal Revenue Code and related regulations;
- (10)
- (11) "Person," as defined in the regulations to section 529 of the Internal Revenue Code;
- (12) "Program," the higher education savings program established under this chapter;
- (13) "Qualified higher education expenses," tuition, fees, books, supplies, and equipment required for enrollment or attendance and room and board of a designated beneficiary at an eligible education institution, and any other expenses qualifying as qualified higher education expenses under section 529 of the Internal Revenue Code and related

regulations; provided that room and board expenses qualify only if the beneficiary enrolls at least half time and only if the expenses do not exceed the minimum room and board allowance determined in calculating costs of attendance for federal financial aid programs;

(14)

(15) "Rollover," a disbursement or transfer from an account of a designated beneficiary that is transferred to or deposited within sixty days into an account of another individual who is a member of the family of the designated beneficiary, if the transferee account was created under this chapter or under a qualified state tuition program maintained by another state in accordance with section 529 of the Internal Revenue Code and related regulations.

Section 8. That § 13-63-15 be repealed.

Section 9. That § 13-63-16 be repealed.

Section 10. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

An Act to revise certain provisions regarding the higher education savings plan and to declare an emergency.

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I certify that the attached Act originated in the

SENATE as Bill No. 41

\_\_\_\_\_  
Secretary of the Senate

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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 41  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State