

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

400S0162

SENATE COMMERCE AND ENERGY  
ENGROSSED NO. **SB 44** - 1/25/2011

Introduced by: The Committee on Commerce at the request of the Department of Revenue  
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding representations and  
2 warranties in insurance and annuity applications.

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

4 Section 1. That § 58-11-44 be amended to read as follows:

5 58-11-44. All statements and descriptions in any application for an insurance policy,  
6 certificate, or annuity contract, by or ~~in~~ on behalf of the insured or annuitant, shall be deemed  
7 to be representations and not warranties. ~~Misrepresentations, omissions, concealment of facts,~~  
8 ~~and incorrect statements shall not prevent~~ No misrepresentation, omission, concealment of fact,  
9 or incorrect statement prevents a recovery under the policy or contract unless ~~either~~:

- 10 (1) Fraudulent or an intentional misrepresentation of a material fact; or  
11 (2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer;  
12 or  
13 (3) The insurer in good faith would either not have issued the policy or contract, or  
14 would not have issued it at the same premium rate, or would not have issued a policy



1 or contract in as large an amount, or would not have provided coverage with respect  
2 to the hazard resulting in the loss, if the true facts had been made known to the  
3 insurer as required either by the application for the policy or contract or otherwise.

4 With respect to any health insurance policy or certificate, subdivisions (2) and (3) of this  
5 section only apply to excepted benefits.

6 Any question, statement, or description in any application for an insurance policy,  
7 certificate, or annuity contract, by or on behalf of the insured or annuitant, which requires the  
8 insured or annuitant to assert a condition precedent is not permitted in any application for an  
9 insurance policy, certificate, or annuity contract. No insured or annuitant may be asked to  
10 warranty or certify whether or not the insured or annuitant is insurable.

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

13 Nothing in § 58-11-44 prohibits an insurer or an insurer's representative from:

- 14 (1) Requesting information from an applicant for the purpose of determining that  
15 applicant's insurability; or
- 16 (2) Underwriting an application or declining coverage based upon that applicant's failure  
17 to meet the insurer's underwriting requirements.