

AN ACT

ENTITLED, An Act to revise certain provisions regarding representations and warranties in insurance and annuity applications.

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

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

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

- (1) Fraudulent or an intentional misrepresentation of a material fact; or
- (2) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or
- (3) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

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

No applicant, insured, or annuitant may be asked to warranty or certify whether or not the applicant, insured, or annuitant is insurable.

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

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

- (1) Requesting information from an applicant for the purpose of determining that applicant's

insurability; or

- (2) Underwriting an application or declining coverage based upon that applicant's failure to meet the insurer's underwriting requirements.

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I certify that the attached Act
originated in the

SENATE as Bill No. 44

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. 44
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
=====

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