

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0222

SENATE BILL NO. 50

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

1 FOR AN ACT ENTITLED, An Act to establish standards for the advertisement, solicitation, and
2 sale of life and health insurance.

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

4 Section 1. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 This Act applies to all individual and group health policies which are solicited or sold in this
7 state. However, this Act does not apply to insurance policies and subscriber contracts subject
8 to the medicare supplement requirements. Except for the exemptions specified in this section,
9 this Act applies to any solicitation, negotiation, or effectuation of life insurance occurring within
10 this state. This Act applies to any existing nonexempt policy held by a policy owner residing in
11 this state for purposes of responses to policyholders for policy data, if an insurer substantially
12 deviates from the contribution principle, if an insurer uses or changes from or to the investment
13 generation method, and if an insurer makes a material revision with respect to changes in
14 nonguaranteed factors. This Act applies to any issuer of life insurance contracts including
15 fraternal benefit societies. This Act does not apply to:

16 (1) Group annuities;

- 1 (2) Credit life insurance;
- 2 (3) Group life insurance (except for disclosures relating to preneed funeral contracts or
3 prearrangements as provided by this Act. These disclosure requirements extend to the
4 issuance or delivery of certificates as well as to the master policy);
- 5 (4) Life insurance policies issued in connection with pension and welfare plans as defined
6 by and which are subject to the federal Employee Retirement Income Security Act of
7 1974 (ERISA), 29 U.S.C. Section 1001 *et seq.* as amended to January 1, 1999; or
- 8 (5) Variable life insurance under which the amount or duration of the life insurance varies
9 according to the investment experience of a separate account.

10 Section 2. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The purpose of this Act is to establish guidelines and permissible and impermissible standards
13 of conduct in the solicitation of and advertising of life and health insurance in a manner which:

- 14 (1) Prevents unfair, deceptive, and misleading advertising;
- 15 (2) Is conducive to accurate presentation and description to the insurance-buying public
16 through the advertising media and material used by insurance agents and companies;
- 17 (3) Provides for the full disclosure of the benefits, limitations, and exclusions of policies
18 sold;
- 19 (4) Sets forth minimum standards and guidelines to assure a full and truthful disclosure
20 to the public of all material and relevant information in the advertising of life insurance
21 policies and annuity contracts;
- 22 (5) Requires insurers to deliver to purchasers of life insurance information which will
23 improve the buyer's ability to select the most appropriate plan of life insurance for the
24 buyer's needs;
- 25 (6) Improves the buyer's understanding of the basic features of the policy which has been

- 1 purchased or which is under consideration;
- 2 (7) Improves the ability of the buyer to evaluate the relative costs of similar plans of life
- 3 insurance;
- 4 (8) Provides reasonable standardization and simplification of terms and coverages of
- 5 health insurance policies and subscriber contracts of nonprofit hospital, medical, and
- 6 dental service associations to facilitate public understanding and comparison;
- 7 (9) Eliminates provisions contained in health insurance policies and subscriber contracts
- 8 of nonprofit hospital, medical, and dental service associations which may be
- 9 misleading or unreasonably confusing in connection either with the purchase of such
- 10 coverages or with the settlement of claims; and
- 11 (10) Provides for full disclosure in the sale of life or health coverages.

12 Section 3. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as

13 follows:

14 For the purposes of this Act, the term, advertisement, includes:

- 15 (1) Any printed and published material, audio visual material, and descriptive literature
- 16 of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts,
- 17 billboards, and similar displays;
- 18 (2) Any descriptive literature and sales aids of all kinds issued by an insurer, agent,
- 19 producer, broker or solicitor for presentation to members of the insurance-buying
- 20 public, including circulars, leaflets, booklets, depictions, illustrations, Internet
- 21 communications, form letters, and lead-generating devices of all kinds;
- 22 (3) Any prepared sales talks, presentations, and material for use by agents, brokers,
- 23 producers, and solicitors whether prepared by the insurer or the agent, broker,
- 24 producer, or solicitor; and
- 25 (4) Any advertising material included with a policy if the policy is delivered and material

1 is used in the solicitation of renewals and reinstatements.

2 Section 4. For the purposes of this Act, the term, advertisement, does not include:

- 3 (1) Any material to be used solely for the training and education of an insurer's
4 employees, agents, or brokers;
- 5 (2) Any material used in-house by insurers;
- 6 (3) Any communications within an insurer's own organization not intended for
7 dissemination to the public;
- 8 (4) Any individual communications of a personal nature with current policyholders other
9 than material urging such policyholders to increase or expand coverages;
- 10 (5) Any correspondence between a prospective group or blanket policyholder and an
11 insurer in the course of negotiating a group or blanket contract;
- 12 (6) Any court-approved material ordered by a court to be disseminated to policyholders;
13 or
- 14 (7) Any general announcement from a group or blanket policyholder to eligible
15 individuals on an employment or membership list that a contract or program has been
16 written or arranged if the announcement clearly indicates that it is preliminary to the
17 issuance of a booklet and the announcement does not describe the benefits under the
18 contract or program or describe advantages as to the purchase of the contract or
19 program.

20 Section 5. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 In order to provide for full and fair disclosure in the sale of health insurance policies or
23 subscriber contracts of a nonprofit hospital, medical, or dental service association, no such policy
24 or contract may be delivered or issued for delivery in this state unless the outline of coverage
25 described in section 6 of this Act either accompanies the policy or is delivered to the applicant

1 at the time application is made and an acknowledgment of receipt or certificate of delivery of
2 such outline is provided the insurer. If the policy has been sold through an agent, the outline of
3 coverage shall be delivered at the time of application. If the policy is issued on a basis other than
4 that applied for, the outline of coverage properly describing the policy or contract shall
5 accompany the policy or contract.

6 Section 6. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The director shall prescribe the format and content of the outline of coverage required by
9 section 5 of this Act. The term, format, means style, arrangement, and overall appearance,
10 including such items as the size, color, prominence of type, and the arrangement of text and
11 captions. The term, outline of coverage, includes:

- 12 (1) A statement identifying the applicable category or categories of coverage provided
13 by the policy or contract as prescribed by the director;
- 14 (2) A description of the principal benefits and coverage provided in the policy or contract;
- 15 (3) A statement of the exceptions, reductions, and limitations contained in the policy or
16 contract;
- 17 (4) A statement of the renewal provisions including any reservation by the insurer of
18 nonprofit hospital, medical, or dental service association of a right to change
19 premiums; and
- 20 (5) A statement that the outline is a summary of the policy or contract issued or applied
21 for and that the policy or contract should be consulted to determine governing
22 contractual provisions.

23 Section 7. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
24 follows:

25 The director may promulgate rules pursuant to chapter 1-26 to establish specific standards

1 consistent with section 2 this Act. The rules may include standards of full and fair disclosure, that
2 set forth the manner, content and required disclosure. Except for conversion policies issued
3 pursuant to a contractual conversion privilege under a group, the rules may apply to the sale of
4 individual and group health insurance policies and subscriber contracts of nonprofit hospital,
5 medical, and dental service associations, in existence on the effective date of this Act, which shall
6 be in addition to and in accordance with applicable laws of this state, including chapters 58-17,
7 58-18, 18-18B and 58-33, which may include:

- 8 (1) Terms of renewability;
- 9 (2) Initial and subsequent conditions of eligibility;
- 10 (3) Nonduplication of coverage provisions;
- 11 (4) Coverage of dependents;
- 12 (5) Preexisting conditions;
- 13 (6) Termination of insurance;
- 14 (7) Probationary periods;
- 15 (8) Limitations, exceptions, and reductions;
- 16 (9) Elimination periods;
- 17 (10) Requirements for replacement;
- 18 (11) Recurrent conditions;
- 19 (12) Prohibitions on the use of terms, information, phrases, or implied affiliations in
20 advertising;
- 21 (13) Prominence, form, and style of any advertisement;
- 22 (14) Information to be disclosed on advertising or solicitation materials;
- 23 (15) Use of testimonials;
- 24 (16) Special offers or enrollment periods;
- 25 (17) Coverage comparisons;

- 1 (18) Identification of insurers and agents;
- 2 (19) Prearrangements or preneed funeral contracts; and
- 3 (20) The definition of terms including the following: hospital, accident, sickness, injury,
- 4 physician, accidental means, total disability, partial disability, nervous disorder,
- 5 guaranteed renewable and noncancellable.

6 Section 8. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Any information required to be disclosed by rules promulgated pursuant to this Act shall be
9 set out conspicuously and in close conjunction with the statements to which the information
10 relates or under appropriate captions of such prominence that it does not minimize, render
11 obscure, present in an ambiguous fashion, or intermingle with the context of the advertisement
12 so as to be confusing or misleading.

13 Section 9. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Prior to accepting the applicant's initial premium or premium deposit, the insurer shall
16 provide, to all prospective life insurance purchasers, a buyer's guide, and a policy summary or
17 premium deposit. However, in lieu of a policy summary, an insurer may provide an illustration
18 which complies with applicable rules concerning life insurance illustrations. Insurers may deliver
19 the buyer's guide and policy summary or illustration at other times as specified by the director
20 by rule. The director may also promulgate rules pursuant to chapter 1-26 specifying the type of
21 policy summary required, the form and content of policy summaries, the specific buyer's guide
22 to be used, and if the buyer's guide must be provided.

23 Section 10. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
24 follows:

25 Any advertisements shall be truthful and not misleading in fact or by implication. The form

1 and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid
2 deception. No advertisement may have the capacity or tendency to mislead or deceive. In
3 determining whether an advertisement has the capacity or tendency to mislead or deceive, the
4 director shall make the determination from the overall impression that the advertisement may be
5 reasonably expected to create upon a person of average education or intelligence within the
6 segment of the public to which it is directed.

7 Section 11. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Each insurer shall maintain at its home or principal office a complete file containing a
10 specimen copy of every printed, published, or prepared advertisement of its policies and
11 specimen copies of typical printed, published, or prepared advertisements of its blanket,
12 franchise, and group policies where the content of advertisements vary dependent upon coverage
13 options, hereafter disseminated in this state, with a notation indicating the manner and extent of
14 distribution and the form number of any policy advertised. The file may be kept electronically.
15 The division may inspect the file. All advertisements shall be maintained in the file for a period
16 of either five years or until the filing of the next regular report on the examination of the insurer,
17 whichever is the longer period of time.

18 Section 12. That chapter 58-33 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 If the director determines that an advertisement has the capacity or tendency to mislead or
21 deceive the public or otherwise does not comply with this Act or the rules promulgated pursuant
22 to this Act, the director may require an insurer or insurance producer to submit all or any part
23 of the advertising material for review or approval prior to use, in addition to any other remedies
24 allowed by law.