

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

544C0559

## SENATE BILL NO. 137

Introduced by: Senators Halverson, Flowers, and Rounds and Representatives Diedtrich  
(Elmer), Engbrecht, Peterson, and Sutton (Daniel)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding insurance coverage  
2 for appurtenant property.

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

4 Section 1. That § 58-10-10 be amended to read as follows:

5 58-10-10. Whenever any policy of insurance is written or renewed to insure any real property  
6 in this state, including structures on land owned by a person other than the insured, against loss  
7 by fire, tornado, or lightning and the property insured is wholly destroyed, without criminal fault  
8 on the part of the insured or the insured's assigns, the amount of insurance written in the policy  
9 shall be taken conclusively to be the true value of the property insured and the true amount of  
10 loss and measure of damages, with the following conditions:

11 (1) This section applies only if a total fire loss occurs ninety days or more after the policy  
12 was made or written or ninety days or more after the policy limits were increased by  
13 twenty-five percent or more at the insured's request. However, within the first ninety  
14 days, payment to the insured shall be in accordance with the terms and conditions of  
15 the policy for valuation of the property absent stated amount;

16 (2) Subdivision (1) of this section does not apply to unchanged renewal policies, to

1 policies with inflation adjustment limits or to policies which are being converted to  
2 replacement cost coverage from a lesser value form and upon which there is a written  
3 agreement between the company and the insured that the policy will be written on a  
4 valued basis;

5 (3) Builders' risk policies of insurance covering property in the process of being  
6 constructed shall be valued and settled according to the actual value of that portion  
7 of the construction completed at the time of the fire, tornado, or lightning loss;

8 (4) If two or more policies are written upon the same property interest, each insurer shall  
9 pay only that proportion of the cost of the loss that the limit of liability under its  
10 policy bears to the total amount of insurance covering the loss; and

11 (5) ~~This section does not apply to any claim for loss of an appurtenant structure.~~ Any  
12 claim for loss of an appurtenant structure or other appurtenant property covered  
13 under the policy shall be settled for actual replacement or actual cash value, depending  
14 on the policy provisions applicable to the structure or other property, unless a specific  
15 value was assigned to ~~the~~ each structure or property prior to the loss; and

16 (6) This section does not apply to any claim for total loss to any building which is insured  
17 under a commercial blanket form with one amount covering two or more buildings.  
18 Any claim for total loss to a building so insured shall be settled for actual replacement  
19 or actual cash value depending on the policy provisions applicable to the building.