



# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

265D0181

## HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB73** - 2/18/00

Introduced by: Senators Brosz, Daugaard, Lawler, and Shoener and Representatives Peterson, Konold, and Solum

1 FOR AN ACT ENTITLED, An Act to require insurers to disclose certain provisions with regard  
2 to usual, customary, and reasonable charges.

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

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

6 Any insurer that is subject to § 58-33A-1 offering to provide health benefits in this state  
7 through a policy, contract, or certificate that contains a provision limiting coverage to usual,  
8 customary, or reasonable charges shall provide prominent disclosure that the policy, certificate,  
9 or contract contains a usual, customary, and reasonable limitation and that this limitation may  
10 cause the insured to incur additional out-of-pocket expenses. An insurer may comply with this  
11 section by including the required disclosure in an outline of coverage.

12 Section 2. That § 58-33A-1 be amended to read as follows:

13 58-33A-1. ~~Sections 58-33A-1 to 58-33A-12, inclusive, apply~~ This chapter applies to all  
14 individual and group health policies which are solicited or sold in this state that are subject to  
15 chapters 58-15, 58-16, 58-17, 58-18, 58-18B, 58-37A, 58-38, 58-39, 58-40, and 58-41.  
16 However, ~~§§ 58-33A-1 to 58-33A-12, inclusive, do~~ this chapter does not apply to insurance

1 policies and subscriber contracts subject to the medicare supplement requirements. Except for  
2 the exemptions specified in this section, ~~§§ 58-33A-1 to 58-33A-12, inclusive, apply~~ this chapter  
3 applies to any solicitation, negotiation, or effectuation of life insurance occurring within this  
4 state. ~~Sections 58-33A-1 to 58-33A-12, inclusive, apply~~ This chapter applies to any issuer of life  
5 insurance contracts including fraternal benefit societies. ~~Sections 58-33A-1 to 58-33A-12,~~  
6 ~~inclusive, do~~ This chapter does not apply to:

- 7 (1) Group annuities;
- 8 (2) Credit life insurance;
- 9 (3) Group life insurance (except for disclosures relating to preneed funeral contracts or  
10 prearrangements as provided by ~~§§ 58-33A-1 to 58-33A-12, inclusive~~ this chapter.  
11 These disclosure requirements extend to the issuance or delivery of certificates as well  
12 as to the master policy);
- 13 (4) Life insurance policies issued in connection with pension and welfare plans as defined  
14 by and which are subject to the federal Employee Retirement Income Security Act of  
15 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended to January 1, 1999;
- 16 (5) Variable life insurance under which the amount or duration of the life insurance varies  
17 according to the investment experience of a separate account; or
- 18 (6) Variable annuities under which the amount varies according to the investment  
19 experience.

20 Section 3. That § 58-33A-2 be amended to read as follows:

21 58-33A-2. The purpose of ~~§§ 58-33A-1 to 58-33A-12, inclusive,~~ this chapter is to establish  
22 guidelines and permissible and impermissible standards of conduct in the solicitation of and  
23 advertising of life and health insurance in a manner which:

- 24 (1) Prevents unfair, deceptive, and misleading advertising;
- 25 (2) Is conducive to accurate presentation and description to the insurance-buying public

- 1 through the advertising media and material used by insurance agents and companies;
- 2 (3) Provides for the full disclosure of the benefits, limitations, and exclusions of policies
- 3 sold;
- 4 (4) Sets forth minimum standards and guidelines to assure a full and truthful disclosure
- 5 to the public of all material and relevant information in the advertising of life insurance
- 6 policies and annuity contracts;
- 7 (5) Requires insurers to deliver to purchasers of life insurance information which will
- 8 improve the buyer's ability to select the most appropriate plan of life insurance for the
- 9 buyer's needs;
- 10 (6) Improves the buyer's understanding of the basic features of the policy which has been
- 11 purchased or which is under consideration;
- 12 (7) Improves the ability of the buyer to evaluate the relative costs of similar plans of life
- 13 insurance;
- 14 (8) Provides reasonable standardization and simplification of terms and coverages of
- 15 health insurance policies and subscriber contracts of nonprofit hospital, medical, and
- 16 dental service associations to facilitate public understanding and comparison;
- 17 (9) Eliminates provisions contained in health insurance policies and subscriber contracts
- 18 of nonprofit hospital, medical, and dental service associations which may be
- 19 misleading or unreasonably confusing in connection either with the purchase of such
- 20 coverages or with the settlement of claims; and
- 21 (10) Provides for full disclosure in the sale of life or health coverages.

22 Section 4. That § 58-33A-3 be amended to read as follows:

23 58-33A-3. For the purposes of ~~§§ 58-33A-1 to 58-33A-12, inclusive~~ this chapter, the term,

24 advertisement, includes:

- 25 (1) Any printed and published material, audio visual material, and descriptive literature

1 of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts,  
2 billboards, and similar displays;

3 (2) Any descriptive literature and sales aids of all kinds issued by an insurer, agent,  
4 producer, broker or solicitor for presentation to members of the insurance-buying  
5 public, including circulars, leaflets, booklets, depictions, illustrations, Internet  
6 communications, form letters, and lead-generating devices of all kinds;

7 (3) Any prepared sales talks, presentations, and material for use by agents, brokers,  
8 producers, and solicitors whether prepared by the insurer or the agent, broker,  
9 producer, or solicitor; and

10 (4) Any advertising material included with a policy if the policy is delivered and material  
11 is used in the solicitation of renewals and reinstatements.

12 Section 5. That § 58-33A-4 be amended to read as follows:

13 58-33A-4. For the purposes of ~~§§ 58-33A-1 to 58-33A-12, inclusive~~ this chapter, the term,  
14 advertisement, does not include:

15 (1) Any material to be used solely for the training and education of an insurer's  
16 employees, agents, or brokers;

17 (2) Any material used in-house by insurers;

18 (3) Any communications within an insurer's own organization not intended for  
19 dissemination to the public;

20 (4) Any individual communications of a personal nature with current policyholders other  
21 than material urging such policyholders to increase or expand coverages;

22 (5) Any correspondence between a prospective group or blanket policyholder and an  
23 insurer in the course of negotiating a group or blanket contract;

24 (6) Any court-approved material ordered by a court to be disseminated to policyholders;  
25 or

1 (7) Any general announcement from a group or blanket policyholder to eligible  
2 individuals on an employment or membership list that a contract or program has been  
3 written or arranged if the announcement clearly indicates that it is preliminary to the  
4 issuance of a booklet and the announcement does not describe the benefits under the  
5 contract or program or describe advantages as to the purchase of the contract or  
6 program.

7 Section 6. That § 58-33A-7 be amended to read as follows:

8 58-33A-7. The director may promulgate rules pursuant to chapter 1-26 to establish specific  
9 standards consistent with § 58-33A-2. The rules may include standards of full and fair disclosure,  
10 that set forth the manner, content and required disclosure. Except for conversion policies issued  
11 pursuant to a contractual conversion privilege under a group, the rules may apply to the sale of  
12 individual and group health insurance subject to ~~§§ 58-33A-1 to 58-33A-12, inclusive, this~~  
13 chapter and shall be in addition to and in accordance with applicable laws of this state. The rules  
14 may include:

- 15 (1) Terms of renewability;
- 16 (2) Initial and subsequent conditions of eligibility;
- 17 (3) Nonduplication of coverage provisions;
- 18 (4) Coverage of dependents;
- 19 (5) Preexisting conditions;
- 20 (6) Termination of insurance;
- 21 (7) Probationary periods;
- 22 (8) Limitations, exceptions, and reductions;
- 23 (9) Elimination periods;
- 24 (10) Requirements for replacement;
- 25 (11) Recurrent conditions;

- 1 (12) Prohibitions on the use of terms, information, phrases, or implied affiliations in
- 2 advertising;
- 3 (13) Prominence, form, and style of any advertisement;
- 4 (14) Information to be disclosed on advertising or solicitation materials;
- 5 (15) Use of testimonials;
- 6 (16) Special offers or enrollment periods;
- 7 (17) Coverage comparisons;
- 8 (18) Identification of insurers and agents;
- 9 (19) Prearrangements or preneed funeral contracts; and
- 10 (20) The definition of terms including the following: hospital, accident, sickness, injury,
- 11 physician, accidental means, total disability, partial disability, nervous disorder,
- 12 guaranteed renewable and noncancellable.

13 Section 7. That § 58-33A-8 be amended to read as follows:

14 58-33A-8. Any information required to be disclosed by rules promulgated pursuant to  
15 ~~§§ 58-33A-1 to 58-33A-12, inclusive~~, this chapter shall be set out conspicuously and in close  
16 conjunction with the statements to which the information relates or under appropriate captions  
17 of such prominence that it does not minimize, render obscure, present in an ambiguous fashion,  
18 or intermingle with the context of the advertisement so as to be confusing or misleading.

19 Section 8. That § 58-33A-12 be amended to read as follows:

20 58-33A-12. If the director has reason to believe that an advertisement has the capacity and  
21 tendency to mislead or deceive the public or otherwise does not comply with ~~§§ 58-33A-1 to~~  
22 ~~58-33A-12, inclusive~~, this chapter or the rules promulgated pursuant to ~~§§ 58-33A-1 to~~  
23 ~~58-33A-12, inclusive~~ this chapter, the director may require an insurer or insurance producer to  
24 submit all or any part of the advertising material for review or approval prior to use, in addition  
25 to any other remedies allowed by law.

1 **BILL HISTORY**

2 1/15/00 First read in Senate and referred to Commerce. S.J. 60

3 1/20/00 Scheduled for Committee hearing on this date.

4 1/20/00 Deferred by Chair.

5 1/27/00 Scheduled for Committee hearing on this date.

6 2/1/00 Scheduled for Committee hearing on this date.

7 2/1/00 Commerce Do Pass, Passed, AYES 7, NAYS 0. S.J. 268

8 2/2/00 Senate Do Pass, Passed, AYES 20, NAYS 15. S.J. 294

9 2/3/00 First read in House and referred to Commerce. H.J. 406

10 2/17/00 Scheduled for Committee hearing on this date.

11 2/17/00 Commerce Do Pass Amended, Passed, AYES 9, NAYS 0. H.J. 718

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

149D0409

## HOUSE TRANSPORTATION COMMITTEE

### ENGROSSED NO. **SB93** - 2/22/00

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Senators Madden, Albers, Daugaard, Flowers, Hainje, Lawler, Moore, Munson (David), Rounds, Shoener, Symens, and Vitter and Representatives Konold, Brooks, Brown (Richard), Diedtrich (Elmer), Duenwald, Garnos, Hennies, Klaudt, Kooistra, Lintz, McCoy, Munson (Donald), Sutton (Duane), Volesky, Wetz, Wilson, and Young

1 FOR AN ACT ENTITLED, An Act to revise the provisions limiting the expenditure of county  
2 road and bridge funds and to declare an emergency.

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

4 Section 1. That § 32-11-2 be amended to read as follows:

5 32-11-2. The funds credited to the county road and bridge fund pursuant to § 32-11-4.2 shall  
6 be used by the board of county commissioners for grading, constructing, planing, dragging, and  
7 maintaining county highways ~~outside the limits of municipalities~~ and also for dragging,  
8 maintaining, and grading secondary roads. Proper equipment for dragging, grading, and  
9 maintaining highways, such as graders, tractors, drags, maintainers, and planers may be  
10 purchased from such county road and bridge fund.

11 Section 2. Whereas, this Act is necessary for the support of the state government and its  
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
13 force and effect from and after its passage and approval.

1 **BILL HISTORY**

2 1/18/00 First read in Senate and referred to Commerce. S.J. 73

3 1/20/00 Scheduled for Committee hearing on this date.

4 1/20/00 Commerce Do Pass, Passed, AYES 5, NAYS 2. S.J. 125

5 1/21/00 Senate Deferred to another day. S.J. 142

6 1/25/00 Motion to Amend, Passed. S.J. 190

7 1/25/00 Senate Do Pass Amended, Passed, AYES 22, NAYS 11. S.J. 190

8 1/26/00 First read in House and referred to Transportation. H.J. 261

9 2/14/00 Scheduled for Committee hearing on this date.

10 2/14/00 Deferred to 36th legislative day, AYES 7, NAYS 6. H.J. 640

11 2/18/00 Transportation Hog Housed.

12 2/18/00 Transportation Reconsidered.

13 2/18/00 Transportation Do Pass Amended, Passed, AYES 9, NAYS 1. H.J. 742

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

980D0684

## HOUSE ENGROSSED NO. **SB124** - 2/24/00

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Senator Brown (Arnold) and Representative Fiegen

1 FOR AN ACT ENTITLED, An Act to allow the transfer of funds from certain nursing facilities  
2 to the intergovernmental transfer fund.

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

4 Section 1. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Terms used in this Act mean:

- 7 (1) "Department," the Department of Social Services;
- 8 (2) "Fiscal period," up to a twelve-month period determined by the department;
- 9 (3) "Funding pool," pool of funds established in accordance with section 2 of this Act;
- 10 (4) "Intergovernmental transfer fund," the fund established to hold the federal portion of  
11 the monetary difference between the medicaid payment and the medicare upper limits  
12 maximum allowable reimbursement, less transaction fees paid to publicly owned and  
13 operated nursing facilities;
- 14 (5) "Medical assistance," the medicaid program authorized by Title XIX of the Social  
15 Security Act, 42 U.S.C.1396d, as amended through January 1, 2000, which provides  
16 medical assistance to eligible individuals and is operated under § 28-6-1;

1 (6) "Medicare," the Health Insurance for the Aged Act, Title XVIII of the Social Security  
2 Amendments of 1965 and as amended through January 1, 2000;

3 (7) "Nursing facility," any facility participating in medicaid that is licensed, maintained,  
4 and operated for the express or implied purpose of providing care to one or more  
5 persons, whether for consideration or not, who are not acutely ill but require nursing  
6 care and related medical services of such complexity as to require professional nursing  
7 care under the direction of a physician twenty-four hours a day;

8 (8) "Political subdivision," any municipality or county;

9 (9) "Publicly owned and operated nursing facility," a nursing facility that is owned and  
10 operated by a political subdivision of the state and is participating in medicaid.

11 Section 2. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 The department shall establish a funding pool consisting of an amount annually calculated  
14 by multiplying the total of all medical assistance resident days of all nursing homes during the  
15 fiscal period during which a resident was eligible for and received benefits under chapter 28-6  
16 times an amount that does not exceed the amount that can reasonably be estimated to be paid  
17 under payment principles established under medicare, reduced by the medical assistance payment  
18 rates set for each such resident, for each such day, during the fiscal period.

19 Section 3. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 In addition to any payment made pursuant to a rate set under this Act, and notwithstanding  
22 any other provision of this Act, the department shall pay to each publicly owned and operated  
23 nursing facility participating under the provisions of this Act an amount determined by:

24 (1) Dividing that facility's total medical assistance resident days for the fiscal period by  
25 the total medical assistance resident days of all publicly owned and operated nursing

1 facilities participating under the provisions of this Act for the fiscal period; and

2 (2) Multiplying a decimal fraction determined under subdivision (1), times the funding  
3 pool amount determined under section 2 of this Act.

4 Section 4. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Each publicly owned and operated nursing facility participating under the provisions of this  
7 Act, immediately upon receiving a payment under section 3 of this Act, shall remit the amount  
8 of that payment, less a transaction fee, to the department for credit to:

9 (1) The intergovernmental transfer fund in an amount equal to the applicable federal  
10 medical assistance percentage times the total remittance to the department, less the  
11 transaction fee; and

12 (2) The department's other funds for all remaining amounts.

13 Section 5. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Notwithstanding any other provision of law governing the operation of a publicly owned and  
16 operated nursing facility, a publicly owned and operated nursing facility participating under the  
17 provisions of this Act may receive and immediately upon receipt shall remit payments provided  
18 under section 3 and 4 of this Act. No payment is required under this section for any period in  
19 which the use of funds for the purposes of this Act are prohibited due to action by the secretary  
20 of the United States Department of Health and Human Services.

21 Section 6. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 There is hereby established in the state treasury a fund known as the intergovernmental  
24 transfer fund. The fund shall include revenue received from publicly owned and operated nursing  
25 facilities for remittance to the fund under section 4 of this Act. The department shall administer

1 the fund and shall adopt procedures for participation by publicly owned and operated nursing  
2 facilities. All moneys designated for the fund from whatever source derived shall be deposited  
3 with the state treasurer in the intergovernmental transfer fund. The amounts in the  
4 intergovernmental transfer fund shall be invested pursuant to §§ 4-5-23 and 4-5-26 and the  
5 earnings shall be deposited in the intergovernmental transfer fund.

6 Section 7. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 Funds appropriated to the department for purposes authorized under § 28-6-1 may be used  
9 for the purposes of making payments pursuant to section 3 of the Act each fiscal year.

10 Section 8. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 The department may promulgate rules pursuant to chapter 1-26 for the administration of this  
13 Act. The rules may include criteria for establishing, funding, and administering the pool, criteria  
14 for participation in the intergovernmental transfer, penalties for failing to immediately remit the  
15 funds to the department, criteria for the transfer of funds, the establishment of transaction fees,  
16 and other policies to facilitate the administration of the intergovernmental transfer fund or the  
17 funding pool.

18 Section 9. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 This Act does not create an entitlement to any funds. The department may disburse funds to  
21 the extent funds are available and, within its discretion, to the extent such appropriations are  
22 approved.

23 Section 10. That § 28-6-1 be amended to read as follows:

24 28-6-1. The Department of Social Services may provide medical services and medical or  
25 remedial care on behalf of persons having insufficient income and resources to meet the

1 necessary cost thereof, if the person has exhausted all other possible public and private medical  
2 and remedial care programs, income or benefits, with the exception of county poor relief, in  
3 accordance with rules which the secretary of social services shall adopt pursuant to chapter 1-26  
4 in accordance with the provisions of Title XIX and Title XXI of the federal Social Security Act,  
5 as amended to January 1, 2000. The rules shall specify the individuals and services for which  
6 state funds or federal financial participation are available and may include:

- 7 (1) The amount, scope, and duration of medical and remedial services;
- 8 (2) The basis for and extent of provider payments on behalf of an eligible person;
- 9 (3) The establishment and collection of copayments, premiums, fees, or charges for  
10 sharing the cost of risk protection or services provided to persons. All such  
11 collections shall be remitted to the general fund;
- 12 (4) Methods of administration found necessary for the operation of the medical assistance  
13 program;
- 14 (5) Safeguards against the disclosure or improper use of information, required by  
15 statutory law to be held confidential, concerning applicants for or recipients of  
16 medical assistance; and
- 17 (6) Such other requirements as may be necessary to obtain federal financial participation  
18 in the medical assistance program.

1 **BILL HISTORY**

2 1/19/00 First read in Senate and referred to Health and Human Services. S.J. 115

3 2/7/00 Scheduled for Committee hearing on this date.

4 2/7/00 Health and Human Services Do Pass, Passed, AYES 6, NAYS 0. S.J. 337

5 2/8/00 Senate Do Pass, Passed, AYES 34, NAYS 1. S.J. 354

6 2/9/00 First read in House and referred to Health and Human Services. H.J. 549

7 2/18/00 Health and Human Services Hog Housed.

8 2/18/00 Scheduled for Committee hearing on this date.

9 2/18/00 Health and Human Services Do Pass Amended, Passed, AYES 10, NAYS 1. H.J. 743

10 2/23/00 House of Representatives Deferred to another day, AYES 56, NAYS 8. H.J. 832