

31A-21-105 Representations, warranties, and conditions.

- (1)
 - (a) No statement, representation, or warranty made by any person representing the insurer in the negotiation for an individual or franchise insurance contract affects the insurer's obligations under the policy unless it is stated in the policy or in a written application signed by the applicant. No person, except the applicant or another by his written consent, may alter the application, except for administrative purposes in a way which is clearly not ascribable to the applicant.
 - (b) No statement, representation, or warranty made by or on behalf of a particular certificate holder under a group policy affects the insurer's obligations under the certificate unless it is stated in the certificate or in a written document signed by the certificate holder, and a copy of it is supplied to the certificate holder.
 - (c) The policyholder, his assignee, the loss payee or mortgagee or lienholder under property insurance, and any person whose life or health is insured under a policy may request, in writing, from the company a copy of the application, if he did not receive the policy or a copy of it, or if the policy has been reinstated or renewed without the attachment of a copy of the original application. If the insurer does not deliver or mail a copy as requested within 30 days after receipt of the request by the insurer or its agent, or in the case of a group policy certificate holder, does not inform that person within the same period how he may inspect the policy or a copy of it and application or enrollment card or a copy of it during normal business hours at a place reasonably convenient to the certificate holder, nothing in the application or enrollment card affects the insurer's obligations under the policy to the person making the request. Each person whose life or health is insured under a group policy has the same right to request a copy of any document under Subsection (1)(b).
- (2) Except as provided in Subsection (5), no misrepresentation or breach of an affirmative warranty affects the insurer's obligations under the policy unless:
 - (a) the insurer relies on it and it is either material or is made with intent to deceive; or
 - (b) the fact misrepresented or falsely warranted contributes to the loss.
- (3) No failure of a condition prior to the loss and no breach of a promissory warranty affects the insurer's obligations under the policy unless it exists at the time of the loss and either increases the risk at the time of the loss or contributes to the loss. This Subsection (3) does not apply to failure to tender payment of premium.
- (4) Nondisclosure of information not requested by the insurer is not a defense to an action against the insurer. Failure to correct within a reasonable time any representation that becomes incorrect because of changes in circumstances is misrepresentation, not nondisclosure.
- (5) If after issuance of a policy the insurer acquires knowledge of sufficient facts to constitute a general defense to all claims under the policy, the defense is only available if the insurer notifies the insured within 60 days after acquiring the knowledge of its intention to defend against a claim if one should arise, or within 120 days if the insurer considers it necessary to secure additional medical information and is actively seeking the information at the end of the 60 days. The insurer and insured may mutually agree to a policy rider in order to continue the policy in force with exceptions or modifications. For purposes of this Subsection (5), an insurer has acquired knowledge only if the information alleged to give rise to the knowledge was disclosed to the insurer or its agent in connection with communications or investigations associated with the insurance policy under which the subject claim arises.
- (6)
 - (a) An insurer that offers coverage to a small employer group as required by Pub. L. No. 104-191, 110 Stat. 1979, Sec. 2711(a), may not rescind a policy or individual certificate holder

based on application misrepresentation unless the insurer would not have been required to issue the coverage in the absence of the misrepresentation.

- (b) Subsection (6)(a) does not prevent an insurer from correcting rates if:
 - (i) in the absence of misrepresentation a different rate would have been required; and
 - (ii) the corrected rates are in compliance with Section 31A-30-106.
- (7) No trivial or transitory breach of or noncompliance with any provision of this chapter is a basis for avoiding an insurance contract.

Amended by Chapter 131, 2003 General Session