

**STATE-BY-STATE SURVEY OF
MATERIAL MISREPRESENTATION LAW
IN PROPERTY CLAIMS:
IS RELIANCE REQUIRED FOR DENIAL?**



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State	Reliance Required?	Source	Difference in misrepresenting during application or in claim?	Misrepresentation in Application	Misrepresentation in Claim
Alabama	Yes	Ala.Code 1975 § 27-14-28; <u>American Fire & Cas. Co., Inc. v. Archie</u> , 409 So.2d 854 (Ala.Civ.App.1981).	Yes	Before loss, a misrepresentation must be material to an increase in the risk of loss and must be relied on by the insurer to its prejudice.	After loss, a misrepresentation need only be made with the actual intent to deceive and be related to a matter which is material.
Alaska	No	AS § 21.36.210; AS § 21.42.110; <u>Bennet v. Hedglin</u> , 995 P.2d 668 (Ak. 2000).	No	If there is a fraudulent and material misrepresentation made on the claim, the insurer may reject coverage.	
Arizona	No	Ariz.Rev.Stat. Ann. 20-1109; <u>Valley Farms, Ltd. v. Transcontinental Ins. Co.</u> , 206 Ariz. 349 (Ct. App.2003).	No	An insurer may not deny coverage under a policy unless the insurer can prove that all three conditions of § 20-1109 have been satisfied.	
Arkansas	Yes	A.C.A. § 23-79-107; <u>Twin City Bank v. Verex Assur. Inc.</u> , 733 F.Supp. 67 (1990), <u>Cincinnati Life Ins. Co. v. Mickles</u> , 85 Ark. App. 188 (2004).	No	Insurance policy will be void if a material misrepresentation, which was relied upon by the insurance company, is made on the application for the coverage.	
California	No	Cal.Ins.Code § 359; <u>LA Sound USA, Inc. v. St. Paul Fire & Marine Ins. Co.</u> (App. 4 Dist. 2007) 156 Cal.App.4th 1259.	No	Reliance is not required to void a policy <i>ab initio</i> for application fraud, only that the policyholder concealed or misrepresented a material fact on an application.	
Colorado	Yes	<u>Hollinger v. Mut. Ben. Life Ins. Co.</u> , 192 Colo. 377 (1977).	N	The insurer must prove that (1) the applicant made a false statement of fact or concealed a fact in his application for insurance; (2) the applicant knowingly made the false statement or knowingly concealed the fact; (3) the false statement of fact or the concealed fact materially affected either the acceptance of the risk or the hazard assumed by the insurer; (4) the insurer was ignorant of the false statement of fact or concealment of fact and is not chargeable with knowledge of the fact; (5) the insurer relied, to its detriment, on the false statement of fact or concealment of fact in issuing the policy.	

Connecticut	No	<u>Rego v. Connecticut Ins. Placement Facility</u> , 219 Conn. 339 (1991).	No	An insurer who raises the special defense of concealment or misrepresentation does not have to prove that the insurer actually relied on the concealment or misrepresentation.	
Delaware	No	18 Del.C. § 2711; <u>Grand Fraternity v. Keatley</u> , 27 Del. 308 (Del. 1913).	No	An insurer must prove that the insured must have known or had a reason to know of the falsity before rescinding an insurance contract under a misrepresentation theory.	
Florida	No	Fla. Stat. Ann. § 627.409; <u>Biscayne Cove Condominium Ass'n., Inc. v. QBE Ins. Corp.</u> , S.D.Fla. No. 10-23728-CIV (June 12, 2013).	No	The insurer does not need to “demonstrate that it relied on the insured's misrepresentations when asserting a policy defense based on fraud; that a material fraud was perpetrated by an insured in pursuing an insurance claim is sufficient.”	
Georgia	No	Ga. Code Ann. § 33-24-7; <u>Blitch Ford, Inc. v. MIC Prop. & Cas. Ins. Corp.</u> , 90 F. Supp. 2d 1377 (M.D. Ga. 2000).	No	Where a policy so provides, material misrepresentations alone, are sufficient to void a policy.	
Hawaii	Yes	HRS § 431:10-209; <u>Matsuura v. E.I. du Pont de Nemours & Co.</u> , 102 Haw. 149 (Haw. 2003).	No	There must be (1) a representation of a material fact, (2) made for the purpose of inducing the other party to act, (3) known to be false but reasonably believed true by the other party, and (4) upon which the other party relies and acts to [his or her] damage.	
Idaho	No	Idaho Code Ann. § 41-1811, § 41-293; <u>Wardle v. Int'l Health & Life Ins. Co.</u> , 97 Idaho 668 (1976).	No		
Illinois	No	ILCS 5/154; <u>Barth v. State Farm Fire and Cas. Co.</u> , 371 Ill. App. 3d 498 (2007).	No	No proof of fraud or detrimental reliance was required. Instead, insurer had to show plaintiff misrepresented or concealed a material fact to void the policy.	
Indiana	Yes	<u>Allied Prop. & Cas. Ins. Co. v. Good</u> , 938 N.E.2d 227 (Ind. Ct. App. 2010).	No	A material misrepresentation or omission of fact in an insurance application relied on by the insurer in issuing the policy, renders the coverage voidable at the insurance company's option.	

Iowa	Yes	<u>Rubes v. Mega Life And Health Ins. Co., Inc.</u> , 642 N.W.2d 263 (Iowa 2002).	No	Reliance is required for insurer to succeed in equitable rescission and equitable estoppel.	
Kansas	No	<u>Pink Cadillac Bar & Grill, Inc. v. U.S. Fid. & Guar. Co.</u> , 22 Kan. App. 2d 944 (1996).	No	An insurer who raises the defense of concealment or misrepresentation does not have to establish that it actually relied on the concealment or misrepresentation or that it suffered an injury.	
Kentucky	Yes	Ky.Rev.Stat.Ann. 304.14-110; <u>Hornback v. Bankers Life Ins. Co.</u> , 176 S.W.3d 699 (Ky. Ct. App. 2005); <u>State Farm Mut. Auto. Ins. Co. v. Crouch</u> , 706 S.W.2d 203 (Ky. Ct. App. 1986).	No	Insurer must rely on misrepresentation to succeed on fraudulent misrepresentation action.	
Louisiana	No	La. Rev. Stat. Ann. § 22:860; <u>Talbert v. State Farm Fire & Cas. Ins. Co.</u> , 971 So. 2d 1206 (La. App. 4 Cir. November 4, 2007).	No	The insurer must only establish that these misstatements materially affected the risk assumed by the insurer.	
Maine	Yes	Me.Rev.Stat. Title 24-A, 2411; <u>N. E. Ins. Co. v. Young</u> , 2011 ME 89, 26 A.3d 794.	No	An insurer must show actual reliance in order to rescind a policy for misrepresentation in application.	
Maryland	Yes	<u>Prince George's Cty. v. Local Govt. Ins. Trust</u> , 388 Md. 162 (2005), <u>Hartford Acc. & Indem. Co. v. Sherwood Brands, Inc.</u> , 111 Md.App. 94, (Md.App.1996), 347 Md. 32 (1997).	No	No misrepresentation by an insured will affect the validity of a policy unless the insurer relies on the misrepresentation in deciding whether to accept the risk.	Insurer may deny claim for material misrepresentation "only if the insurer establishes by a preponderance of the evidence that the lack of cooperation or notice has resulted in actual prejudice to the insurer."
Massachusetts	No	Mass.Gen.Laws Ann.175 S. 186; <u>Northwestern Mut. Life Ins. Co. v. Iannacchino</u> , 950 F.Supp. 28 (D.Mass.1997).	No	An insurer need not demonstrate that it relied on misrepresentations because under Massachusetts law "reliance" is not a prerequisite for proof of invalidation of an insurance policy and/or denial of a claim.	

Michigan	Yes	Mich. Comp. Laws Ann. § 500.2218; <u>Lake States Ins. Co. v. Wilson</u> , 231 Mich. App. 327 (1998), <u>Mina v. Gen. Star Indem. Co.</u> , 218 Mich. App. 678, (1996) rev'd in part, 455 Mich. 866, 568 N.W.2d 80 (1997).	Yes	Rescission is justified without regard to the intentional nature of the misrepresentation, as long as it is relied upon by the insurer.	Insured's statement is "material," for purposes of determining whether insurance policy can be voided for misrepresentation of material fact, if statement is reasonably relevant to insurer's investigation of claim.
Minnesota	No	Minn. Stat. § 60A.08, subd. 9; <u>Collins v. USAA Property & Cas. Ins. Co.</u> , 580 N.W.2d 55 (Minn.App.1998).	No	Any "willful false swearing" as to any material article of insurance policy prevents insured from recovering under whole policy.	
Mississippi	Yes	<u>Apperson v. United States Fidelity & Guaranty Co.</u> , 318 F.2d 438 (5th Cir. Miss. 1963), <u>Watkins v. Continental Ins. Cos.</u> , 690 F.2d 449 (5th Cir.1982).	Yes	Intentional misrepresentation, by the applicant for an insurance policy, of a material fact, if relied on by the insurer, is ground for rescission.	Insurer must only establish that statements made by the insured were 1) false and 2) material and 3) knowingly and willfully made.
Missouri	No	<u>Crewse v. Shelter Mut. Ins. Co.</u> , 706 S.W.2d 35 (Mo. Ct. App. 1985).	No	A misrepresentation is material if it would likely affect the conduct of a reasonable man with respect to his transaction with another.	
Montana	No	Mont. Code Ann. § 33-15-403(2); <u>Schlemmer v. N. Cent. Life Ins. Co.</u> , 2001 MT 256 (Mont. 2001), <u>Schneider v. Minnesota Mut. Life Ins. Co.</u> , 247 Mont. 334 (1991).	No	Omission or misrepresentation on insurance application may be material, and thus, may prevent recovery under policy or contract, if, had truth been known, reasonable and prudent insurer would not have issued policy or would have issued it at higher premium.	
Nebraska	No	Neb. Rev. Stat. § 44-358; <u>Glockel v. State Farm Mut. Auto. Ins. Co.</u> , 224 Neb. 598 (Neb. 1987), <u>McCullough v. State Farm Fire & Cas. Co.</u> , 80 F.3d 269 (8th Cir.1996).	Yes	In Nebraska there is a common-law right to rescind or avoid insurance policies for material misrepresentations, which is recognized in and limited by §44-358.	Under § 44-358, an insurer may not void a policy because an insured misrepresents proof of loss unless the insurer relied on the misrepresentation to its injury.

Nevada	No	<u>Powers v. United Services Auto. Ass'n</u> , 115 Nev. 38, 42(1999).	No	A false representation is material if it concerns a subject reasonably relevant to the insurance company's investigation, and if a reasonable person would attach importance to that fact.	
New Hampshire	No	N.H. RS 417-C:1.	No		
New Jersey	No	<u>Longobardi v. Chubb Ins. Co. of New Jersey</u> , 121 N.J. 530 (1990), <u>Dawn Restaurant, Inc. v. Penn Millers Ins. Co.</u> , D.N.J. No. CIV.A. 10-2273 MLC,(Oct. 18, 2011).	No	An insured's misstatement is material if when made a reasonable insurer would have considered the misrepresented fact relevant to its concerns and important in determining its course of action.	
New Mexico	Yes	N. M. S. A. 1978, § 59A-18-11; <u>Prudential Ins. Co. of America v. Anaya</u> , 78 N.M. 101, 1967-NMSC-132.	No	Rescission is allowed where there has been a misrepresentation of a material fact, the misrepresentation was made to be relied on, and has in fact been relied on.	
New York	Yes	<u>Mutual Ben. Life Ins. Co. v. JMR Electronics Corp.</u> , 848 F.2d 30 (2d Cir. N.Y. 1988), <u>Sunbright Fashions, Inc. v. Greater N.Y. Mut. Ins. Co.</u> , 310 N.Y.S.2d 760, (N.Y. App. Div. 1970).	Yes	The materiality inquiry under New York law is made with respect to the particular policy issued in reliance upon the misrepresentation.	False statements in insurance claims made with the intent to deceive constitute insurance fraud and can be grounds for voiding the underlying policy.
North Carolina	No	N.C.G.S.A. § 58-3-10; <u>Bryant v. Nationwide Mut. Fire Ins. Co.</u> , 329 S.E.2d 333 (1985); <u>Federated Mut. Ins. Co. v. Williams Trull Co., Inc.</u> , 838 F. Supp. 2d 370 (M.D.N.C. 2011).	No	The insurance company must prove the insured made statements that were: 1) false, 2) material, and 3) knowingly and willfully made.	
North Dakota	Yes	NDCC, 26.1-29-25; NDCC, 26.1-29-24; NDCC, 26.1-29-24; NDCC, 26.1-29-17; <u>Lindlauf v. N. Founders Ins. Co.</u> , 130 N.W.2d 86 (N.D. 1964).	No	A misrepresentation in an application for insurance which is made with an intent to deceive, or where the matter misrepresented increases the risk of loss is a ground to avoid a policy of insurance, issued in reliance upon the misrepresentation.	

Ohio	No	<u>Abon, Ltd. v. Transcon. Ins. Co.</u> , 2005-Ohio-3052 (Ohio Ct. App. June 16, 2005), <u>Nationwide Mut. Ins. Co. v. Skeens</u> , 2008-Ohio-1875 (Ohio Ct. App. Apr. 18, 2008).	No	The subject of the misrepresentation need not ultimately prove to be significant to the disposition of the claim, so long as it was reasonably relevant to the insurer's investigation at the time.	
Oklahoma	Yes	<u>Adams v. Nat'l Cas. Co.</u> , 1957 OK 6; <u>Long v. Ins. Co. of N. America</u> , 670 F.2d 930 (10th Cir.1982).	Yes	A misrepresentation must have been relied upon by the insurer, if it constitutes a ground for avoiding the policy.	Regarding allegations of false swearing, a misrepresentation will be considered material if a reasonable insurance company, in determining its course of action, would attach importance to the fact misrepresented.
Oregon	Yes	O.R.S. § 742.013; <u>Story v. Safeco Life Ins. Co.</u> , 179 Or. App. 688 (2002).	No	Misrepresentations must be shown by the insurer to be material, and the insurer also shows reliance thereon.	
Pennsylvania	No	<u>A.G. Allebach, Inc. v. Hurley</u> , 373 Pa.Super. 41, (Pa. Super. Ct.1988), <u>Parasco v. Pacific Indem. Co.</u> , 920 F.Supp. 647 (E.D.Pa.1996).	No	Information is said to be material if knowledge or ignorance of it would naturally influence the judgment of the insurer in issuing the policy, in estimating the degree and character of the risk, or in fixing the premium rate.	In the context of an insurer's post-loss investigation, "the materiality requirement is satisfied if the false statement concerns a subject relevant and germane to the insurer's investigation as it was then proceeding.
Rhode Island	No	R.I.Gen.Laws Ann. 27-18-16; <u>Evora v. Henry</u> , 559 A.2d 1038 (R.I. 1989).	No	Material misrepresentation in an insurance application makes voidable, without a concomitant demonstration of fraud, an insurance contract that is issued upon the application.	
South Carolina	Yes	<u>Primerica Life Ins. Co. v. Ingram</u> , 616 S.E.2d 737 (S.C. App. 2005); <u>United Ins. Co. of America v. Stanley</u> , 289 S.E. 2d 407 (S.C. 1982).	No	In order to void an insurance policy for fraudulent procurement, the insurer must show not only that the statements complained of were untrue but also that the falsity was known to the applicant, material to the risk, relied on by the insurer,	

				and made with the intent to deceive and defraud the company.	
South Dakota	No	SDCL § 58-11-44; <u>De Smet Farm Mut. Ins. Co., v. Busskohl</u> , 834 N.W.2d 826 (N.D. 2013), <u>Fedderson v. Columbia Ins. Group</u> , 2012 SD 90 (S.D. 2012).	No	A misrepresentation “in an application for insurance is material to the risk if it is such as would reasonably influence the decision of the insurer as to whether it would accept or reject the risk.”	
Tennessee	No	T. C. A. § 56-7-103; <u>Owens v. Tenn. Rural Health Improvement Ass'n</u> , 213 S.W.3d 283 (Tn Ct. App. 2006), <u>Matthews v. Auto Owners Mutual Ins. Co.</u> , 680 F. Supp. 287 (M.D. Tenn. 1988).	No	A misrepresentation on an application voids the policy if it is made with actual intent to deceive.	
Texas	Yes	<u>Darby v. Jefferson Life Ins. Co.</u> , 998 S.W.2d 622 (Tex. App. 1995), <u>Koral Industries, Inc. v. Sec.-Connecticut Life Ins. Co.</u> , 788 S.W.2d 136 (Tex. App.1990).	No	Insurer must plead and prove five elements: (1) the making of the representation; (2) the falsity of the representation; (3) the insurer's reliance on the representation; (4) the insured's intent to deceive in making the representation; and (5) the materiality of the representation.	
Utah	Yes	Utah Code Ann. § 31A-21-105 (West), <u>Hardy v. Prudential Ins. Co. of Am.</u> , 763 P.2d 761 (Utah 1988).	No	An insurance company cannot escape liability on a policy if it is established that there should have been no actual reliance on the applicant's misrepresentation, concealment, or omission.	
Vermont	No	Vt.Stat.Ann. Title 8, 4205 <u>Fireman's Fund Ins. Co. v. Knutsen</u> , 132 Vt. 383 (1974), <u>McAllister v. Avemco Ins. Co.</u> , 148 Vt. 110 (1987).	No	A material misrepresentation in an application for liability insurance is grounds for declaring the policy void ab initio.	
Virginia	Yes	Va. Code Ann. § 38.2-309; <u>Montgomery Mut. Ins. Co. v. Riddle</u> , 266 Va. 539 (2003).	No	Insurer must show by clear proof that the statement on the application was untrue and that the insurance company's reliance on the false statement or omission was material to the company's decision to undertake the risk and issued the policy.	

Washington	No	RCWA 48.18.090; <u>Karpenski v. Am. Gen. Life Companies, LLC</u> , 916 F. Supp. 2d 1188 (W.D. Wash. 2012), <u>St. Paul Mercury Ins. Co. v. Salovich</u> , 41 Wn. App. 652 (Wash. Ct. App. 1985).	No	Misrepresentations made during application render policy void ab initio.	The insurer need not establish reliance, an essential element of fraud, in order to deny coverage for such misrepresentation.
West Virginia	No	W. Va. Code, § 33-6-7; <u>Massachusetts Mut. Life Ins. Co. v. Thompson</u> , 460 S.E.2d 719 (1995), <u>Cordial v. Ernst & Young</u> , 199 W. Va. 119 (1996).	No	Insurer must show that misrepresentation, omission, concealment of fact, or incorrect statement substantially affected or impaired its ability to make reasonable decision to assume risk of coverage.	
Wisconsin	No	W.S.A. 631.11; <u>Pum v. Wisconsin Physicians Serv. Ins. Corp.</u> , 298 Wis.2d 497; <u>Tempelis v. Aetna Casualty & Surety Co.</u> , 164 Wis. 2d 17 (Wis. Ct. App. 1991).	No	To be entitled under the statute to rescind an insurance policy, the insurance company must prove: either (a)(i) the insurer relied on the misrepresentation, and (ii) that misrepresentation was material, or (iii) it was made with intent to deceive; or (b) the misrepresented fact contributed to the loss.	Reliance is not an element required to establish material misrepresentations in a proof of loss.
Wyoming	No	W.S.1977 § 26-15-109; <u>White v. Cont'l Gen. Ins. Co.</u> , 831 F. Supp. 1545 (D. Wyo. 1993)	No	Materiality in this context has been defined as a risk that would have influenced a prudent insurer in determining whether to accept the risk in the first place.	

The foregoing represent general principles of state law - It is important you consult with our firm, or your selected legal counsel, regarding individual claims as laws may change and facts of individual claims may differ.

For more information regarding the investigation and handling of insurance fraud investigations and related litigation, please contact us at any time.

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