

Bulletin 98-5

DATE: May 27, 1998

TO: Insurers

FROM: Darla L. Lyon, Director

RE: Arbitration Clauses

Any provision of a policy which allows a party to demand or require arbitration, is prohibited by law. The statute which prohibits this is SDCL 21-25A-3 which reads as follows:

§ 21-25A-3. Insurance policies not covered-Arbitration agreements void.

This chapter does not apply to insurance policies and every provision in any such policy requiring arbitration or restricting a party thereto or beneficiary thereof from enforcing any right under it by usual legal proceedings in ordinary tribunals or limiting the time to do so is void and unenforceable. However, nothing in this chapter may be deemed to impair the enforcement of or invalidate a contractual provision for arbitration entered into between insurance companies.

Policies which have provisions labeled as arbitration, appraisal or any other term whereby a claim dispute resolution process can be demanded or required by either party are likewise prohibited as such provisions constitute arbitration. Such arbitration or appraisal provisions must be optional and only permitted where it is agreed upon by both parties. Any arbitration or appraisal outcome can not be made binding upon the parties.

Examples of prohibited provisions include:

Appraisal. If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss.

Arbitration. If an insured person and we do not agree; (1) that the person is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle, or (2) as to the amount of payment under this part, either that person or we may demand that the issue be determined by arbitration.

This Bulletin does not affect any appraisals made by insurers in the underwriting process or any independent appraisal made by insurers in the processing of claims. For instance,

an insurer may make an appraisal of scheduled property for purposes of determining the amount of insurance to place on that property. Also an insurer may use independent appraisals to determine valuation of property for purposes of the coinsurance clause.

Any insurer with a policy having a provision not in compliance with this Bulletin must re-file its policy forms. Questions regarding this Bulletin may be directed to Vicki Rivenes, Property Casualty Analyst, either by phone, regular mail or email at Vicki.Rivenes@state.sd.us