

BULLETIN 97-1

TO: All Property/Casualty Insurers Licensed in South Dakota

FROM: Darla L. Lyon, Director, S.D. Division of Insurance

DATE: December 05, 1997

RE: Insurance Coverage for Punitive Damages

Questions have recently arisen as to the insurability of punitive damages in South Dakota.

The Division of Insurance concludes that insurance coverage for punitive damages is violative of public policy for the following reasons:

- 1) Pursuant to SDCL 21-3-2, the purposes of a punitive damage award are to deter wrongful conduct and to punish the wrongdoer;
- 2) One of the factors considered in determining the appropriate size of a punitive damage judgment is the wrongdoer's financial condition, meaning that the wrongdoer bears personal responsibility for the penalty;
- 3) Pursuant to SDCL 53-9-3, all contracts which directly or indirectly exempt anyone from responsibility for fraud or willful injury to the person or property of another are against public policy;
- 4) Our analysis of South Dakota Supreme Court cases concludes that a provision of an insurance contract providing indemnity for punitive damages would be found void as against public policy.

Any insurers currently offering policies which would include indemnity for punitive or exemplary damages must cease offering that coverage. If policy forms are being utilized which could be construed as providing coverage for punitive or exemplary damages, those forms must be amended to eliminate that coverage and refiled for approval with the Division of Insurance. Endorsements, also subject to approval, may be used for this purpose. In addition, any insurers offering this coverage must provide written notice to agents that this coverage is no longer available.

All inquiries concerning this bulletin should be addressed to:

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