

Wilson

January 21, 1949

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ARIZONA ATTORNEY GENERAL

Roy B. Rummage, Director
Division of Insurance
Arizona Corporation Commission
Phoenix, Arizona

Dear Mr. Rummage:

We are in receipt of your letter of December 15, 1948 in which you ask the opinion of this office as to whether:

"an insurance company organized and operating under the Benefit Insurance Corporation Law of 1943 can include in its policies of life insurance or accident and health insurance, a provision for reinsuring its claim liabilities 100% in another insurance carrier?"

There seems to be nothing in Section 61-1018, A.C.A. 1939 titled "Prohibited provisions" which would prevent such a provision. And the logic of the situation seems to support the view for the reason that such reinsurance strengthens rather than weakens the protection given the policyholder.

You further ask:

"Would such a provision permit the re-insurance premiums to be paid by the mortuary or morbidity fund?"

The answer to this question is "Yes", if and only if the reinsuring is undertaken by another Arizona Benefit Insurance Company. If the reinsurer is not a benefit company, or is an out-of-state company, mortuary funds may not be used for such reinsurance premiums.

Roy B. Rummage, Director
Division of Insurance

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The logic and reasoning behind this answer is as follows: Section 61-1009, A.C.A. 1939 sets up certain definite mandatory requirements for contribution to a mortuary fund for benefit companies. These requirements are more strict than those providing for the use of funds for legal reserve companies, and more strict than some foreign benefit laws provide. The strictness is caused by the fact that the benefit law contemplates a smaller company with less policyholders over whom to spread the risk. Reinsurance by another Arizona Benefit Company would provide, in effect, for the same fund contributions as outlined in Section 61-1009 for such reinsurer would be bound by this same statute. Reinsurance by another kind of company might not so provide, and the statute is mandatory.

Therefore, mortuary funds may be used for reinsurance premiums only if the reinsurer is an Arizona Benefit Company.

Trusting this answers your question and with kindest personal regards,

Yours very truly,

FRED O. WILSON
Attorney General

EDWARD JACOBSON
Assistant Attorney General

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