

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2838

Chapter 89, Laws of 2004

58th Legislature
2004 Regular Session

INSURERS--CAPITAL CALLS

EFFECTIVE DATE: 3/22/04

Passed by the House February 16, 2004
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 5, 2004
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved March 22, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2838** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 22, 2004 - 5:35 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 2838

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Representatives Benson and Schual-Berke

Read first time 01/21/2004. Referred to Committee on Financial
Institutions & Insurance.

1 AN ACT Relating to capital calls by domestic mutual insurers;
2 adding new sections to chapter 48.09 RCW; providing an effective date;
3 providing an expiration date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.09 RCW
6 to read as follows:

7 (1) In addition to authority granted by RCW 48.09.220 and
8 48.09.230, a domestic mutual insurer meeting all the requirements of
9 this section may increase its surplus by issuing a capital call. A
10 capital call requires policyholders or applicants for insurance to pay
11 a sum, in addition to premium, to be eligible to renew a policy or be
12 issued a new policy. A policyholder that does not pay the amount of a
13 call cannot be cancelled or denied the benefits of an existing policy.

14 (2) Prior to issuing a capital call, the insurer must have:

15 (a) Adopted articles of incorporation or other organizational
16 documents authorizing capital calls; and

17 (b) Provided information concerning the insurer's authority to
18 issue a capital call to every policyholder. This information must be
19 provided at least ninety days prior to a capital call.

1 (3) The insurer must notify the commissioner of its intent to issue
2 a capital call at least ninety days prior to the capital call. The
3 notice to the commissioner must include:

4 (a) A statement of each of the following:

5 (i) The specific purpose or purposes of the capital call;

6 (ii) The total amount intended to be raised by issuance of the
7 capital call;

8 (iii) The amount intended to be raised for each stated purpose;

9 (iv) The grounds relied upon by the insurer in deciding that the
10 capital call is the best option available to the insurer for raising
11 capital; and

12 (v) Each of the alternative methods of raising capital the insurer
13 considered and the reasons the insurer rejected each alternative in
14 favor of the capital call;

15 (b) For the ten years immediately preceding the filing of the
16 notice, a year by year accounting of:

17 (i) All rate filings and actions;

18 (ii) The total of all underwriting losses; and

19 (iii) The total amount of dividends paid to policyholders; and

20 (c) A complete application for a solicitation permit as required in
21 RCW 48.06.030.

22 (4) Before an insurer may issue a capital call, the insurer must:

23 (a) Notify the commissioner and provide information as required in
24 subsection (3) of this section;

25 (b) Provide any and all additional information that the
26 commissioner may determine is useful or necessary in evaluating the
27 merits of the proposed capital call;

28 (c) Receive approval of the policy or insuring instrument from the
29 commissioner; and

30 (d) Receive approval of the commissioner for the capital call and
31 the solicitation permit.

32 The commissioner may disapprove a capital call if he or she does
33 not believe it is in the best interest of the insurer, the
34 policyholders, or the citizens of the state of Washington. In making
35 this determination, the commissioner may consider the financial health
36 of the insurer, the impact on the marketplace, the possible use of
37 other means to raise capital, the frequency of previous capital calls

1 by the insurer, the effect of raising premiums instead of a capital
2 call, the impact on state revenue, or any other factor the commissioner
3 deems proper.

4 (5) The funds raised by an approved capital call are not premiums
5 for the purposes of RCW 48.14.020.

6 (6) The commissioner may adopt rules to implement this section.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.09 RCW
8 to read as follows:

9 (1) In addition to authority granted by RCW 48.09.220 and
10 48.09.230, a domestic mutual insurer meeting all the requirements of
11 this section may increase its surplus by issuing a capital call. A
12 capital call requires policyholders or applicants for insurance to pay
13 a sum, in addition to premium, to be eligible to renew a policy or be
14 issued a new policy. A policyholder that does not pay the amount of a
15 call cannot be cancelled or denied the benefits of an existing policy.

16 (2) Prior to issuing a capital call, the insurer must have:

17 (a) Adopted articles of incorporation or other organizational
18 documents authorizing capital calls; and

19 (b) For any capital call issued on or after January 1, 2006,
20 included information concerning the insurer's authority to issue a
21 capital call in the policy of every policyholder. This information
22 must be provided at least one full policy renewal cycle prior to a
23 capital call.

24 (3) The insurer must notify the commissioner of its intent to issue
25 a capital call at least ninety days prior to the capital call. The
26 notice to the commissioner must include:

27 (a) A statement of each of the following:

28 (i) The specific purpose or purposes of the capital call;

29 (ii) The total amount intended to be raised by issuance of the
30 capital call;

31 (iii) The amount intended to be raised for each stated purpose;

32 (iv) The grounds relied upon by the insurer in deciding that the
33 capital call is the best option available to the insurer for raising
34 capital; and

35 (v) Each of the alternative methods of raising capital the insurer
36 considered and the reasons the insurer rejected each alternative in
37 favor of the capital call;

1 (b) For the ten years immediately preceding the filing of the
2 notice, a year by year accounting of:

3 (i) All rate filings and actions;

4 (ii) The total of all underwriting losses; and

5 (iii) The total amount of dividends paid to policyholders; and

6 (c) A complete application for a solicitation permit as required in
7 RCW 48.06.030.

8 (4) Before an insurer may issue a capital call, the insurer must:

9 (a) Notify the commissioner and provide information as required in
10 subsection (3) of this section;

11 (b) Provide any and all additional information that the
12 commissioner may determine is useful or necessary in evaluating the
13 merits of the proposed capital call;

14 (c) Receive approval of the policy or insuring instrument from the
15 commissioner; and

16 (d) Receive approval of the commissioner for the capital call and
17 the solicitation permit.

18 The commissioner may disapprove a capital call if he or she does
19 not believe it is in the best interest of the insurer, the
20 policyholders, or the citizens of the state of Washington. In making
21 this determination, the commissioner may consider the financial health
22 of the insurer, the impact on the marketplace, the possible use of
23 other means to raise capital, the frequency of previous capital calls
24 by the insurer, the effect of raising premiums instead of a capital
25 call, the impact on state revenue, or any other factor the commissioner
26 deems proper.

27 (5) The funds raised by an approved capital call are not premiums
28 for the purposes of RCW 48.14.020.

29 (6) The commissioner may adopt rules to implement this section.

30 NEW SECTION. **Sec. 3.** Section 1 of this act expires January 1,
31 2006.

32 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect January
33 1, 2006.

34 NEW SECTION. **Sec. 5.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 immediately.

Passed by the House February 16, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.