

HOUSE BILL REPORT

HB 2838

As Passed Legislature

Title: An act relating to capital calls by domestic mutual insurers.

Brief Description: Regulating capital calls by domestic mutual insurers.

Sponsors: By Representatives Benson and Schual-Berke.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/27/04, 2/4/04 [DP].

Floor Activity:

Passed House: 2/16/04, 98-0.

Passed Senate: 3/5/04, 47-0.

Passed Legislature.

Brief Summary of Bill

- Allows a domestic mutual insurer to issue capital calls to its members related to policy renewal or new policy issuance.
- Prohibits a domestic mutual insurer from cancelling or denying benefits under an existing policy based on a member's failure to pay a capital call.
- Requires Insurance Commissioner approval of capital calls.
- Includes requirements for notice to policyholders before capital calls are issued.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 11 members: Representatives Schual-Berke, Chair; Simpson, G., Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Roach, Santos and Simpson, D.

Staff: Caroleen Dineen (786-7156).

Background:

The Insurance Commissioner (Commissioner) is responsible for the licensing and regulation of domestic mutual insurance companies. A domestic mutual insurer is an insurance company that is headquartered in this state, owned by its members, and operated in their interest. The

members must be state residents. The policies issued by a domestic mutual insurer must cover lives, property, or risks located in Washington.

The members of a domestic mutual insurer may be required to pay amounts in excess of their policy premiums under certain circumstances. Each member may have a contingent liability for the discharge of the insurer's obligations of between one and five additional premiums at the annual premium rate and for a one-year term. The contingent liability must be stated in the insurer's articles of incorporation, and the policy must contain a statement of the contingent liability. A domestic mutual insurer may, with the Commissioner's approval, make an assessment on policyholders holding policies within the preceding 12 months that provide for contingent liability if: (1) the insurer's assets are less than its liabilities and the minimum required surplus; and (2) the deficiency is not cured from other sources. The assessment may be made in the amount the Commissioner determines is needed to make the insurer fully solvent, subject to certain limitations.

Insurers must pay to the Commissioner an annual premium tax equal to 2 percent of all premiums collected or received during the preceding calendar year for policies on risks or property resident, situated, or to be performed in this state.

Any person forming an insurer or affiliated entities must obtain a solicitation permit from the Commissioner before advertising or soliciting or receiving any funds, agreement, stock subscription, or membership. Certain requirements for obtaining a solicitation permit also apply to solicitation or receipt of funds after an insurer receives a certificate of authority or completes its initial organization and financing.

Summary of Bill:

In addition to their statutory assessment authority, domestic mutual insurers are authorized to increase their surpluses by issuing capital calls. A domestic mutual insurer may require policyholders or applicants for insurance to pay a capital call amount – a sum in addition to the premium payment – to be eligible to renew a policy or to be issued a new policy. The insurer may not cancel or deny benefits under an existing policy if a policyholder does not pay the call amount.

Before issuing a capital call, a domestic mutual insurer must have adopted articles of incorporation or documents authorizing capital calls. At least 90 days before issuing the capital call, the insurer also must provide information regarding the insurer's authority to issue a capital call to every policyholder. For any capital call issued on or after January 1, 2006, the insurer must include information regarding the insurer's authority to issue a capital call in every policyholder's policy. This information must be provided at least one full policy renewal cycle before a capital call is issued.

The insurer must provide a notice to the Commissioner of its intent to issue a capital call at least 90 days before issuance. This notice of intent must include:

- the specific purpose(s) of the capital call;
- the total amount intended to be raised for each stated purpose;
- the grounds the insurer relied upon to determine the capital call is the best available option for raising capital;
- the alternative methods of raising capital the insurer considered, and the reasons for rejecting each alternative in favor of the capital call;
- an annual accounting of all rate filings and actions, total underwriting losses, and total dividends paid in the 10 years preceding filing of the notice of intent; and
- a complete application for a solicitation permit as required by state law.

The Commissioner must approve the policy or insuring instrument, capital call, and solicitation permit before a capital call is issued. The insurer must provide any additional information the Commissioner deems useful or necessary to evaluate the proposed capital call. The Commissioner may deny a capital call if it is not in the best interest of the insurer, policyholders, or citizens of the state. In making this determination, the Commissioner may consider factors such as the insurer's financial health, impact on the marketplace, alternative means of raising capital, frequency of previous capital calls, effect of raising premiums instead of issuing the capital call, impact on state revenue, or any other factor the Commissioner deems proper.

Funds raised by a capital call are not premiums for the purposes of determining premium taxes under state law.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The OIC worked with Physicians Insurance to frame the features of this bill. Physicians Insurance has experienced a significant surplus reduction since 2001, and its rating has been reduced. This bill provides a more efficient way for Physicians Insurance to build its capital base. The OIC widely circulated this bill and did not receive objections to making this tool available.

The medical malpractice insurance market is in crisis, and capacity is a critical issue. Much of the medical malpractice insurance is provided by mutual insurers, and some other companies have stopped writing new policies. The OIC does not believe mutual insurers have authority under current law to issue capital calls unless there is a risk of receivership; this bill may help some insurers avoid getting to this situation. The OIC believes giving mutual insurers this authority is appropriate.

Testimony Against: None.

Persons Testifying: Bill Daley, Office of the Insurance Commissioner; Tom Myers, Physicians Insurance; and Len Eddinger, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: Cliff Webster, Washington State Medical Association.