

**HOUSE . . . . . No. 2825**

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the Year Two Thousand Nine**  
\_\_\_\_\_

An Act Relative to FAIR Plan Credits and Assessments.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 175C of the General Laws, as so appearing, is hereby amended by striking out  
2 section 4 and inserting in place thereof the following section:-

3 Section 4. (a) All insurers licensed to write and engaged in writing in this commonwealth,  
4 on a direct basis, basic property insurance or any component thereof in multi-peril policies, shall  
5 cooperate in organizing a joint underwriting association which shall provide basic property  
6 insurance to eligible applicants who are otherwise unable to obtain such coverage in the  
7 voluntary market. Every such insurer shall be a member of the association and remain a member  
8 as a condition of its authority to transact such insurance within the commonwealth. (b)

9 Such association shall be authorized to inspect properties, issue policies, collect premiums and  
10 accept payment in installments under plans approved by the commissioner consistent with plans  
11 offered by voluntary market insurers and reflecting options for at least 6 payments annually,  
12 adjust claims and pay losses on behalf of its members, employ officers, agents and other  
13 employees, enter into contracts, sue and be sued in its own name and take all other actions

14 necessary or appropriate to carry out its functions. (c) The association shall submit to the

15 commissioner a proposed plan of operation, consistent with the purposes of this chapter, to  
16 provide for the prompt and efficient provision of basic property insurance to eligible applicants  
17 who meet reasonable underwriting standards and are otherwise unable to obtain coverage from  
18 insurers in the voluntary market. Such plan of operation shall provide for economical, fair and  
19 nondiscriminatory administration including, but not limited to, provisions for preliminary  
20 assessment of all members for initial expenses necessary to commence operations, establishment  
21 of necessary facilities, management of the association, assessment of members to defray losses  
22 and expenses, commissions, reasonable underwriting standards and limits of liability, purchase  
23 of reinsurance and procedures for determining amounts of insurance to be provided. (d)  
24 The plan of operation shall be subject to approval by the commissioner and shall take effect 10  
25 days after the commissioner approves it. If the commissioner disapproves the proposed plan of  
26 operation, the association shall, within 30 days, submit for review an appropriately revised plan  
27 of operation and, if the association fails to submit such a plan or if the revised plan is also  
28 disapproved by the commissioner, the commissioner shall promulgate a plan of operation  
29 consistent with this section. The association may, on its own initiative or at the request of the  
30 commissioner, amend the plan of operation, subject to approval by the commissioner. (e)  
31 (1) All members of the association shall participate in its writing, expenses, profits and losses in  
32 the proportion that the premiums written by each such member for basic property insurance, as  
33 defined in section one, except premiums for insurance on automobile and manufacturing risks  
34 excluded from the plan and that portion of the premiums attributable to the operation of the  
35 association during the preceding calendar year, bear to the aggregate premiums for such  
36 insurance written in the commonwealth by all members of the association. Such participation by  
37 each insurer in the association shall be determined annually on the basis of such premiums

38 written during the preceding calendar year as disclosed in the annual statements and other reports  
39 filed by the insurer with the commissioner. (2) The participation of each member of the  
40 association writing personal lines coverage shall be adjusted based on the homeowners premiums  
41 written by such a member in any credit-eligible zip code, defined as any zip code in the  
42 commonwealth where the association market share in such zip code exceeds one and one half  
43 times the association's statewide market share and further that the association market share in  
44 that zip code shall equal or exceed fifteen per cent, averaged over the latest three calendar years,  
45 in accordance with the following clauses: (i) The participation ratio of each member  
46 writing personal lines insurance shall be recalculated, in accordance with the procedures set forth  
47 in subparagraph (1) but subtracting the premium written by members of the association writing  
48 only commercial lines insurance from the aggregate premiums written in the commonwealth by  
49 all members of the association. (ii) The participation ratio of each member writing  
50 personal lines insurance as recalculated in clause (i) shall be multiplied by the sum of the total  
51 premium written by the association in the commonwealth and 150 per cent of the total industry  
52 homeowners credit eligible premium written in credit-eligible zip codes, as defined in this  
53 chapter. (iii) The product of the multiplication described in clause (ii) of this subsection  
54 shall be (A) reduced by subtracting therefrom 150 per cent of the homeowners premium written  
55 by each member in any credit-eligible zip code in the year of an association loss or (B) shall be  
56 increased by adding therefrom 150 per cent of the homeowners premium written by each  
57 member in any credit-eligible zip code in the year of an association profit. (iv) The result  
58 of the calculation described in clause (iii) for a carrier, never less than zero, shall be divided by  
59 sum of this calculation across all carriers. The resulting ratio shall be the adjusted participation  
60 ratio for the member. (v) The adjusted participation ratio of those members whose

61 participation ratio is calculated as provided in this subparagraph shall apply to that portion of the  
62 writings, expenses, profits and losses of the association not recovered by applying the  
63 participation ratios of the remaining members of the association as calculated, as provided in  
64 subparagraph (1). (3) The participation of any member of the association writing personal  
65 lines insurance shall be further adjusted if such member has written homeowners insurance  
66 during the preceding calendar year, hereafter called the base year, on property that was insured  
67 by the association in the year immediately preceding such base year and which is located in any  
68 credit eligible zip code, defined as any zip code in the commonwealth where the association  
69 market share in such zip code exceeds one and one half times the association's statewide market  
70 share and further that the association market share in that zip code shall equal or exceed fifteen  
71 per cent, averaged over the latest three calendar years. The participation of such a member shall  
72 be adjusted by (i) reducing the amount of premium written by such member in subparagraph (1)  
73 by one hundred per cent of the total homeowners insurance premiums written by the member on  
74 property described in this clause in the year of an association loss or by (ii) increasing the  
75 amount of premium written by such member in subparagraph (1) by one hundred per cent of the  
76 total homeowners insurance premiums written by the member on property described in this  
77 clause in the year of an association profit. Such adjustment shall not apply to any insurance  
78 written on property that was insured by the member or any affiliate or subsidiary member in  
79 either of the two years preceding the base year. (f)The association shall annually make a  
80 return to the commissioner of revenue on behalf of the members of the association reporting the  
81 amount of the aggregate excise imposed on the members under sections twenty-two and twenty-  
82 three of chapter sixty-three with respect to policies or certificates of insurance issued by the  
83 association on behalf of the members and shall pay to the commissioner at the time fixed for

84 filing such return the amount of the aggregate excise thereby imposed on the members. The  
85 association shall give such information on its return as the commissioner may deem necessary  
86 for the determination of the excise imposed on the members of the association under sections  
87 twenty-two and twenty-three of chapter sixty-three on business transacted by the members  
88 directly and through the association. The association shall make payments of estimated tax on  
89 behalf of the members of the association with respect to the excise imposed on the members  
90 under sections twenty-two and twenty-three of chapter sixty-three with respect to policies or  
91 certificates of insurance issued by the association on behalf of the members under procedures  
92 established by the commissioner which are similar to the procedures and requirements for  
93 corporations to make payments of estimated tax under sections two through ten of chapter sixty-  
94 three B.