HOUSE DOCKET, NO. 2332 FILED ON: 1/17/2013

HOUSE . . . . . No. 959

The Commonwealth of Massachusetts

PRESENTED BY:

James M. Murphy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to FAIR plan credits and assessments.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James M. Murphy	*4th Norfolk*

HOUSE DOCKET, NO. 2332 FILED ON: 1/17/2013

HOUSE . . . . . No. 959

By Mr. Murphy of Weymouth, a petition (accompanied by bill, House, No. 959) of James M. Murphy relative to joint underwriting associations and the excise imposed on its members. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3252* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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:

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

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

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

(c) The association shall submit to the commissioner a proposed plan of operation, consistent with the purposes of this chapter, to provide for the prompt and efficient provision of

17 basic property insurance to eligible applicants who meet reasonable underwriting standards and
18 are otherwise unable to obtain coverage from insurers in the voluntary market. Such plan of
19 operation shall provide for economical, fair and nondiscriminatory administration including, but
20 not limited to, provisions for preliminary assessment of all members for initial expenses
21 necessary to commence operations, establishment of necessary facilities, management of the
22 association, assessment of members to defray losses and expenses, commissions, reasonable
23 underwriting standards and limits of liability, purchase of reinsurance and procedures for
24 determining amounts of insurance to be provided.

25 (d) The plan of operation shall be subject to approval by the commissioner and shall take
26 effect 10 days after the commissioner approves it. If the commissioner disapproves the
27 proposed plan of operation, the association shall, within 30 days, submit for review an
28 appropriately revised plan of operation and, if the association fails to submit such a plan or if the
29 revised plan is also disapproved by the commissioner, the commissioner shall promulgate a plan
30 of operation consistent with this section. The association may, on its own initiative or at the
31 request of the commissioner, amend the plan of operation, subject to approval by the
32 commissioner.

33 (e)(1) All members of the association shall participate in its writing, expenses, profits and
34 losses in the proportion that the premiums written by each such member for basic property
35 insurance, as defined in section one, except premiums for insurance on automobile and
36 manufacturing risks excluded from the plan and that portion of the premiums attributable to the
37 operation of the association during the preceding calendar year, bear to the aggregate premiums
38 for such insurance written in the commonwealth by all members of the association. Such
39 participation by each insurer in the association shall be determined annually on the basis of such
40 premiums written during the preceding calendar year as disclosed in the annual statements and
41 other reports filed by the insurer with the commissioner.

42 (2) The participation of each member of the association writing personal lines coverage
43 shall be adjusted based on the homeowners premiums written by such a member in any credit-
44 eligible zip code, defined as any zip code in the commonwealth where the association market
45 share in such zip code exceeds one and one half times the association's statewide market share
46 and further that the association market share in that zip code shall equal or exceed fifteen per
47 cent, averaged over the latest three calendar years, in accordance with the following clauses:

48 (i) The participation ratio of each member writing personal lines insurance
49 shall be recalculated, in accordance with the procedures set forth in subparagraph (1) but
50 subtracting the premium written by members of the association writing only commercial lines
51 insurance from the aggregate premiums written in the commonwealth by all members of the
52 association.

53 (ii) The participation ratio of each member writing personal lines insurance
54 as recalculated in clause (i) shall be multiplied by the sum of the total premium written by the
55 association in the commonwealth and 150 per cent of the total industry homeowners credit
56 eligible premium written in credit-eligible zip codes, as defined in this chapter.

57 (iii) The product of the multiplication described in clause (ii) of this
58 subsection shall be (A) reduced by subtracting therefrom 150 per cent of the homeowners
59 premium written by each member in any credit-eligible zip code in the year of an association loss
60 or (B) shall be increased by adding therefrom 150 per cent of the homeowners premium written
61 by each member in any credit-eligible zip code in the year of an association profit.

62 (iv) The result of the calculation described in clause (iii) for a carrier, never
63 less than zero, shall be divided by sum of this calculation across all carriers. The resulting ratio
64 shall be the adjusted participation ratio for the member.

65 (v) The adjusted participation ratio of those members whose participation
66 ratio is calculated as provided in this subparagraph shall apply to that portion of the writings,
67 expenses, profits and losses of the association not recovered by applying the participation ratios
68 of the remaining members of the association as calculated, as provided in subparagraph (1).

69 (3) The participation of any member of the association writing personal lines insurance
70 shall be further adjusted if such member has written homeowners insurance during the preceding
71 calendar year, hereafter called the base year, on property that was insured by the association in
72 the year immediately preceding such base year and which is located in any credit eligible zip
73 code, defined as any zip code in the commonwealth where the association market share in such
74 zip code exceeds one and one half times the association's statewide market share and further that
75 the association market share in that zip code shall equal or exceed fifteen per cent, averaged over
76 the latest three calendar years. The participation of such a member shall be adjusted by (i)
77 reducing the amount of premium written by such member in subparagraph (1) by one hundred
78 per cent of the total homeowners insurance premiums written by the member on property
79 described in this clause in the year of an association loss or by (ii) increasing the amount of
80 premium written by such member in subparagraph (1) by one hundred per cent of the total
81 homeowners insurance premiums written by the member on property described in this clause in
82 the year of an association profit. Such adjustment shall not apply to any insurance written on
83 property that was insured by the member or any affiliate or subsidiary member in either of the
84 two years preceding the base year.

85 (f) The association shall annually make a return to the commissioner of revenue on behalf
86 of the members of the association reporting the amount of the aggregate excise imposed on the
87 members under sections twenty-two and twenty-three of chapter sixty-three with respect to
88 policies or certificates of insurance issued by the association on behalf of the members and shall
89 pay to the commissioner at the time fixed for filing such return the amount of the aggregate

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