

SUBSTITUTE FOR

SENATE BILL NO. 1213

(As amended by the Senate, December 5, 2002)

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A bill to amend 1956 PA 218, entitled

"The insurance code of 1956,"

by amending sections 456, 2236, 2401, and 2601 (MCL 500.456, 500.2236, 500.2401, and 500.2601), section 456 as amended by 2002, PA 26, section 2236 as amended by 1993 PA 200 and section 2401 as amended by 1982 PA 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 456. (1) Every insurance company, association, risk retention group, or purchasing group not organized under the statutes of this state shall file with the commissioner, as a condition precedent to doing business in this state, the name and address of a resident agent upon which any local process affecting the company, association, or group may be served. Service upon the resident agent designated under this section is service on the company, association, or group. This designation shall remain in force as long as any liability remains within this state.

(2) As a condition of doing business in this state, an unauthorized insurer who does not have a resident agent shall file with the commissioner an irrevocable written stipulation agreeing that any legal process affecting the company, association, or group that is served upon the commissioner or his or her designee has the same effect as if personally served upon the company, association, or group. A copy of the appointment shall be filed with the commissioner. Service upon the commissioner is service upon the company, association, or group and the fee for service is \$10.00 payable at time of service. This appointment remains in force as long as any liability remains within this state.

(3) EVERY INSURANCE COMPANY NOT ORGANIZED UNDER THE STATUTES OF THIS STATE THAT PROVIDES A SURETY BOND REQUIRED OR PERMITTED UNDER THE LAWS OF THE UNITED STATES SHALL IRREVOCABLY APPOINT THE COMMISSIONER OR HIS OR HER DESIGNEE AS THE COMPANY'S AGENT TO RECEIVE SERVICE OF PROCESS IN ANY
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ACTION IN UNITED STATES DISTRICT COURT ON THE SURETY BOND. SERVICE UPON THE COMMISSIONER IS SERVICE UPON THE COMPANY. AND THE COMMISSIONER MAY ESTABLISH A REASONABLE FEE, PAYABLE AT THE TIME OF SERVICE, FOR THE

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ACCEPTANCE OF SERVICE. UPON RECEIPT OF SERVICE OF PROCESS, THE COMMISSIONER OR HIS OR HER DESIGNEE SHALL FORWARD THE SERVICE OF PROCESS TO THE RESIDENT AGENT DESIGNATED UNDER SUBSECTION (1). SERVICE OF PROCESS ON THE COMMISSIONER UNDER THIS SUBSECTION ONLY APPLIES FOR A BOND PROVIDED WITHIN THIS STATE AND IS IN ADDITION TO AND NOT IN PLACE OF ANY OTHER METHOD OF SERVICE AUTHORIZED BY LAW OR COURT RULE.

1 Sec. 2236. (1) A basic insurance policy form or annuity
2 contract form shall not be issued or delivered to any person in
3 this state, and an insurance or annuity application form if a
4 written application is required and is to be made a part of the
5 policy or contract, a printed rider or indorsement form or form
6 of renewal certificate, and a group certificate in connection
7 with the policy or contract, shall not be issued or delivered to
8 a person in this state, until a copy of the form is filed with
9 the insurance bureau and approved by the commissioner as

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1 conforming with the requirements of this act and not inconsistent
2 with the law. Failure of the commissioner to act within 30 days
3 after submittal ~~shall constitute~~ CONSTITUTES approval. All
4 such forms, except policies of disability insurance as defined in
5 section 3400, shall be plainly printed with type size not less
6 than 8-point unless the commissioner determines that portions of
7 such a form printed with type less than 8-point is not deceptive
8 or misleading.

9 (2) An insurer may satisfy its obligations to make form fil-
10 ings by becoming a member of, or a subscriber to, a rating organ-
11 ization, licensed under section 2436 or 2630, which makes such
12 filings and by filing with the commissioner a copy of its autho-
13 rization of the rating organization to make the filings on its
14 behalf. Every member of or subscriber to a rating organization
15 shall adhere to the form filings made on its behalf by the organ-
16 ization except that an insurer may file with the commissioner a
17 substitute form, and thereafter if a subsequent form filing by
18 the rating organization affects the use of the substitute form,
19 the insurer shall review its use and notify the commissioner
20 WHETHER to withdraw its substitute form.

21 (3) Beginning January 1, 1992, the commissioner shall not
22 approve a form filed pursuant to this section providing for or
23 relating to an insurance policy or an annuity contract for per-
24 sonal, family, or household purposes if the form fails to obtain
25 the readability score or meet the other requirements of this sub-
26 section, as applicable:

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1 (a) The readability score for a form for which approval is
2 required by this section shall not be less than 45, as determined
3 by the method provided in subdivisions (b) and (c).

4 (b) The readability score for a form shall be determined as
5 follows:

6 (i) For a form containing not more than 10,000 words, the
7 entire form shall be analyzed. For a form containing more than
8 10,000 words, not less than two 200-word samples per page shall
9 be analyzed instead of the entire form. The samples shall be
10 separated by at least 20 printed lines.

11 (ii) Count the number of words and sentences in the form or
12 samples and divide the total number of words by the total number
13 of sentences. Multiply this quotient by a factor of 1.015.

14 (iii) Count the total number of syllables in the form or
15 samples and divide the total number of syllables by the total
16 number of words. Multiply this quotient by a factor of 84.6. As
17 used in this subparagraph, "syllable" means a unit of spoken lan-
18 guage consisting of 1 or more letters of a word as indicated by
19 an accepted dictionary. If the dictionary shows 2 or more
20 equally acceptable pronunciations of a word, the pronunciation
21 containing fewer syllables may be used.

22 (iv) Add the figures obtained in subparagraphs (ii) and
23 (iii) and subtract this sum from 206.835. The figure obtained
24 equals the readability score for the form.

25 (c) For the purposes of subdivision (b)(ii) and (iii), the
26 following procedures shall be used:

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1 (i) A contraction, hyphenated word, or numbers and letters
2 when separated by spaces shall be counted as 1 word.

3 (ii) A unit of words ending with a period, semicolon, or
4 colon, but excluding headings and captions, shall be counted as 1
5 sentence.

6 (d) In determining the readability score, the method pro-
7 vided in subdivisions (b) and (c):

8 (i) Shall be applied to an insurance policy form or an annu-
9 ity contract, together with a rider or indorsement form usually
10 associated with such an insurance policy form or annuity
11 contract.

12 (ii) Shall not be applied to words or phrases that are
13 defined in an insurance policy form, an annuity contract, or
14 riders, indorsements, or group certificates pursuant to an insur-
15 ance policy form or annuity contract.

16 (iii) Shall not be applied to language specifically agreed
17 upon through collective bargaining or required by a collective
18 bargaining agreement.

19 (iv) Shall not be applied to language that is prescribed by
20 state or federal statute or by rules or regulations promulgated
21 pursuant to a state or federal statute.

22 (e) Each form for which approval is required by this section
23 shall contain both of the following:

24 (i) Topical captions.

25 (ii) An identification of exclusions.

26 (f) Each insurance policy and annuity contract that has more
27 than 3,000 words printed on not more than 3 pages of text or that

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1 has more than 3 pages of text regardless of the number of words
2 shall contain a table of contents. This subdivision does not
3 apply to indorsements.

4 (g) Each rider or indorsement form that changes coverage
5 shall do all of the following:

6 (i) Contain a properly descriptive title.

7 (ii) Reproduce either the entire paragraph or the provision
8 as changed.

9 (iii) Be accompanied by an explanation of the change.

10 (h) If a computer system approved by the commissioner calcu-
11 lates the readability score of a form as being in compliance with
12 this subsection, the form is considered in compliance with the
13 readability score requirements of this subsection.

14 (4) After January 1, 1992, any change or addition to a
15 policy or annuity contract form for personal, family, or house-
16 hold purposes, whether by indorsement, rider, or otherwise, or a
17 change or addition to a rider or indorsement form to such policy
18 or annuity contract form, which policy or annuity contract form
19 has not been previously approved under subsection (3), shall be
20 submitted for approval pursuant to subsection (3).

21 (5) Upon written notice to the insurer, the commissioner may
22 disapprove, withdraw approval or prohibit the issuance,
23 advertising, or delivery of any form to any person in this state
24 if it violates any provisions of this act, or contains inconsis-
25 tent, ambiguous, or misleading clauses, or contains exceptions
26 and conditions that unreasonably or deceptively affect the risk
27 purported to be assumed in the general coverage of the policy.

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1 The notice shall specify the objectionable provisions or
2 conditions and state the reasons for the commissioner's
3 decision. If the form is legally in use by the insurer in this
4 state, the notice shall give the effective date of the
5 commissioner's disapproval, which shall not be less than 30 days
6 subsequent to the mailing or delivery of the notice to the
7 insurer. If the form is not legally in use, then disapproval
8 shall be effective immediately.

9 (6) If a form is disapproved or approval is withdrawn under
10 the provisions of this act, the insurer ~~shall be~~ IS entitled
11 upon demand to a hearing before the commissioner or a deputy com-
12 missioner within 30 days after the notice of disapproval or of
13 withdrawal of approval. ~~; and after~~ AFTER the hearing, the com-
14 missioner shall make findings of fact and law, and either affirm,
15 modify, or withdraw his or her original order or decision.

16 (7) Any issuance, use, or delivery by an insurer of any form
17 without the prior approval of the commissioner as required by
18 subsection (1) or after withdrawal of approval as provided by
19 subsection (5) constitutes a separate violation for which the
20 commissioner may order the imposition of a civil penalty of
21 \$25.00 for each offense, but not to exceed the maximum penalty of
22 \$500.00 for any 1 series of offenses relating to any 1 basic
23 policy form, which penalty may be recovered by the attorney gen-
24 eral as provided in section 230.

25 (8) The filing requirements of this section ~~shall~~ DO not
26 apply to ANY OF THE FOLLOWING:

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1 (a) Insurance against loss of or damage to:

2 (i) Imports, exports, or domestic shipments.

3 (ii) Bridges, tunnels, or other instrumentalities of trans-
4 portation and communication.

5 (iii) Aircraft and attached equipment.

6 (iv) Vessels and watercraft under construction or owned by
7 or used in a business or having a straight-line hull length of
8 more than 24 feet.

9 (b) Insurance against loss resulting from liability, other
10 than worker's compensation or employers' liability arising out of
11 the ownership, maintenance, or use of:

12 (i) Imports, exports, or domestic shipments.

13 (ii) Aircraft and attached equipment.

14 (iii) Vessels and watercraft under construction or owned by
15 or used in a business or having a straight-line hull length of
16 more than 24 feet.

17 (c) Surety bonds other than fidelity bonds.

18 (d) Policies, riders, indorsements, or forms of unique char-
19 acter designed for and used with relation to insurance upon a
20 particular subject, or ~~which~~ THAT relate to the manner of dis-
21 tribution of benefits or to the reservation of rights and bene-
22 fits under life or disability insurance policies and are used at
23 the request of the individual policyholder, contract holder, or
24 certificate holder. Beginning September 1, 1968, the commis-
25 sioner by order may exempt from the filing requirements of this
26 section and sections 2242, 3606, and 4430 for so long as he or
27 she considers proper any insurance document or form, except that

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1 portion of the document or form that establishes a relationship
2 between group disability insurance and personal protection insur-
3 ance benefits subject to exclusions or deductibles pursuant to
4 section 3109a, as specified in the order to which this section
5 practicably may not be applied, or the filing and approval of
6 which are considered unnecessary for the protection of the
7 public. Insurance documents or forms providing medical payments
8 or income replacement benefits, except that portion of the docu-
9 ment or form that establishes a relationship between group dis-
10 ability insurance and personal protection insurance benefits
11 subject to exclusions or deductibles pursuant to section 3109a,
12 exempt by order of the commissioner from the filing requirements
13 of this section and sections 2242 and 3606 are considered
14 approved by the commissioner for purposes of section 3430.

15 (E) INSURANCE THAT MEETS BOTH OF THE FOLLOWING:

16 (i) IS SOLD TO AN EXEMPT COMMERCIAL POLICYHOLDER.

17 (ii) CONTAINS A PROMINENT DISCLAIMER THAT STATES "THIS
18 POLICY IS EXEMPT FROM THE FILING REQUIREMENTS OF SECTION 2236 OF
19 THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.2236." OR WORDS
20 THAT ARE SUBSTANTIALLY SIMILAR.

21 (9) AS USED IN THIS SECTION AND SECTIONS 2401 AND 2601,
22 "EXEMPT COMMERCIAL POLICYHOLDER" MEANS AN INSURED THAT PURCHASES
23 THE INSURANCE FOR OTHER THAN PERSONAL, FAMILY, OR HOUSEHOLD
24 PURPOSES.

25 (10) ~~(9)~~ Every order made by the commissioner under the
26 provisions of this section ~~shall be~~ IS subject to court review
27 as provided in section 244.

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1 Sec. 2401. (1) Except as provided in subsection (2), this
2 chapter applies to the following kinds of insurance or coverages
3 on risks or operations in this state:

4 (a) Casualty insurance, as defined in section 624, except as
5 to livestock insurance.

6 (b) Surety and fidelity.

7 (c) Automobile insurance, as defined or included under the
8 following sections:

9 (i) 624 (general definition of casualty insurance).

10 (ii) 7202 (insuring powers of reciprocal insurers).

11 (iii) 620 (automobile insurance (limited) defined).

12 (iv) 614 (marine insurance defined).

13 (d) Worker's compensation insurance, as defined or included
14 under the following sections:

15 (i) 624 (general definition of casualty insurance).

16 (ii) 7202 (insuring powers of reciprocal insurers).

17 (e) To all insurance transacted by a reciprocal insurer pur-
18 suant to section 7202 (insuring powers of reciprocal insurers).

19 (f) Personal property floaters.

20 (g) Title insurance.

21 (2) This chapter ~~shall~~ DOES not apply to ANY OF THE
22 FOLLOWING:

23 (a) Reinsurance, other than joint reinsurance to the extent
24 stated in section 2464.

25 (b) Disability insurance.

26 (c) Insurance against loss of or damage to aircraft or
27 against liability, other than worker's compensation and

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1 employers' liability, arising out of the ownership, maintenance,
2 or use of aircraft.

3 (D) INSURANCE THAT MEETS BOTH OF THE FOLLOWING AND IS NOT
4 WORKER'S COMPENSATION INSURANCE:

5 (i) IS SOLD TO AN EXEMPT COMMERCIAL POLICYHOLDER.

6 (ii) CONTAINS A PROMINENT DISCLAIMER THAT STATES "THIS
7 POLICY IS EXEMPT FROM THE FILING REQUIREMENTS OF SECTION 2236 OF
8 THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.2236." OR WORDS
9 THAT ARE SUBSTANTIALLY SIMILAR.

10 (3) This chapter ~~shall apply~~ APPLIES to all classes of
11 insurers admitted to do business in this state, including stock,
12 mutual, reciprocal, and interinsurers authorized to write any of
13 the kinds of insurance to which this chapter applies under this
14 act.

15 (4) If any kind of insurance, subdivision, or combination
16 thereof, or type of coverage, subject to this chapter, is also
17 subject to regulation by another rate regulatory chapter of this
18 act, an insurer to which both chapter 24 and chapter 26 are oth-
19 erwise applicable shall file with the commissioner, a designation
20 as to which rate regulatory chapter shall be applicable to the
21 insurer with respect to such kind of insurance, subdivision, or
22 combination thereof, or type of coverage.

23 (5) IF, PURSUANT TO SUBSECTION (6), THE COMMISSIONER CERTI-
24 FIES THE ABSENCE OF A REASONABLE DEGREE OF COMPETITION FOR A
25 SPECIFIED CLASSIFICATION, TYPE, OR KIND OF INSURANCE, THE COMMIS-
26 SIONER MAY ORDER THAT EACH INSURER FILE FOR PRIOR APPROVAL,
27 SUBJECT TO THE PROVISIONS OF THIS CHAPTER, ANY CHANGES TO ITS

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1 MANUALS OF CLASSIFICATION, MANUALS OF RULES AND RATES, AND RATING
2 PLANS THE INSURER PROPOSES TO USE FOR THAT SPECIFIED CLASSIFICA-
3 TION, TYPE, OR KIND OF INSURANCE. THE ORDER SHALL STATE, IN
4 WRITING, THE REASONS FOR THE COMMISSIONER'S DECISION TO ORDER THE
5 FILING. AN ORDER ISSUED UNDER THIS SUBSECTION EXPIRES 2 YEARS
6 AFTER THE DATE OF ISSUANCE. IF SUCH AN ORDER IS IN EFFECT, RATES
7 TO WHICH THE ORDER APPLIES SHALL BE FILED AT LEAST 30 DAYS BEFORE
8 THEIR PROPOSED EFFECTIVE DATE. FAILURE OF THE COMMISSIONER TO
9 ACT WITHIN 30 DAYS AFTER SUBMITTAL CONSTITUTES APPROVAL.

10 (6) A DETERMINATION CONCERNING THE ABSENCE OF A REASONABLE
11 DEGREE OF COMPETITION SHALL TAKE INTO ACCOUNT A REASONABLE SPEC-
12 TRUM OF RELEVANT ECONOMIC TESTS, INCLUDING THE NUMBER OF INSURERS
13 ACTIVELY ENGAGED IN WRITING THE INSURANCE IN QUESTION, THE
14 PRESENT AVAILABILITY OF THAT INSURANCE COMPARED TO THE AVAILABIL-
15 ITY IN COMPARABLE PAST PERIODS, THE UNDERWRITING RETURN OF THAT
16 INSURANCE OVER A REASONABLE PERIOD OF TIME SUFFICIENT TO ASSURE
17 RELIABILITY IN RELATION TO THE RISK ASSOCIATED WITH THAT INSUR-
18 ANCE, AND THE DIFFICULTY ENCOUNTERED BY NEW INSURERS ENTERING THE
19 MARKET IN ORDER TO COMPETE FOR THE WRITING OF THAT INSURANCE.

20 Sec. 2601. (1) This chapter applies to the following kinds
21 of insurance as written on risks located in this state by and
22 companies, associations, or other carriers, including
23 reciprocals:

24 (a) Property insurance, as defined in section 610.

25 (b) Marine insurance, as defined in section 614.

26 (c) Inland navigation and transportation insurance, as
27 defined in section 616.

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1 (d) Automobile insurance (limited), as defined in section
2 620.

3 (2) "Inland marine insurance" shall be ~~deemed~~ CONSIDERED
4 to include:

5 (a) Insurance against loss of or damage to domestic ship-
6 ments, bridges, tunnels, and other inland instrumentalities of
7 transportation or communication, excluding buildings, their fur-
8 niture and furnishings, fixed contents, and supplies held in
9 storage.

10 (b) Insurance defined by ruling of the commissioner as
11 inland marine insurance.

12 (3) This chapter ~~shall~~ DOES not apply TO ANY OF THE
13 FOLLOWING:

14 (a) ~~To reinsurance~~ REINSURANCE, other than joint reinsur-
15 ance to the extent stated in section 2658.

16 (b) ~~To insurance~~ INSURANCE against loss of or damage to:

17 (i) Imports, exports, or domestic shipments.

18 (ii) Bridges, tunnels, or other instrumentalities of trans-
19 portation and communication.

20 (iii) Aircraft and attached equipment.

21 (iv) Vessels and watercraft under construction or owned by
22 or used in a business or having a straight-line hull length of
23 more than 24 feet.

24 (c) ~~To insurance~~ INSURANCE against loss resulting from
25 liability arising out of the ownership, maintenance, or use of:

26 (i) Imports, exports, or domestic shipments.

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1 (ii) Aircraft and attached equipment.

2 (iii) Vessels and watercraft ~~which~~ THAT are under
3 construction or owned by or used in a business or having a
4 straight-line hull length of more than 24 feet.

5 (d) ~~To motor~~ MOTOR vehicle insurance, nor to insurance
6 against liability arising out of the ownership, maintenance, or
7 use of motor vehicles.

8 (e) ~~To companies~~ COMPANIES organized and doing business
9 under chapter 68.

10 (F) INSURANCE THAT MEETS BOTH OF THE FOLLOWING:

11 (i) IS SOLD TO AN EXEMPT COMMERCIAL POLICYHOLDER.

12 (ii) CONTAINS A PROMINENT DISCLAIMER THAT STATES "THIS
13 POLICY IS EXEMPT FROM THE FILING REQUIREMENTS OF SECTION 2236 OF
14 THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.2236." OR WORDS
15 THAT ARE SUBSTANTIALLY SIMILAR.

16 (4) If any kind of insurance, subdivision, or combination
17 thereof, or type of coverage, subject to this chapter, is also
18 subject to regulation by another rate regulatory chapter of this
19 ~~insurance code~~ ACT, an insurer to which both chapters are oth-
20 erwise applicable shall file with the commissioner ~~,~~ a designa-
21 tion as to which rate regulatory chapter shall be applicable to
22 it with respect to such kind of insurance, subdivision, or combi-
23 nation thereof, or type of coverage.

24 (5) IF, PURSUANT TO SUBSECTION (6), THE COMMISSIONER CERTI-
25 FIES THE ABSENCE OF A REASONABLE DEGREE OF COMPETITION FOR A
26 SPECIFIED CLASSIFICATION, TYPE, OR KIND OF INSURANCE, THE
27 COMMISSIONER MAY ORDER THAT EACH INSURER FILE FOR PRIOR APPROVAL,

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1 SUBJECT TO THE PROVISIONS OF THIS CHAPTER, ANY CHANGES TO ITS
2 MANUALS OF CLASSIFICATION, MANUALS OF RULES AND RATES, AND RATING
3 PLANS THE INSURER PROPOSES TO USE FOR THAT SPECIFIED CLASSIFICA-
4 TION, TYPE, OR KIND OF INSURANCE. THE ORDER SHALL STATE, IN
5 WRITING, THE REASONS FOR THE COMMISSIONER'S DECISION TO ORDER THE
6 FILING. AN ORDER ISSUED UNDER THIS SUBSECTION EXPIRES 2 YEARS
7 AFTER THE DATE OF ISSUANCE. IF SUCH AN ORDER IS IN EFFECT, RATES
8 TO WHICH THE ORDER APPLIES SHALL BE FILED AT LEAST 30 DAYS BEFORE
9 THEIR PROPOSED EFFECTIVE DATE. FAILURE OF THE COMMISSIONER TO
10 ACT WITHIN 30 DAYS AFTER SUBMITTAL CONSTITUTES APPROVAL.

11 (6) A DETERMINATION CONCERNING THE EXISTENCE OF A REASONABLE
12 DEGREE OF COMPETITION SHALL TAKE INTO ACCOUNT A REASONABLE SPEC-
13 TRUM OF RELEVANT ECONOMIC TESTS, INCLUDING THE NUMBER OF INSURERS
14 ACTIVELY ENGAGED IN WRITING THE INSURANCE IN QUESTION, THE
15 PRESENT AVAILABILITY OF THAT INSURANCE COMPARED TO THE AVAILABIL-
16 ITY IN COMPARABLE PAST PERIODS, THE UNDERWRITING RETURN OF THAT
17 INSURANCE OVER A REASONABLE PERIOD OF TIME SUFFICIENT TO ASSURE
18 RELIABILITY IN RELATION TO THE RISK ASSOCIATED WITH THAT INSUR-
19 ANCE, AND THE DIFFICULTY ENCOUNTERED BY NEW INSURERS ENTERING THE
20 MARKET IN ORDER TO COMPETE FOR THE WRITING OF THAT INSURANCE.