

112TH CONGRESS
1ST SESSION

H. R. 1150

To restore the application of the Federal antitrust laws to the business of health insurance to protect competition and consumers.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2011

Mr. GOSAR introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To restore the application of the Federal antitrust laws to the business of health insurance to protect competition and consumers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Competitive Health
5 Insurance Reform Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Open, free, and fair competition has made
9 the United States the strongest economy in the
10 world.

1 (2) As a general proposition, Government
2 should ensure that no industry obtains an unfair
3 competitive advantage and that the playing field is
4 equal. The Congress should not play favorites with
5 certain industries or special interest groups by ex-
6 empting one group from the general application of
7 the law.

8 (3) There is no factual basis supporting any
9 further exemption of the insurance industry from
10 Federal antitrust and unfair competition laws.

11 (4) Enforcement of these laws is most appro-
12 priately done through the U.S. Department of Jus-
13 tice, and in the case of aggrieved individuals through
14 private actions as set forth in the existing statutes,
15 but that class actions suits based on antitrust theo-
16 ries can themselves pose a hindrance to competition
17 among insurance companies, and to higher prices for
18 consumers, because of the resources they can con-
19 sume.

20 **SEC. 3. PURPOSE.**

21 It is the purpose of this Act to ensure that health
22 insurance issuers and medical malpractice insurance
23 issuers are subject to the same antitrust and unfair trade
24 practices laws that all businesses have had to comply with
25 and that these issuers would be subject to Federal laws

1 against price fixing, bid rigging, or market allocations to
2 the detriment of competition and consumers. This Act
3 remedies a special exemption provided by Congress in
4 1945 to respond to the United States Supreme Court deci-
5 sion entitled *United States v. South-Eastern Underwriters*
6 *Association*, wherein the Court correctly held that the
7 Federal Government could regulate insurance companies
8 under the authority of the commerce clause in the Con-
9 stitution. This Act would also retain enforcement of these
10 laws with State and Federal law enforcement agencies and
11 allow private causes of action by aggrieved consumers
12 harmed by unfair trade practices, but would prohibit class
13 actions based on antitrust legal theories against insurance
14 companies.

15 **SEC. 4. RESTORING THE APPLICATION OF ANTITRUST**
16 **LAWS TO HEALTH SECTOR INSURERS.**

17 (a) AMENDMENT TO McCARRAN-FERGUSON ACT.—
18 Section 3 of the Act of March 9, 1945 (15 U.S.C. 1013),
19 commonly known as the McCarran-Ferguson Act, is
20 amended by adding at the end the following:

21 “(c) Nothing contained in this Act shall modify, im-
22 pair, or supersede the operation of any of the antitrust
23 laws with respect to the business of health insurance. For
24 purposes of the preceding sentence, the term ‘antitrust
25 laws’ has the meaning given it in subsection (a) of the

1 first section of the Clayton Act, except that such term in-
2 cludes section 5 of the Federal Trade Commission Act to
3 the extent that such section 5 applies to unfair methods
4 of competition.”.

5 (b) RELATED PROVISION.—For purposes of section
6 5 of the Federal Trade Commission Act (15 U.S.C. 45)
7 to the extent such section applies to unfair methods of
8 competition, section 3(e) of the McCarran-Ferguson Act
9 shall apply with respect to the business of health insurance
10 without regard to whether such business is carried on for
11 profit, notwithstanding the definition of “Corporation”
12 contained in section 4 of the Federal Trade Commission
13 Act.

14 (c) LIMITATION ON CLASS ACTIONS.—

15 (1) LIMITATION.—No class action may be
16 heard in a Federal or State court on a claim against
17 an insurer for a violation of any of the antitrust
18 laws (as defined in section 3(e) of the Act of March
19 9, 1945 (15 U.S.C. 1013), commonly known as the
20 McCarran-Ferguson Act).

21 (2) EXEMPTION.—Paragraph (1) shall not
22 apply with respect to any action commenced—

23 (A) by the United States or any State; or

1 (B) by named individual claimants for
2 their particular injuries.

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