House Passes McCarran-Ferguson Repeal Bill

On March 22, 2017, in a long anticipated action and after a very hard fought battle, the U.S. House of Representatives passed H.R. 372, the "Competitive Health Insurance Reform Act of 2017" by Rep. Paul Gosar (R-Arizona), by a bipartisan vote of 416-7. The legislation would repeal the limited McCarran-Ferguson antitrust exemption for health insurers; however, it would let the exemption remain in place for other lines of insurance, such as property-casualty and life insurance.

During consideration of H.R. 372, Rep. Jon Conyers (D-Michigan) put forth an amendment that would have expanded the bill to include medical malpractice insurance. The Big "I" opposed this amendment and sent a letter with a number of other insurance trade associations stating joint opposition. In arguing for his amendment, Rep. Conyers stated, "Democrats have long supported a full repeal of McCarran-Ferguson antitrust exemption for all insurers, not just for health insurers."

The McCarran-Ferguson Act was signed into law in 1945 in order to affirm the primacy of state insurance regulation. Pursuant to McCarran-Ferguson, state regulated insurance companies hold a limited exemption from federal antitrust laws. One of the main benefits of the exemption is that it allows insurers to share information on insurance losses so that the insurance industry can better project future losses and charge actuarial-based prices for their products. The ability to pool data actually serves to increase market competition by giving small insurers access to large data sets that are needed to appropriately rate insurance products.

In early 2016, ICA's Board of Directors had voted unanimously to adopt the repeal of the anti-trust provisions of the McCarran Ferguson Act as a top legislative goal and priority for the association. "The time has come to once again make this vitally important public policy correction a top priority," said ICA President Dr. George B. Curry. "With no effective federal oversight and enforcement, private insurance will only continue their widespread policies of abuse and discrimination, policies that strike especially hard at chiropractors and chiropractic patients."

Except in the few states like California, New York, and Florida that have very active insurance regulators and antitrust enforcers, consumers receive virtually no protection from state regulators on anti-trust issues. A study by the Center for American Progress found that the vast majority of enforcement actions against health insurers were taken by only five states. In far too many states, a few insurers dominate the market, and authorities lack the resources

or expertise to conduct substantive competition or consumer protection oversight; tellingly, in four states, the insurance commissioner is also the fire marshal. As articulated in that study by David Balto, former Policy Director of the Federal Trade Commission (FTC):

> *If there was one thing clear from the Congressional debate over health care, it is that health insurance markets are unhealthy. Over the past few decades, profits have increased dramatically, and the market has become one of the least transparent and most anticompetitive markets in the nation; indeed, few markets are as concentrated, opaque and complex, and subject to rampant anticompetitive and deceptive conduct. There is simply an immense need for antitrust and consumer protection enforcement to rein in the constant abuses of the industry.*[i]

The McCarran-Ferguson anti-trust exemption[ii] was passed by Congress in 1945, in a unique environment of post-war confusion and rush to provide a new level of private insurance services to consumers. The stated intent of this Act was to protect small insurance companies incorporating at that time who had a great need for data from existing insurers in order to set premiums effectively. Because such information sharing was illegal under the anti-trust standards of the era, Congress provided an antitrust exemption for the insurance industry as a means of support and stimulation at a time of special need.

In the decades since the passage of the McCarran-Ferguson Act, the business of insurance has grown by monumental proportions, now representing a highly concentrated, multi-billion-dollar profit center with little effective consumer protection regulation by the states and, because of the McCarran-Ferguson Act, no effective Federal Trade Commission (FTC) or other federal anti-trust oversight and enforcement.

In passing the 1945 Act, it is clear from the legislative discussion at the time that Congress hoped that state regulation would be sufficient to address anti-trust concerns. The reality is, however, that states bring few if any meaningful cases against health insurers. "This important Congressional action is a major step towards fairness and acco8ntability in the insurance industry, one which the ICA enthusiastically supports and applauds. We will now shift our focus to obtaining passage in the US Senate" said Dr. Curry

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[i] Balto, Davic, Repeal McCarran-Ferguson - Before it's too late, *The Hill*, April 8, 2013.

[ii] The McCarran–Ferguson Act, 15 U.S.C. §§ 1011-1015, also known as Public Law 15,[1] is a United States federal law that exempts the business of insurance from most federal regulation, including federal antitrust laws to a limited extent. The McCarran–Ferguson Act was passed by the 79th Congress in 1945 after the Supreme Court ruled in *United States v. South-Eastern Underwriters Association* that the federal government could regulate insurance companies under the authority of the Commerce Clause in the U.S. Constitution.