

113TH CONGRESS
1ST SESSION

H. R. 911

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

FEBRUARY 28, 2013

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 2013”.

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 health insurance industry
10 from 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 **SEC. 3. PURPOSE.**

16 It is the purpose of this Act to ensure that health
17 insurance issuers are subject to the same antitrust and
18 unfair trade practices laws that all businesses have had
19 to comply with and to more effectively ensure that these
20 issuers would be subject to Federal laws against price fix-
21 ing, bid rigging, or market allocations to the detriment
22 of competition and consumers. This Act remedies a special
23 exemption provided by Congress in 1945 to respond to the
24 United States Supreme Court decision entitled United
25 States v. South-Eastern Underwriters Association, where-

1 in the Court correctly held that the Federal Government
 2 could regulate insurance companies under the authority
 3 of the commerce clause in the Constitution. This Act
 4 would also retain enforcement of these laws with State and
 5 Federal law enforcement agencies and allow private causes
 6 of action by aggrieved consumers harmed by unfair trade
 7 practices.

8 **SEC. 4. RESTORING THE APPLICATION OF ANTITRUST**
 9 **LAWS TO HEALTH SECTOR INSURERS.**

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

14 “(c)(1) Nothing contained in this Act shall modify,
 15 impair, or supersede the operation of any of the antitrust
 16 laws with respect to the business of health insurance (in-
 17 cluding the business of dental insurance). For purposes
 18 of the preceding sentence, the term ‘antitrust laws’ has
 19 the meaning given it in subsection (a) of the first section
 20 of the Clayton Act, except that such term includes section
 21 5 of the Federal Trade Commission Act to the extent that
 22 such section 5 applies to unfair methods of competition.

23 “(2) For purposes of paragraph (1), the term ‘busi-
 24 ness of health insurance (including the business of dental
 25 insurance)’ does not include—

1 “(A) the business of life insurance (including
2 annuities); or

3 “(B) the business of property or casualty insur-
4 ance, including but not limited to, any insurance or
5 benefits defined as ‘excepted benefits’ under para-
6 graph (1), subparagraphs (B) or (C) of paragraph
7 (2), or paragraph (3) of section 9832(c) of the In-
8 ternal Revenue Code of 1986 (26 U.S.C. 9832(c))
9 whether offered separately or in combination with
10 insurance or benefits described in paragraph (2)(A)
11 of such section.”.

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

○