

115TH CONGRESS
1ST SESSION

H. R. 372

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2017

Received; read twice and referred to the Committee on the Judiciary

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Competitive Health
3 Insurance Reform Act of 2017”.

4 **SEC. 2. RESTORING THE APPLICATION OF ANTITRUST**
5 **LAWS TO THE BUSINESS OF HEALTH INSUR-**
6 **ANCE.**

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

11 “(c)(1) Nothing contained in this Act shall modify,
12 impair, or supersede the operation of any of the antitrust
13 laws with respect to the business of health insurance (in-
14 cluding the business of dental insurance and limited-scope
15 dental benefits).

16 “(2) Paragraph (1) shall not apply with respect to
17 making a contract, or engaging in a combination or con-
18 spiracy—

19 “(A) to collect, compile, or disseminate histor-
20 ical loss data;

21 “(B) to determine a loss development factor ap-
22 plicable to historical loss data;

23 “(C) to perform actuarial services if such con-
24 tract, combination, or conspiracy does not involve a
25 restraint of trade; or

1 “(D) to develop or disseminate a standard in-
2 surance policy form (including a standard addendum
3 to an insurance policy form and standard termi-
4 nology in an insurance policy form) if such contract,
5 combination, or conspiracy is not to adhere to such
6 standard form or require adherence to such standard
7 form.

8 “(3) For purposes of this subsection—

9 “(A) the term ‘antitrust laws’ has the meaning
10 given it in subsection (a) of the first section of the
11 Clayton Act (15 U.S.C. 12), except that such term
12 includes section 5 of the Federal Trade Commission
13 Act (15 U.S.C. 45) to the extent that such section
14 5 applies to unfair methods of competition;

15 “(B) the term ‘business of health insurance (in-
16 cluding the business of dental insurance and limited-
17 scope dental benefits)’ does not include—

18 “(i) the business of life insurance (includ-
19 ing annuities); or

20 “(ii) the business of property or casualty
21 insurance, including but not limited to—

22 “(I) any insurance or benefits defined
23 as ‘excepted benefits’ under paragraph (1),
24 subparagraph (B) or (C) of paragraph (2),
25 or paragraph (3) of section 9832(c) of the

1 Internal Revenue Code of 1986 (26 U.S.C.
2 9832(c)) whether offered separately or in
3 combination with insurance or benefits de-
4 scribed in paragraph (2)(A) of such sec-
5 tion; and

6 “(II) any other line of insurance that
7 is classified as property or casualty insur-
8 ance under State law;

9 “(C) the term ‘historical loss data’ means infor-
10 mation respecting claims paid, or reserves held for
11 claims reported, by any person engaged in the busi-
12 ness of insurance; and

13 “(D) the term ‘loss development factor’ means
14 an adjustment to be made to reserves held for losses
15 incurred for claims reported by any person engaged
16 in the business of insurance, for the purpose of
17 bringing such reserves to an ultimate paid basis.”.

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

1 contained in section 4 of the Federal Trade Commission
2 Act.

Passed the House of Representatives March 22,
2017.

Attest:

KAREN L. HAAS,

Clerk.