

## Union Calendar No. 18

115TH CONGRESS  
1ST SESSION

# H. R. 372

[Report No. 115-36]

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

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### IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2017

Mr. GOSAR (for himself, Mr. BRAT, Mr. BROOKS of Alabama, Mr. DESJARLAIS, Mr. DUNCAN of Tennessee, Mr. GOHMERT, Mr. JONES, Mr. KING of Iowa, Mr. ROE of Tennessee, Mr. AUSTIN SCOTT of Georgia, Mr. YOHO, Mr. FERGUSON, Mr. WITTMAN, Mr. BABIN, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 15 (legislative day, MARCH 13), 2017

Additional sponsors: Mr. BIGGS, Mr. LAMBORN, Mr. SANFORD, Mr. GARRETT, Mr. LABRADOR, and Mr. TIPTON

MARCH 15 (legislative day, MARCH 13), 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on January 9, 2017]

# **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 In-*  
5 *surance Reform Act of 2017”.*

6 **SEC. 2. RESTORING THE APPLICATION OF ANTITRUST LAWS**  
7 **TO THE BUSINESS OF HEALTH INSURANCE.**

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

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

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

20 *“(A) to collect, compile, or disseminate historical*  
21 *loss data;*

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

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

4           “(D) to develop or disseminate a standard insur-  
5           ance policy form (including a standard addendum to  
6           an insurance policy form and standard terminology  
7           in an insurance policy form) if such contract, com-  
8           bination, or conspiracy is not to adhere to such  
9           standard form or require adherence to such standard  
10          form.

11          “(3) For purposes of this subsection—

12           “(A) the term ‘antitrust laws’ has the meaning  
13           given it in subsection (a) of the first section of the  
14           Clayton Act (15 U.S.C. 12), except that such term in-  
15           cludes section 5 of the Federal Trade Commission Act  
16           (15 U.S.C. 45) to the extent that such section 5 ap-  
17           plies to unfair methods of competition;

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

21           “(i) the business of life insurance (including  
22           annuities); or

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

1           “(I) any insurance or benefits defined  
2           as ‘excepted benefits’ under paragraph (1),  
3           subparagraph (B) or (C) of paragraph (2),  
4           or paragraph (3) of section 9832(c) of the  
5           Internal Revenue Code of 1986 (26 U.S.C.  
6           9832(c)) whether offered separately or in  
7           combination with insurance or benefits de-  
8           scribed in paragraph (2)(A) of such section;  
9           and

10           “(II) any other line of insurance that  
11           is classified as property or casualty insur-  
12           ance under State law;

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

17           “(D) the term ‘loss development factor’ means an  
18           adjustment to be made to reserves held for losses in-  
19           curred for claims reported by any person engaged in  
20           the business of insurance, for the purpose of bringing  
21           such reserves to an ultimate paid basis.”.

22           (b) *RELATED PROVISION.*—For purposes of section 5  
23           of the Federal Trade Commission Act (15 U.S.C. 45) to the  
24           extent such section applies to unfair methods of competi-  
25           tion, section 3(c) of the McCarran-Ferguson Act shall apply

1 *with respect to the business of health insurance without re-*  
2 *gard to whether such business is carried on for profit, not-*  
3 *withstanding the definition of “Corporation” contained in*  
4 *section 4 of the Federal Trade Commission Act.*



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