

**PROPOSED LEGISLATION WOULD  
REPEAL INSURERS' ANTITRUST EXEMPTION**

A bill introduced in the U.S. House of Representatives, on March 18, 2009, seeks repeal of the insurance industry's longstanding exemption from certain government and private enforcement of the federal antitrust laws. H.R. 1583, titled the Insurance Industry Competition Act of 2009, would amend the McCarran-Ferguson Act ("McCarran-Ferguson") to provide for the application of the federal antitrust laws to the "business of insurance."

**Background**

Enacted in 1945, McCarran-Ferguson delegates to the states the authority to regulate and tax "the business of insurance," and establishes that no federal law should be presumed to interfere with that authority. McCarran-Ferguson specifically exempts from government and private enforcement of the federal antitrust laws conduct that constitutes the "business of insurance," as long as the conduct at issue is regulated by a state and is not an act of boycott, coercion, or intimidation.

McCarran-Ferguson's limited exemption has permitted insurance companies and other market participants to engage in certain activities that might otherwise be prohibited under the federal antitrust laws. Such activities have included sharing loss-experience data, standardizing policy forms, and creating joint underwriting associations, all of which can have pro-competitive benefits.

The Insurance Industry Competition Act of 2009 would make the Sherman Act, Clayton Act, and Federal Trade Commission Act (to the extent that the Federal Trade Commission Act relates to unfair methods of competition) fully applicable to "business of insurance." This bill would not change existing state regulation of insurance-related activity.

**Prior Repeal Efforts**

McCarran-Ferguson has exposed the insurance industry to criticism each decade since its enactment. Repeal efforts escalated in 2005 when then-New York State Attorney General Eliot Spitzer submitted a call for amendment to the Antitrust Modernization Committee. The current bill is identical to its February 2007 predecessors, H.R. 1081 and S. 618. The 2007 bills, which never passed the committee stage, were introduced following federal scrutiny of property and casualty insurers in the wake of losses related to Hurricane Katrina. Sponsors of the current legislation, Reps. Gene Taylor (D-Miss.) and Peter DeFazio (D-Ore.), cite as the current impetus for their bill concerns that the exemption gave insurers such as American International Group the ability to become "too big to fail."

Opponents of McCarran-Ferguson repeal cite the narrow scope of this exemption and the potential harm to consumers that repeal could generate. For example, standardized policy language allows consumers to compare policies more readily, and sharing loss-experience data may reduce barriers to entry for smaller insurers that otherwise might not be able to access this type of data.

H.R. 1583 has been referred to the House Judiciary Committee, Energy and Commerce Committee, and Financial Services Committee for review.

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April 13, 2009

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