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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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Competitive Health Insurance Reform Act of 2013''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Open, free, and fair competition has made the United States the strongest economy in the world.

(2) As a general proposition, Government should ensure that no industry obtains an unfair competitive advantage and that the playing field is equal. The Congress should not play favorites with certain industries or special interest groups by exempting one group from the general application of the law.

(3) There is no factual basis supporting any further exemption of the health insurance industry from Federal antitrust and unfair competition laws.

(4) Enforcement of these laws is most appropriately done through the U.S. Department of Justice, and in the case of aggrieved individuals through private actions as set forth in the existing statutes.

SEC. 3. PURPOSE.

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

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

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

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

''(c)(1) Nothing contained in this Act shall modify, impair, or supersede the operation of any of the antitrust laws with respect to the business of health insurance (including the business of dental insurance). For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given it in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

''(2) For purposes of paragraph (1), the term 'business of health insurance (including the business of dental insurance)' does not include—

"(A) the business of life insurance (including annuities); or

"(B) the business of property or casualty insurance, including but not limited to, any insurance or benefits defined as 'excepted benefits' under paragraph (1), subparagraphs (B) or (C) of paragraph (2), or paragraph (3) of section 9832(c) of the Internal Revenue Code of 1986 (26 U.S.C. 9832(c)) whether offered separately or in combination with insurance or benefits described in paragraph (2)(A) of such section.".

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

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