

115TH CONGRESS  
1ST SESSION

# H. R. 372

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

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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.

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 2017”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

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

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

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

14           (4) Enforcement of these laws is most appro-  
15 priately done through the U.S. Department of Jus-  
16 tice, and in the case of aggrieved individuals through  
17 private actions as set forth in the existing statutes.

18 **SEC. 3. PURPOSE.**

19           It is the purpose of this Act to ensure that health  
20 insurance issuers are subject to the same antitrust and  
21 unfair trade practices laws that all businesses have had  
22 to comply with and to more effectively ensure that these  
23 issuers would be subject to Federal laws against price fix-  
24 ing, bid rigging, or market allocations to the detriment  
25 of competition and consumers. This Act remedies a special

1 exemption provided by Congress in 1945 to respond to the  
2 United States Supreme Court decision entitled United  
3 States v. South-Eastern Underwriters Association, where-  
4 in the Court correctly held that the Federal Government  
5 could regulate insurance companies under the authority  
6 of the commerce clause in the Constitution. This Act  
7 would also retain enforcement of these laws with State and  
8 Federal law enforcement agencies and allow private causes  
9 of action by aggrieved consumers harmed by unfair trade  
10 practices.

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

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

17 “(c)(1) Nothing contained in this Act shall modify,  
18 impair, or supersede the operation of any of the antitrust  
19 laws with respect to the business of health insurance (in-  
20 cluding the business of dental insurance). For purposes  
21 of the preceding sentence, the term ‘antitrust laws’ has  
22 the meaning given it in subsection (a) of the first section  
23 of the Clayton Act, except that such term includes section  
24 5 of the Federal Trade Commission Act to the extent that  
25 such section 5 applies to unfair methods of competition.

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

4               “(A) the business of life insurance (including  
5   annuities); or

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

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

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