

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 372
OFFERED BY _____**

Strike all after the enacting clause and insert the following:

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).

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

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

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

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

8 “(D) to develop or disseminate a standard in-
9 surance policy form (including a standard addendum
10 to an insurance policy form and standard termi-
11 nology in an insurance policy form) if such agree-
12 ment or joint conduct does not include an agreement
13 to adhere to such standard form or to require adher-
14 ence to such standard form.

15 “(3) For purposes of this subsection—

16 “(A) the term ‘antitrust laws’ has the meaning
17 given it in subsection (a) of the first section of the
18 Clayton Act (15 U.S.C. 12), except that such term
19 includes section 5 of the Federal Trade Commission
20 Act (15 U.S.C. 45) to the extent that such section
21 5 applies to unfair methods of competition;

22 “(B) the term ‘business of health insurance (in-
23 cluding the business of dental insurance)’ does not
24 include—

1 “(i) the business of life insurance (includ-
2 ing annuities); or

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

5 “(I) any insurance or benefits defined
6 as ‘excepted benefits’ under paragraph (1),
7 subparagraph (B) or (C) of paragraph (2),
8 or paragraph (3) of section 9832(c) of the
9 Internal Revenue Code of 1986 (26 U.S.C.
10 9832(c)) whether offered separately or in
11 combination with insurance or benefits de-
12 scribed in paragraph (2)(A) of such sec-
13 tion; and

14 “(II) any other line of insurance that
15 is classified as property or casualty insur-
16 ance under State law;

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

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

1 (b) RELATED PROVISION.—For purposes of section
2 5 of the Federal Trade Commission Act (15 U.S.C. 45)
3 to the extent such section applies to unfair methods of
4 competition, section 3(c) of the McCarran-Ferguson Act
5 shall apply with respect to the business of health insurance
6 without regard to whether such business is carried on for
7 profit, notwithstanding the definition of “Corporation”
8 contained in section 4 of the Federal Trade Commission
9 Act.

