

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

RESOLUTION IN OPPOSITION TO AMENDING OR REPEALING THE MCCARRAN-FERGUSON ACT

Adopted by the NCOIL State-Federal Relations Committee on July 20, 2007, and Executive Committee on July 21, 2007.

Sponsored by Sen. Alan Sanborn (MI), Rep. Brian Kennedy (RI), Sen. James Seward (NY), Rep. Robert Damron (KY), and Rep. George Keiser

WHEREAS, the United States Congress, in 1945, passed the McCarran-Ferguson Act, granting insurers a limited antitrust exemption and providing states with the sole authority to regulate the business of insurance; and

WHEREAS, this authority has led to the successful promotion of a strong, efficient, consumer-based system of insurance oversight; and

WHEREAS, state legislatures, state regulators, and state attorneys general have proven responsive to the needs of their constituents and the need for insurance products and regulation that suits their states' unique market demands; and

WHEREAS, the states, along with the National Conference of Insurance Legislators (NCOIL) and other groups, continue to address issues of uniformity and modernization by enacting legislation that streamlines and strengthens regulation throughout the states, in response to an increasingly competitive and global insurance market; and

WHEREAS, the limited antitrust exemption granted under the McCarran-Ferguson Act is not a loophole through which insurers can avoid prosecution for antitrust violations such as boycotts, intimidation, or coercion, nor does it limit the abilities of state attorneys general to prosecute crimes under existing state antitrust laws; and

WHEREAS, the McCarran-Ferguson Act's limited antitrust exemption fosters competition by granting insurers the ability to share loss history and other information and ensuring that smaller and more regional insurers are able to compete with large insurers that are less dependant on industry-wide data; and

WHEREAS, *The Insurance Industry Competition Act* (S. 618/H.R. 1081) would repeal the limited antitrust exemption granted under the McCarran-Ferguson Act; apply to the business of insurance consumer-protection provisions of the Federal Trade Commission Act to the extent that they are not regulated by state law; and authorize the Federal Trade Commission and the United States Justice Department to oversee the business of insurance; and

WHEREAS, subjecting consumers and the insurance industry to the complicated and very likely contradictory system of state and federal regulation contemplated by S. 618/H.R. 1081 would lead to confusion that would destabilize insurance markets that rely on predictability to gauge risks and price products, as well as lead to years of costly litigation; and

WHEREAS, any changes to the limited antitrust exemption, such as those envisioned by S. 618/H.R. 1081, would not lower insurance costs for consumers, but, in fact, could have the opposite effect should smaller insurers be driven from the market, particularly in communities with limited availability and affordability of coverage; and

WHEREAS, any amendment to the McCarran-Ferguson Act, including S. 618/H.R. 1081, could call into question the operation of state guaranty funds and residual markets mechanisms that, respectively, protect claimants whose insurance companies have gone insolvent and ensure that insurance is available to all.

NOW, THEREFORE, BE IT RESOLVED that NCOIL opposes passage of S. 618/H.R. 1081 on the grounds that it misinterprets the role of states in enforcing antitrust protections and would jeopardize insurer practices that promote available and affordable coverage; expose insurance markets to uncertainty and litigation; and create an environment that inadvertently disadvantages consumers most in need.

BE IT RESOLVED that NCOIL encourages individual state legislatures to join in opposing S. 618/H.R. 1081 and to convey their concerns to their respective congressional delegations.

BE IT FURTHER RESOLVED that a copy of this resolution be printed and forwarded to members of the United States House of Representatives Committee on the Judiciary, the United States Senate Committee on the Judiciary, and legislative leaders across the country.