

115TH CONGRESS  
2D SESSION

# S. 3782

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

---

IN THE SENATE OF THE UNITED STATES

DECEMBER 19, 2018

Mr. DAINES introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## 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 2018”.

6 **SEC. 2. RESTORING THE APPLICATION OF ANTITRUST**  
7 **LAWS TO THE BUSINESS OF HEALTH INSUR-**  
8 **ANCE.**

9 (a) AMENDMENT TO MCCARRAN-FERGUSON ACT.—  
10 Section 3 of the Act of March 9, 1945 (15 U.S.C. 1013),

1 commonly known as the McCarran-Ferguson Act, is  
2 amended by adding at the end the following:

3 “(c)(1) Nothing contained in this Act shall modify,  
4 impair, or supersede the operation of any of the antitrust  
5 laws with respect to the business of health insurance (in-  
6 cluding the business of dental insurance and limited-scope  
7 dental benefits).

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

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

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

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

18 “(D) to develop or disseminate a standard in-  
19 surance policy form (including a standard addendum  
20 to an insurance policy form and standard termi-  
21 nology in an insurance policy form) if such contract,  
22 combination, or conspiracy is not to adhere to such  
23 standard form or require adherence to such standard  
24 form.

25 “(3) For purposes of this subsection—

1           “(A) the term ‘antitrust laws’ has the meaning  
2           given it in subsection (a) of the first section of the  
3           Clayton Act (15 U.S.C. 12), except that such term  
4           includes section 5 of the Federal Trade Commission  
5           Act (15 U.S.C. 45) to the extent that such section  
6           5 applies to unfair methods of competition;

7           “(B) the term ‘business of health insurance (in-  
8           cluding the business of dental insurance and limited-  
9           scope dental benefits)’ does not include—

10                   “(i) the business of life insurance (includ-  
11                   ing annuities); or

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

14                           “(I) any insurance or benefits defined  
15                           as ‘excepted benefits’ under paragraph (1),  
16                           subparagraph (B) or (C) of paragraph (2),  
17                           or paragraph (3) of section 9832(c) of the  
18                           Internal Revenue Code of 1986 (26 U.S.C.  
19                           9832(c)) whether offered separately or in  
20                           combination with insurance or benefits de-  
21                           scribed in paragraph (2)(A) of such sec-  
22                           tion; and

23                           “(II) any other line of insurance that  
24                           is classified as property or casualty insur-  
25                           ance under State law;

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

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

10          (b) RELATED PROVISION.—For purposes of section  
11          5 of the Federal Trade Commission Act (15 U.S.C. 45)  
12          to the extent such section applies to unfair methods of  
13          competition, section 3(c) of the McCarran-Ferguson Act  
14          shall apply with respect to the business of health insurance  
15          without regard to whether such business is carried on for  
16          profit, notwithstanding the definition of “Corporation”  
17          contained in section 4 of the Federal Trade Commission  
18          Act.

○