



2<sup>ND</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 12

To ensure that any issuer of health insurance and medical malpractice insurance must be held to standard antitrust law and regulation; to guarantee the right of private health insurance providers to operate in all of the several States, in compliance with appropriate laws, rules, and regulations; and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 31, 2013

Mr. MENON introduced the following bill; which was referred to the Committee on Commerce, Science, and Transportation for a period to be subsequently determined by the President Pro Tempore, for consideration of such provisions as fall within the jurisdiction of the committee concerned.

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## A BILL

To ensure that any issuer of health insurance and medical malpractice insurance must be held to standard antitrust law and regulation; to guarantee the right of private health insurance providers to operate in all of the several States, in compliance with appropriate laws, rules, and regulations; and for other purposes.

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

4 **SECTION 1. SHORT TITLE.**

5 This Act may be cited as the "National Health  
6 Insurance Antitrust Act".

7 **SEC. 2. SCOPE AND PURPOSE.**

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8 The 'McCarran-Ferguson Act' (15 U.S.C. 1011), the Patient  
9 Protection and Affordable Care Act (P.L. 111-148), and all  
10 other relevant Federal law are to be amended in order to  
11 reinstate the application of standard antitrust laws to the health  
12 insurance sector, ensure the compliance of the several States,  
13 and guarantee the right of private health insurance providers to  
14 operate in all of the several States, in compliance with the  
15 appropriate Federal law and the rules and regulations of the  
16 several States, which shall be consistent with the terms of this  
17 Act.

18 **SEC. 3. RESTORING THE APPLICATION AND**  
19 **ENFORCEMENT OF STANDARD ANTITRUST LAWS TO THE**  
20 **HEALTH INSURANCE SECTOR.**

21 (a) Notwithstanding any other provision of law, nothing in the  
22 Act of March 9, 1945, 15 U.S.C. 1011 et. seq., commonly  
23 known as the 'McCarran-Ferguson Act', shall be construed to  
24 permit issuers of health insurance, as defined in section 2791 of  
25 the Public Health Service Act (42 U.S.C. 300gg-91), or issuers  
26 of medical malpractice insurance to engage in any form of price  
27 fixing, bid rigging, or market allocations in connection with the  
28 conduct of the business of providing health insurance coverage,  
29 as defined in such section, or coverage for medical malpractice  
30 claims or actions.

31 (b) Amendment to the McCarran-Ferguson Act- Section 3 of the  
32 Act of March 9, 1945 (15 U.S.C. 1013), commonly known as  
33 the McCarran-Ferguson Act, is amended by adding at the end  
34 the following:

35 (c) Nothing contained in this Act shall modify, impair, or  
 36 supersede the operation of any of the antitrust laws with  
 37 respect to the business of health insurance. For purposes of the  
 38 preceding sentence, the term 'antitrust laws' has the meaning  
 39 given it in subsection (a) of the first section of the Clayton Act,  
 40 except that such term includes section 5 of the Federal Trade  
 41 Commission Act to the extent that such section 5 applies to  
 42 unfair methods of competition. For the purposes of this  
 43 subsection, the term 'business of health insurance' shall--  
 44 (1) mean 'health insurance coverage' offered by a 'health  
 45 insurance issuer' as those terms are defined in section 9001 of  
 46 the Patient Protection and Affordable Care Act, which  
 47 incorporates by reference and utilizes the definitions included in  
 48 section 9832 of the Internal Revenue Code (26 U.S.C. 9832);  
 49 and  
 50 (2) not include--  
 51 (A) life insurance and annuities;  
 52 (B) property or casualty insurance, including but not limited to,  
 53 automobile, medical malpractice or workers' compensation  
 54 insurance; or  
 55 (C) any insurance or benefits defined as 'excepted benefits'  
 56 under section 9832(c) of the Internal Revenue Code (26 U.S.C.  
 57 9832(c)), whether offered separately or in combination with  
 58 products described in subparagraph (A).'  
 59 (c) Related Provision- For purposes of section 5 of the Federal  
 60 Trade Commission Act (15 U.S.C. 45) to the extent such section  
 61 applies to unfair methods of competition, section 3(c) of the

62 McCarran-Ferguson Act shall apply with respect to the business  
 63 of health insurance without regard to whether such business is  
 64 carried on for profit, notwithstanding the definition of  
 65 'Corporation' contained in section 4 of the Federal Trade  
 66 Commission Act.  
 67 (d) Limitation on Class Actions-  
 68 (1) LIMITATION- No class action may be heard in a Federal or  
 69 State court on a claim against a person engaged in the business  
 70 of health insurance for a violation of any of the antitrust laws  
 71 (as defined in section 3(c) of the Act of March 9, 1945 (15  
 72 U.S.C. 1013), commonly known as the McCarran-Ferguson  
 73 Act).  
 74 (2) EXEMPTION- Paragraph (1) shall not apply with respect to  
 75 any action commenced--  
 76 (A) by the United States or any State; or  
 77 (B) by a named claimant for an injury only to itself.  
 78 **SEC. 4. APPLICATION TO ACTIONS ADOPTED BY**  
 79 **INSURANCE REGULATORY BODIES OF THE SEVERAL**  
 80 **STATES.**  
 81 (a) Nothing in this Act shall apply to the information collection  
 82 and rate setting activities of any State commission of  
 83 insurance, or any other State regulatory entity with authority to  
 84 set insurance rates.  
 85 (b) Following enactment of this Act, the several States shall be  
 86 compelled to immediately revise all conflicting law and policy,  
 87 and adopt law and policy consistent with this Act.

88 (c) Any State found to be in violation of this Act, 365 days  
89 following enactment, shall be subject to direct Federal  
90 intervention, and may be subject to fines and revocation of  
91 funding, as determined by the United States Department of  
92 Justice.

93 **SEC. 5. CONFIRMING THE RIGHT TO OPERATE OF**  
94 **PRIVATE HEALTH INSURANCE PROVIDERS TO OPERATE**  
95 **IN THE SEVERAL STATES.**

96 Congress affirms by the terms of this Act that private health  
97 insurance operators shall have the right, in compliance with  
98 Federal law and the rules and regulations of the several States  
99 (in legal accordance with this Act), to operate in all of the  
100 several States.

101 **SEC. 6. APPROPRIATIONS.**

102 The Department of Health and Human Services and the  
103 Department of Justice shall be responsible for overseeing the  
104 terms of this Act and shall incur any expenses associated with  
105 the terms of this Act.

106 **SEC. 7. EFFECTIVE DATE.**

107 All sections of this Act shall go into effect six months after  
108 passage.