

By: Zedler

H.C.R. No. 120

CONCURRENT RESOLUTION

1 WHEREAS, Antitrust laws are crucial to ensure that the free
2 market works for consumers, but the McCarran-Ferguson Act of 1945
3 created a special exemption from federal antitrust laws for
4 insurance companies; and

5 WHEREAS, In 1944, the Supreme Court's decision in *United*
6 *States v. South-Eastern Underwriters* clarified that the business of
7 insurance is interstate commerce and subject to existing antitrust
8 laws; the following year, Congress responded by hurriedly passing
9 the McCarran-Ferguson Act, which permitted state regulation of
10 insurance companies; a section of the act was also crafted to
11 provide insurers with a three-year moratorium during which they
12 could study federal antitrust laws and adjust their practices to a
13 competitive marketplace; however, a seemingly innocuous phrase
14 inserted in the bill in conference committee was later interpreted
15 by the courts such that the temporary delay became broad, permanent
16 immunity, completely contrary to the intent understood by all,
17 including President Franklin Roosevelt, who specifically discussed
18 the limited moratorium upon signing the act; and

19 WHEREAS, The exemption from antitrust laws has allowed
20 insurance companies to collude to drive up prices, share or divide
21 markets, restrict coverage, and reduce payouts; some lines of
22 insurance, including property and casualty insurance, have formed
23 cartel-like rating bureaus that collect and pool claims data from
24 different companies, enabling them to engage in joint

1 price-setting, joint policy-language development, and the use of
2 the same or similar computer programs designed to systematically
3 underpay claims; health insurers have banded together to share
4 pricing information, and premiums have soared sharply while doctors
5 and hospitals are underpaid; and

6 WHEREAS, Unfettered by antitrust regulations, a handful of
7 insurers have so dominated their markets that consumers have little
8 or no choice in providers; more than 90 percent of health insurance
9 markets in more than 300 metropolitan areas have become "highly
10 concentrated," as defined by the Federal Trade Commission,
11 according to the American Medical Association; a 2008 survey by the
12 Government Accountability Office found the five largest providers
13 of small group insurance controlled 75 percent or more of the market
14 in 34 states, while in 23 of those states, they controlled 90
15 percent or more of the market; and

16 WHEREAS, Competition is the cornerstone of our economic
17 system, but for nearly seven decades, the insurance industry's
18 singular immunity from antitrust laws has allowed excessive
19 corporate concentration to distort the marketplace; ending this
20 special treatment would check monopolistic practices, spurring
21 competition that would improve coverage and expand choices while
22 bringing down costs for American consumers and businesses; now,
23 therefore, be it

24 RESOLVED, That the 85th Legislature of the State of Texas
25 hereby respectfully urge the United States Congress to end the
26 antitrust exemption for insurers; and, be it further

27 RESOLVED, That the Texas secretary of state forward official

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1 copies of this resolution to the president of the United States, to
2 the president of the Senate and the speaker of the House of
3 Representatives of the United States Congress, and to all the
4 members of the Texas delegation to Congress with the request that
5 this resolution be entered in the Congressional Record as a
6 memorial to the Congress of the United States of America.