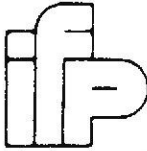


Sam Marshall

3 pages

The
Insurance
Federation of
Pennsylvania, Inc.



The Robert Morris Building
Suite 1100
17th & Arch Streets
Philadelphia, PA 19103
(215) 665-0500

April 27, 1990

David L. Krantz, Executive Director
House Judiciary Committee
House Post Office
Harrisburg, PA 17120

A. JOHN SMITHER
Chairman

JOHN A. MILLER
Vice Chairman

HENRY G. HAGER
President &

Chief Executive Officer

PATRICIA A. DONOVAN
Sr. Vice President & Treasurer

PAUL LASKOW
Vice President
& General Counsel

SAMUEL R. MARSHALL
Secretary & Counsel

NORA L. LIERO
Director of Insurance
Information

Re: House Bill 2376

Dear Mr. Krantz:

The Insurance Federation recommends the following amendment to this bill, which establishes the Pennsylvania Antitrust Act.

Section 5, which sets forth exclusions, should be amended to add a subsection (e) that states:

Section 5. Exclusions

(e) This act shall not apply to the business of insurance to the extent that the business:

- (1) is otherwise regulated by State law; and
- (2) does not constitute a boycott, coercion or intimidation or an agreement to boycott, coerce or intimidate.

This amendment is mirrors the Federal exemption of the business of insurance from its antitrust laws, which exemption is found in Section 2(b) of the McCarran Ferguson Act (a copy of the Act is attached).

The amendment is necessary for the proposed act to avoid conflict with existing state insurance laws and case law, and to avoid conflicting regulatory responsibilities of the Attorney General and the Insurance Commissioner.

The amendment in no way lessons the regulatory supervision under which the business of insurance is conducted; nor does it allow for monopolistic limiting of competition or fixing of prices in that business. Instead, the amendment recognizes that the business of insurance is already subject to the Insurance Commissioner's jurisdiction under the laws of this Commonwealth.

Those laws control veritabily every aspect of the business of insurance, including rate making, issuance of coverage, market conduct and claims handling. They

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empower the Insurance Commissioner with extensive authority to regulate the business of insurance and punish unlawful conduct, including any potential for monopolistic practices for the purpose of limiting competition or controlling prices - the conduct this proposed act also proscribes.

Antitrust legislation regulates businesses and business practices that would be otherwise unregulated. The insurance business, as covered in the proposed amendment, is already closely regulated by this Commonwealth. Thus, inclusion of insurers in this bill creates unnecessary duplication and legal obstacles without adding consumer protection.

Thank you for the opportunity to bring this matter to the Committee's attention.

Sincerely,

Samuel R. Marshall

Samuel R. Marshall

c: Henry G. Hager

McCARRAN FERGUSON ACT
PUBLIC LAW 15, 79TH CONGRESS

AN ACT

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided That after January 1, 1948,* the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Sec. 3. (a) Until January 1, 1948,* the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson-Patman Anti-discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Sec. 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 5. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 6. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Approved March 9, 1945.

"business of insurance"
not regulated by State law"