

# Federal Insurance Antitrust Exemption: Insurer, Consumer Friend or Foe?

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June 22, 2006

Excerpt:

The argument for complete repeal came from J. Robert Hunter, director of Insurance for the Consumer Federation of America, who termed the McCarran-Ferguson Act "a truly astounding piece of legislation" not only because it exempts insurers from antitrust laws but also because it omits any oversight by the federal government of state regulation.

CFA estimate that elimination of the exemption would save insurance consumers at least 10 percent of the current premiums, or about \$45 billion a year.

"CFA urges the Senate to repeal the antiquated, unnecessary and harmful insurance antitrust exemption for the benefit of the nation's insurance consumers," Hunter testified.

He maintained that "anticompetitive behavior has been a prime cause" of a homeowners insurance crisis along America's coastlines. Also, state attorneys general have had to jump in to stop bid-rigging, market allocation arrangements and hidden kickbacks to brokers because state regulators failed to act.

He argued that organizations such as ISO restrain competition "significantly" since they make "loss costs," which represent about 60-70 percent of the rate; share expense data so insurers can compare their costs, and establish classes of risk that are adopted by many insurers.

"The business cycle of the property/casualty insurance industry is exacerbated by the availability of pure premium and other rate guides the rate bureaus publish. These guides are not used by many insurers during the 'soft' market periods but become a kind of safe harbor when the periodic hard market strikes the commercial property/casualty market," Hunter added.

That's not all that's wrong with rating bureaus, according to Hunter. "Rate bureaus, of course, must bias their projections to the high side to be sure that the resulting rates or loss costs are high enough to cover the needs of the least efficient, worst underwriting insurer member or subscriber to the service," he said.

He also criticized rate bureaus — and hurricane modeling firms — for public comments he said signal to insurers when the time is right to raise prices. He suggested such signals have contributed to hundreds of thousands of coastal residents having their homeowners insurance policies cancelled and sent prices skyrocketing.

To bolster his case for repeal, Hunter claimed that California's Proposition 103, which eliminated the state antitrust exemption, "has produced remarkable results for auto insurance consumers and for the insurance companies doing business there. "

Senator Patrick Leahy, D-Vt., ranking member on the committee, used the opportunity to tout his S. 1525, The Medical Malpractice Insurance Antitrust Act of 2005. This bill would repeal the antitrust exemption for medical malpractice insurance only.

"It is a narrow bill that targets a particularly troublesome aspect of the problem, but I believe that we should consider all of the effects of the exemption as we consider legislation," he said in his statement.

## ***U.S. SENATOR PATRICK LEAHY***

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### ***Senate Judiciary Committee Focuses On Insurance Industry's Antitrust Exemption***

*WASHINGTON (Wednesday, March 7) – The Senate Judiciary Committee held a hearing, “The McCarran-Ferguson Act and Antitrust Immunity: Good for Consumers?” on Tuesday focusing on the insurance industry’s federal antitrust immunity. For more than six decades, insurance companies have enjoyed immunity from federal antitrust investigation and prosecution.*

***Leahy has teamed up with Senate Democratic and Republican leaders to introduce S. 618, The Insurance Industry Competition Act, which would level the playing field so that insurance companies must abide by the same competition laws as nearly every other industry. The bipartisan bill would give the Department of Justice and the Federal Trade Commission the authority to apply antitrust laws to anti-competitive behavior by insurance companies.***

***Leahy introduced the bill along with the Judiciary Committee’s Ranking Member, Senator Arlen Specter (R-Pa.), Senate Majority Leader Harry Reid, (D-Nev.), and Senate Republican Whip Trent Lott, (R-Miss.). Senator Mary Landrieu, (D-La.), is also an original cosponsor. Senators Lott and Landrieu testified at the hearing.***

***Companion, bipartisan legislation has also been introduced in the House by Reps. Peter DeFazio (D-Ore.), Gene Taylor (D-Miss.), Bobby Jindal (R-La.), Charlie Melancon (D-La.), Rodney Alexander (R-La.), and Walter Jones (R-N.C.).***

***Both Allstate and State Farm want to keep their special status, exempt from the antitrust laws, yet both rejected my offer to come here today and explain to the Committee why they deserve it.***

***The bottom line is, right now we do not know what anticompetitive acts insurers may be engaging in because the antitrust immunity insurers enjoy acts as a curtain that hides their activity from federal antitrust authorities.***

***The Insurance Industry Competition Act that I have introduced with Senators Specter, Lott, Reid and Landrieu would pull back that curtain to give the Department of Justice and the Federal Trade Commission the authority to apply our federal competition laws to insurance companies.***

***Insurers may object to being subject to the same antitrust laws as everyone else, but if they are operating in an honest and appropriate way, they should have nothing to fear.***

That is why, as the Los Angeles Times reported, “The companies that provide Americans with their homeowners and auto insurance made a record \$44.8-billion profit last year even after accounting for the claims of policyholders wiped out by Hurricane Katrina and the other big storms of 2005, according to the firms' filings with state regulators(Los Angeles Times, 4/5/06).

A 2006 report of the insurance industry financial situation states, “Over the past seven years, 1999 through 2005, the insurance industry has seen its profits nearly double, while adding almost \$100 million to its surplus reserves. According to data provided by the Insurance Information Institute, industry profits increased from \$22.2 billion in 1999 to \$43 billion in 2005. The data also indicate that the insurance industry has seen its surpluses grow by a third – from \$336.30 billion in 1999 to \$427.1 billion in 2005” (p.11, in Pattern of Greed: How Insurance Companies put Profits over Policyholders, available at

<http://www.beasleyallen.com/publications/Pattern%20of%20Greed.pdf>

Instead of trying to correct the natural imbalance in the insurance market to protect consumers and local governments, the United States government years ago came down on the side of the insurance companies. Our state legislators cannot fix that.

We ought to be pressuring our representatives in congress to at least make a start by repealing the unique exemption of the insurance industry from antitrust laws.