

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOSAR OF ARIZONA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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**AMENDMENT TO RULES COMMITTEE PRINT OF  
H.R. 5  
OFFERED BY MR. GOSAR OF ARIZONA**

At the end of the bill, add the following (and make such technical and conforming changes as may be appropriate):

1 **TITLE III—RESTORING THE AP-**  
2 **PLICATION OF ANTITRUST**  
3 **LAWS TO HEALTH SECTOR IN-**  
4 **SURERS**

5 **SEC. 301. SHORT TITLE.**

6 This title may be cited as the “Health Insurance In-  
7 dustry Fair Competition Act of 2012”.

8 **SEC. 302. APPLICATION OF THE ANTITRUST LAWS TO THE**  
9 **BUSINESS OF HEALTH INSURANCE.**

10 (a) AMENDMENT TO McCARRAN-FERGUSON ACT.—  
11 Section 3 of the Act of March 9, 1945 (15 U.S.C. 1013),  
12 commonly known as the McCarran-Ferguson Act, is  
13 amended by adding at the end the following:

14 “(c) Nothing contained in this Act shall modify, im-  
15 pair, or supersede the operation of any of the antitrust  
16 laws with respect to the business of health insurance. For  
17 purposes of the preceding sentence, the term ‘antitrust

1 laws' has the meaning given it in subsection (a) of the  
2 first section of the Clayton Act, except that such term in-  
3 cludes section 5 of the Federal Trade Commission Act to  
4 the extent that such section 5 applies to unfair methods  
5 of competition. For the purposes of this subsection, the  
6 term 'business of health insurance' shall—

7           “(1) mean 'health insurance coverage' offered  
8           by a 'health insurance issuer' as those terms are de-  
9           fined in section 9001 of the Patient Protection and  
10          Affordable Care Act, which incorporates by reference  
11          and utilizes the definitions included in section 9832  
12          of the Internal Revenue Code (26 U.S.C. 9832); and

13          “(2) not include—

14                 “(A) life insurance and annuities;

15                 “(B) property or casualty insurance, in-  
16                 cluding but not limited to, automobile, medical  
17                 malpractice or workers' compensation insur-  
18                 ance; or

19                 “(C) any insurance or benefits defined as  
20                 'excepted benefits' under section 9832(c) of the  
21                 Internal Revenue Code (26 U.S.C. 9832(c)),  
22                 whether offered separately or in combination  
23                 with products described in subparagraph (A).”.

24          (b) RELATED PROVISION.—For purposes of section  
25 5 of the Federal Trade Commission Act (15 U.S.C. 45)

1 to the extent such section applies to unfair methods of  
2 competition, section 3(c) of the McCarran-Ferguson Act  
3 shall apply with respect to the business of health insurance  
4 without regard to whether such business is carried on for  
5 profit, notwithstanding the definition of "Corporation"  
6 contained in section 4 of the Federal Trade Commission  
7 Act.

8 (c) LIMITATION ON CLASS ACTIONS.—

9 (1) LIMITATION.—No class action may be  
10 heard in a Federal or State court on a claim against  
11 a person engaged in the business of health insurance  
12 for a violation of any of the antitrust laws (as de-  
13 fined in section 3(c) of the Act of March 9, 1945  
14 (15 U.S.C. 1013), commonly known as the  
15 McCarran-Ferguson Act).

16 (2) EXEMPTION.—Paragraph (1) shall not  
17 apply with respect to any action commenced—

18 (A) by the United States or any State; or

19 (B) by a named claimant for an injury  
20 only to itself.

