American Insurance Association
Council of Insurance Agents and Brokers
The Financial Services Roundtable
Independent Agents & Brokers of America
National Association of Mutual Insurance Companies
National Association of Professional Insurance Agents
Physician Insurers Association of America
Property Casualty Insurers Association of America
Reinsurance Association of America

October 7, 2009

The Honorable John Conyers
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Congressman Smith:

The undersigned organizations represent all the segments of the property/casualty insurance industry, from primary insurers to agents, brokers, and reinsurers. We are writing to express our strong opposition to H.R. 3596 and S. 1681, identical bills introduced as the "Health Insurance Industry Antitrust Enforcement Act of 2009." These recently introduced bills would repeal long-standing provisions of the McCarran-Ferguson Act with respect to health and medical malpractice insurance (more appropriately called medical professional liability insurance) issuers. There is no demonstrated need to expand the scope of the healthcare reform debate in this fashion for the reasons below.

The McCarran-Ferguson Act, approved by Congress in 1945, entrusts states with the authority and responsibility for the regulation of the business of insurance. The McCarran-Ferguson Act creates a limited exemption from federal antitrust laws to the extent that the business of insurance – not the business of insurance companies – is regulated by the states; it does not grant insurers blanket immunity from federal antitrust laws, as some have erroneously suggested, and it does not shield insurers from laws that prohibit them from engaging in boycotts, intimidation, or coercion. Courts consistently have narrowly construed McCarran's limited antitrust exemption.

Under the regulatory regime that arose from the McCarran-Ferguson Act, more than 5,000 property/casualty insurers across the country are subject to a comprehensive and pervasive regimen of state-based regulation and antitrust enforcement, including health and medical professional liability insurance covered by H.R. 3596 and S. 1681. States regulate virtually every aspect of insurance, including licensing, market conduct, financial solvency, policy language and underwriting standards. Thus, federal action to repeal or amend the McCarran-Ferguson Act for these or any line of insurance is unnecessary to pursue any allegations of anti-competitive behavior.

Beyond the general disruption to the state regulatory system that these bills propose, the bills appear to have a much broader, but undisclosed agenda. For example:

Section 3 appears to expand the boundaries of antitrust violations in order to encourage attacks on insurers for marketplace behavior that would not otherwise be a violation of federal antitrust laws irrespective of McCarran-Ferguson.

Section 4 would have the effect of preempting or repealing state laws establishing mechanisms for insurers to gather information and develop actuarially-based rates through organizations that have been (i) created precisely for those purposes, (ii) are licensed and regulated by the states; and (iii) whose availability is critical to the states in carrying out their regulatory responsibilities. Thus, Section 4 would leave the states with only two options for health and medical malpractice insurance: they would either be required to set the prices themselves for health and medical malpractice insurance or be denied the right to have any mechanism for reviewing and regulating the prices established in the marketplace.

The bill appears designed to deny the affected insurers of standard antitrust defenses, such as the state action doctrine.

In short, the bill is an attempt to radically rewrite the antitrust laws for a certain segment of the insurance business.

We, therefore, urge you to oppose these current bills, as they would bring no consumer benefit while causing enormous marketplace disruption that might have the perverse effect of discouraging new marketplace entrants. It would be ironic indeed if the primary purpose of the federal antitrust laws – promoting competition – was undercut through enactment of either bill.

Sincerely,

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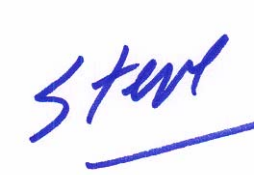

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cc: Members of the House Judiciary Committee