NAIC National Association of Insurance Commissioners & The Center for Insurance Policy and Research
CIPR newsletter

The Relevance of the McCarran-Ferguson Act

By Eric Nordman[1], Director of Regulatory Services and CIPR

◆ Introduction

It was 1945 when the 79th U.S. Congress enacted the McCarran-Ferguson Act.[2] The Act was needed to address the outcome of a 1944 U.S. Supreme Court ruling in *United States v. South-Eastern Underwriters Association*.[3] The *South-Eastern Underwriters* decision overturned the long-held belief insurance was not interstate commerce. The decision created confusion in the insurance markets as suddenly the U.S. government found itself in the business of regulating insurance under the Commerce Clause. However, there were no federal laws or a viable regulatory framework to regulate the solvency or market activity of insurers and insurance producers.

The McCarran-Ferguson Act is as relevant today as it was when it was adopted. It is brilliant in its simplicity. It solved a problem created by a significant court case and demonstrated the flexibility of our democracy.

◆ Historical Perspective

Our journey begins with a story about an insurance agent named Samuel Paul. Mr. Paul was a resident of the commonwealth of Virginia. Mr. Paul was appointed by several New York-based fire insurers to represent them as an agent to sell fire insurance policies to Virginia residents. For that to happen, there were several preconditions. The commonwealth had enacted laws requiring insurers and persons representing insurers to obtain a license and post a bond ranging from $30,000 to $50,000 before transacting the business of insurance. Mr. Paul partially complied with the laws of the Commonwealth. He provided the auditor of public accounts with proof of his authorization from the New York insurers to serve as their agent. He submitted an application to the proper office to receive a license. He met several other requirements, including agreeing to pay any taxes due. He balked at providing the required bond. Neither Mr. Paul nor the New York insurers posted the required bond. Mr. Paul's request for a license was denied by the commonwealth based on his refusal to post the required bond.

Despite his unlicensed status, Mr. Paul sold a fire insurance policy to a Virginia resident. Mr. Paul was indicted and convicted for his violation by the city of Petersburg, Virginia. His sentence was a fine of $50. He appealed the decision and his appeal was eventually heard by the Supreme Court and became a landmark case establishing the regulatory framework for insurers from November 1869 until it was overturned in 1944.

In the case *Paul v. Virginia*, at issue was Article IV, Section 2 of the U.S. Constitution.[4] The pertinent sentence at issue was, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states." Mr. Paul claimed the Virginia law requiring he be licensed and post bond infringed on his privileges granted under the Constitution.

Justice Stephen Johnson Field, an appointee of President Abraham Lincoln, wrote the majority opinion of the court. In it he said, "corporations are not citizens within its meaning. The term citizens as there used applies only to natural persons . . . not to artificial persons created by the legislature, and possessing only the attributes which the legislature has prescribed."[5] He went on to say, "Special privileges enjoyed by citizens in their own States are not secured in other States by this provision. It was not intended by the provision to give to the laws of one State any operation in other states. They can have no such operation, except by the permission, express or implied, of those States. The special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other States to their enjoyment therein be given."[6]

Thus, the conclusion when the Supreme Court ruling affirmed the decision of the Supreme Court of Appeals in Virginia was that insurance was not considered to be interstate commerce subject to jurisdiction by Congress. The court found that insurance policies should be treated as any other contract subject to state law. Therefore, the states were free to regulate and tax the business of insurance as they saw fit.

◆ Concern About Antitrust Activities

Over time, a cartel system evolved for property and casualty insurers where, what we would call today, rating organizations developed. There were a number of these rating organizations and often the by-laws of these organizations required members to adhere to a common set of rates and common policy forms. These requirements were viewed by many as anti-competitive. Significant control was vested

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[1] The purpose of this article is to provide a historical perspective on the McCarran-Ferguson Act and to explore its relevance today. The opinions expressed in this article are solely my own. They are not the opinions of the National Association of Insurance Commission (NAIC) members individually or collectively or opinions shared by other NAIC staff. This article is being drafted as part of the charge of the NAIC Center for Policy and Research (CIPR) to serve as a thought leader and provide information for public policymakers to consider.

[2] 15 U.S.C. §§ 1011-1015.

[3] *United States v. S.-E. Underwriters Ass'n*, 322 U.S. 533 (1944).

[4] *Paul v. State of Virginia*, 75 U.S. 168 (1868).

[5] Id. at 177.

[6] Id. at 180 181.

with the rating organizations and some of them were ruthless in enforcing their power to the detriment of non-member competitors.

A different scenario developed for life insurers. In the life insurance sector, there were many interlocking directorships, where a buddy system rewarded participants and punished outsiders.

President Franklin D. Roosevelt played a role in the journey. He was interested in fostering competition and was using the National Industrial Recovery Act of 1933 as the tool of choice.[7] That was until it was declared unconstitutional. The National Industrial Recovery Act was part of the legislation designed to help the country recover from the Great Depression. It suspended antitrust laws in favor of an alliance of industries, where businesses were asked to form alliances to write codes of fair competition. Essentially, this was a form of self-regulation. The law created the National Recovery Administration to promote compliance with the self-regulatory guidance, among other things. The National Industrial Recovery Act was declared unconstitutional in May 1935 in the case *A.L.A. Schechter Poultry Corp. v. United States*.[8] At issue was the unlawful assignment of legislative powers to the National Recovery Administration when the Constitution reserved those powers for Congress.

Since the National Industrial Recovery Act could no longer be used to foster competition, the Roosevelt administration turned to the antitrust laws as a way to break up detrimental concentrations of economic power. Ironically the U.S. Department of Justice Antitrust Division looked into a case with ties to Kansas City, MO, the current home of the NAIC. The infamous former Kansas City Mayor Thomas J. Pendergast was under investigation for tax evasion. One element investigated was his failure to report a bribe he received on his income taxes. The bribe originated from a lawyer named Charles Street who represented a Chicago-based fire insurance rating organization. Long story short, Mr. Pendergast shared the bribe with R. Emmet O'Malley, who was, through Pendergast's influence, appointed as superintendent of insurance for Missouri. Discovery during the Pendergast – O'Malley investigation revealed certain anticompetitive behavior by the South-Eastern Underwriters Association, which is covered in the next section.

◆ UNITED STATES V. SOUTH EASTERN UNDERWRITERS

It was June 5, 1944, when the U.S. Supreme Court delivered an opinion in the *United States v. South-Eastern Underwriters Association* case.[9] The opinion set the insurance world on its heels. The Supreme Court overturned a long-held belief insurance was not interstate commerce and, therefore, not subject to federal anti-trust laws and oversight by the Federal Trade Commission.[10] There was concern a shift from the cartel pricing mechanisms in place at the time would lead to unrestrained competition and many insurer insolvencies.

The South-Eastern Underwriters Association consisted of roughly 200 private stock fire insurers and 27 individuals. In today's parlance, South-Eastern Underwriters would be known as a rating organization. South-Eastern Underwriters was appealing a decision in the district court alleging violations of the federal Sherman Antitrust Act. Specifically, South-Eastern Underwriters was alleged to be part of a conspiracy to restrain interstate trade and commerce by engaging in price fixing and conspiring to monopolize fire and allied lines insurance transactions in several states. Facts presented show South-Eastern Underwriters members controlled 90% of the market in six states (Alabama, Florida, Georgia, North Carolina, South Carolina and Virginia). Among the practices identified were fixing of premium rates and agent commissions; boycotts and other types of coercion and intimidation to force others to join South-Eastern Underwriters; compelling people who needed insurance to buy from South-Eastern Underwriters member insurers; denying reinsurance to non-member insurers; disparaging non-member competitors' services and facilities; and removing appointments for agents who also agreed to work with a non-member insurer.[11]

The Supreme Court majority opinion was written by Justice Hugo Lafayette Black, an appointee of President Franklin D. Roosevelt. In it, Justice Black presents two questions for the court to consider: "Was the Sherman Act intended to prohibit conduct of fire insurance companies which restrains or monopolizes the interstate fire insurance trade?" and, if so, "Do fire insurance transactions which stretch across state lines constitute 'Commerce among the several States' so as to make them subject to regulation by Congress under the Commerce Clause?"[12] The Court assumed an affirmative answer to the first question and focused its analysis on the second question.

Generally, courts do not construe words to have a more narrow meaning than they have in common language. Justice Black noted that to interpret the word "commerce" so

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[7] National Industrial Recovery Act, Pub. L. No. 73-67 § 1, 48 Stat. 195 (1933), *Title I invalidated* by Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935) (Title II expired in June, 1935).
[8] A.*L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).
[9] *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944).
[10] *Id.* at 571.
[11] Id. at 535-36 (pages 4 & 5).
[12] Id. at 538-39.

as not to include the business of insurance would be giving the word a more narrow definition than in the common language. He found the language of the time to be clear and suggested the meaning of the word "commerce" had not changed since the *Paul v. Virginia* decision. He noted the business of insurance employed more than 500,000 people and its annual premium receipts of $6 billion exceeded the annual revenue receipts of the federal government at the time. He suggested the insurance business touches the home, family, occupation or business of almost every person in the country, often involving more than one state.[13]

He noted that the Commerce Clause must be read broadly so that Congress can "discharge its Constitutional duty to govern commerce among the states.[14]" Furthermore, he found no evidence supporting the notion that the Sherman Act was intended to exclude the business of insurance from its reach. Finally, he determined that the Sherman Act did not necessarily invalidate state laws regulating insurance because few states would allow companies to fix rates and no state would allow the type of destructive business practices alleged in this case.

The Supreme Court was not unanimous in its decision. Writing one of the dissenting opinions was Justice Robert Jackson, another appointee of President Franklin D. Roosevelt. Justice Jackson suggested the majority was not taking a common sense approach to the problem. He said the court was not evaluating the constitutionality of a law enacted by Congress, but rather using a law to strike down the constitutional basis for state insurance regulation.[15] He noted the states had successfully been regulating insurance for more than 100 years. He observed insurance departments have accumulated the institutional experience and wisdom indispensable to good administration.

Justice Jackson noted there was no indication from Congress that it concurs with a plan to federalize insurance regulation and suggested there was evidence to the contrary. He suggested if Congress intended to assume the regulation of the insurance business, it surely would not have relied solely on the anti-trust laws to accomplish the task. He listed several failed bills to establish federal regulation of insurance over a period from 1866 to 1933. He noted that proponents of a federal regulatory system tended to be representatives of the largest insurers. In addition, he pointed out the failure of several federal agencies to effectively regulate other businesses. Specifically mentioned were the Interstate Commerce Commission's failure to deal with railroad abuses, the Beef Trust and the Oil Trust. He noted amicus curiae briefs were received from 35 states protesting the court's decision.[16]

◆ REACTION TO THE SOUTH-EASTERN UNDERWRITERS DECISION

NAIC President Charles F. J. Harrington (Mass.) opened the 75th Annual Meeting of the NAIC on June 15, 1944, at the Edgewater Beach Hotel in Chicago, IL. In his opening remarks he quoted Chief Justice Harlan F. Stone:

> But the immediate and practical effect of the decision now rendered is to withdraw from the states, in large measure, the regulation of insurance and to confer it on the national government, which has adopted no legislative policy and evolved no scheme of regulation with respect to the business of insurance. Congress having taken no action, the present decision substitutes, for the varied and detailed state regulation developed over a period of years, the limited aim and indefinite command of the Sherman Act for the suppression of restraints on competition in the marketing of goods and services in or affecting interstate commerce, to be applied by the courts to the insurance business as best they may.[17]

During the NAIC national meeting, a resolution was adopted unanimously urging the continuation of state regulation of the business of insurance, stating that "the interests of the insuring public can best be served by proper supervision on the part of State Governments, and in keeping with constitutional limitations as defined by the United States Supreme Court over the past seventy-five years."[18] The insurance regulators were galvanized in support of the continuation of state insurance regulation. They were also concerned, without a resolution, insurers would begin to withhold premium tax payments to the states.

Other forces were in play. Writings at the time reveal the development of three separate schools of thought. Each was based on the self-interest of the parties subject to regulation. The result was the development of three separate bills. The fire insurers liked the cartel system which was essentially a form of self-regulation. They were supportive of the Bailey-Walters bill. This bill began in the U.S. House of Representatives and reported out of the U.S. Senate Committee on the Judiciary. It never reached the floor of the Senate.[19]

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[13] Id. at 540-41.
[14] Id. At 551.
[15] Id. at 565.
[16] Id. at 589-94.
[17] 1944 NAIC Proc. 75th Sess. p. 98-99.
[18] Id. at 43.
[19] Kevin P. Hennosy, Fear and Loathing in Insurance Regulation, 157 Pub. Rough Notes., no. 11, Nov. 2014, at 76, 78 (2014).

The McCarran-Ferguson Act as initially drafted, fit the interests of the large stock life insurers. They were anxious to maintain their cozy nature with interlocking boards and exclusion of outsiders. In its initial form the bill provided insurers with a temporary exemption from antitrust law and a permanent exemption from enforcement activity by the Federal Trade Commission. The bill sponsors were U.S. Senator Patrick Anthony McCarran (D-NV) and U.S. Senator Homer Samuel Ferguson (R-MI). They were chair and ranking member of the Senate Judiciary Committee, respectively.[20]

The third bill was known as the "commissioners" bill.[21] It was supported by the independent insurers and independent agents. Support came from the National Association of Insurance Agents and a group of independent insurers.[22] Supporters of this approach worked with U.S. Senator Joseph C. O'Mahoney (D-WY). The first section of the bill provided jurisdiction to the states and allowed the states to regulate and tax the business of insurance. It further stated that federal law could not invalidate, impair or supersede state insurance law. Other provisions exempted insurance from oversight by the Federal Trade Commission and the Robinson-Patman Act. It included a limited exemption from the Sherman Act and the Clayton Act.[23]

◆ THE MCCARRAN-FERGUSON ACT

Senator O'Mahoney was well connected to the Roosevelt administration and he led the effort to bring the three factions together. As a result, Senate Bill 340 of 1945 was proposed as a substitute for the original bill drafted by Senator McCarran and Senator Ferguson. Ironically, even though the bill still carried his name, Senator McCarran did not support it. He instead favored a total and permanent antitrust exemption for the insurance sector.[24]

The new McCarran-Ferguson Act contained most of the text of the "commissioners" bill. There were two significant changes to it. A provision was added to the boycott provision so that it would cover agreements in addition to acts of boycott, coercion or intimidation. The other change was to delete a provision in the "commissioners" bill allowing the states to keep or enact laws in conflict with the Sherman Act or the Clayton Act. The Senate passed the bill as amended and the House passed the "commissioners" bill. The difference between the two was the Senate amendments.[25]

A conference committee was appointed to discuss and iron out the differences. Key players in the discussion were Senator O'Mahoney (D-WY), Senator Orrice Abram "Abe" Murdock, Jr. (D-UT) and Senator Robert Alphonso Taft (R-OH). The House agreed to the new version without debate on Feb. 23, 1945. The Senate debated the report on Feb. 26 and Feb. 27, 1945. The Senate adopted the bill on Feb. 27, 1945. On March 9, 1945, the conference report version of the law was signed by President Roosevelt and became Public Law 15 of 1945.[26]

The complete text of the enacted McCarren-Ferguson Act is included in the appendix of this article. The key provisions of the Act are as follows:

- Congress declares the continued regulation and taxation by the states of the business of insurance is in the public interest (15 U.S.C. § 1011).
- Silence by Congress shall not be construed to impose any barrier to regulation or taxation of the business of insurance by the states (15 U.S.C. § 1011).
- The business of insurance is subject to the laws of the states which relate to the regulation or taxation of the business of insurance (15 U.S.C. § 1012(a)).
- Every person engaged in the business of insurance is subject to the laws of the states which relate to the regulation or taxation of the business of insurance (15 U.S.C. § 1012(a)).
- 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 unless such Act specifically relates to the business of insurance (15 U.S.C. § 1012(b)). This says Congress must specifically mention the business of insurance if it intends a particular piece of legislation to apply to the business of insurance.
- No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance (15 U.S.C. § 1012(b)).

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[20] *Id.*

[21] The complete text of the "Commissioners" bill is included in the appendix of this article.

[22] *Id.* at 86. The National Association of Insurance Agents is now known as the Independent Insurance Agents & Brokers of America, Inc. The group of independent insurers later formed the National Association of Independent Insurers. The National Association of Independent Insurers and the Alliance of American Insurers merged to form the Property Casualty Insurers Association of America (PCI).

[23] Kevin P. Hennosy, *The Moratorium*, 158 Pub. Rough Notes., no. 1, Jan. 2015, at 48, 79 (2015).

[24] *Id.*

[25] *Id.*

[26] Kevin P. Hennosy, *Use It or Lose It*, 158 Pub. Rough Notes., no. 2, Feb. 2015, at 70, 72. The complete text of the adopted McCarran-Ferguson Act is included in the appendix of this article.

- However, the Sherman Act, the Clayton Act and the Federal Trade Commission Act apply to the business of insurance to the extent the business of insurance is not regulated by state law (15 U.S.C. § 1012(b)). This provision requires active regulation by states of the business of insurance to avoid application of the federal antitrust laws to the business of insurance.

- The Sherman Act applies to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation (15 U.S.C. § 1013(b)). Insurers and persons engaged in the business of insurance remain subject to the Sherman Act. The Sherman Act is an antitrust law intended to prevent monopolies or cartels and encourage competitive markets.

- Insurers remain subject to the National Labor Relations Act, the Fair Labor Standards Act and the Merchant Marine Act (15 U.S.C. § 1014).

◆ THE PERIOD FOLLOWING THE ENACTMENT OF THE MCCARRAN-FERGUSON ACT

The enactment of the McCarran-Ferguson Act set off a flurry of activity at the NAIC and in the states. Regulatory frameworks were strengthened and model legislation was discussed and adopted. In a Report of the Subcommittee on Federal Legislation, rate regulation was discussed.[27] Because the cartel approach had clearly been discarded with the enactment of the McCarran-Ferguson Act, the states recognized a pressing need to enact laws to regulate rates used by property and casualty insurers. This led to the development of the Fire and Marine Rating Bill and the Casualty and Surety Rating Bill.[28] These model laws introduced the frameworks for the rating laws in place today. They included several concepts including the formation, licensing and regulation of rating organizations (the advisory organizations of today); the rate standards that rates should not be excessive, inadequate, nor unfairly discriminatory; and the requirements for filing and approval of rates and rating systems. Also included was a prohibition against giving rebates.[29]

It is beyond the scope of this article to go into detail on all the meetings and deliberations of the mechanism establish to assemble all the parts needed to effectively implement the authority granted by the McCarran-Ferguson Act. Persons interested in reading further on the aftermath should look at the information on the All- Industry Committee established in 1946 and documented in the NAIC *Proceedings*, Seventy-Seventh Session 1946.

◆ RELEVANCE OF THE MCCARRAN-FERGUSON ACT TODAY

The McCarran-Ferguson Act is as relevant today as it was when it was first enacted. It contains the basic delegation of authority from Congress to the states with respect to the regulation and taxation of the business of insurance. It has been affirmed as the law of the land in the Gramm-Leach-Bliley Act and in the Dodd-Frank Act.[30]

In today's world, there is much discussion of deregulation and making things easier for businesses. Designing the appropriate amount of regulation of the business of insurance to ensure solvency, promote competitive markets and ensure sound consumer protection can be challenging. It is important for the insurance industry, consumers, insurance producers and regulators to remember deregulation of the business of insurance is not like deregulation of other sectors of American businesses. The congressional delegation of authority to the states is a contingent delegation of authority.

There are two contingencies affecting the delegation of authority. First, Congress can enact legislation applicable to the business of insurance by mentioning it in a bill and affirmatively stating that the legislation applies to the business of insurance. Second, when the states do not enact or maintain laws to regulate the business of insurance, such regulation is left to Congress under the Sherman Act, the Clayton Act and the Federal Trade Commission Act.

Thus, deregulation of aspects of the business of insurance may be accompanied by some unanticipated outcomes with respect to antitrust laws. For example, sharing loss data among competitors as is done through advisory organizations would be considered an antitrust violation. Organizations such as Insurance Services Office and the National Council on Compensation Insurance can only exist under active state regulation of the products they produce and the information they collect.

In addition, if state insurance regulators fail to regulate, the insurance industry does not become deregulated; it merely finds itself with a new master, the Federal Trade Commis-

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[27] 1945 NAIC Proc. 76th Sess. p. 170-171.

[28] Herbert H. Naujoks, *Eight Years After S.E.U.A. – Present Status of the Regulation of Insurance as Commerce*, 35 Marq. L. Rev. 339, 351 (1952).

[29] *Id.*

[30] The Gramm-Leach Bliley Act is formally known as the Financial Services Modernization Act, 15 U.S.C. §§ 6801–6809 (1999). Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

sion. This is an outcome no one expects or thinks about. It is important for all not to forget how relevant the McCarran-Ferguson Act remains today.

◆ CONCLUSION

It is important for state insurance regulators, as well as regulated individuals and entities, to be familiar with and understand the importance of the McCarran-Ferguson Act. Key concepts in the law provides a contingent delegation of authority to the states to regulate and tax the business of insurance. The contingency is the states must actively regulate the business of insurance or its regulation will return to the federal government under the Commerce Clause of the U.S. Constitution. Insurance is a form of interstate commerce. If there is a regulatory void, federal authorities may fill the void employing the provisions of the Sherman Act, the Clayton Act, and/or the Federal Trade Commission Act.

ABOUT THE AUTHOR

Eric Nordman, CPCU, CIE, is the director of the NAIC Regulatory Services Division and the CIPR. He directs the Regulatory Services Division staff in a wide range of insurance research, financial and market regulatory activities, supporting NAIC committees, task forces and working groups. He has been with the NAIC since 1991. Prior to his appointment as director of the Regulatory Services Division, Mr. Nordman was director of the Research Division and, before that, the NAIC senior regulatory specialist. Before joining the NAIC, he was with the Michigan Insurance Bureau for 13 years. Mr. Nordman earned a bachelor's degree in mathematics from Michigan State University. He is a member of the CPCU Society and the Insurance Regulatory Examiners Society.

APPENDIX

LEGISLATIVE PROPOSAL
Submitted to
The Congress of the United States
By
The Executive Committee of the National Association
of Insurance Commissioners
November 1944

TEXT OF LEGISLATION
Recommended by National Association of Insurance Commissioners

Section 1.
That 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 of such business by the several States.

Section 2.
a) The business of insurance, and every person engaged therein, shall be subject to the laws of the respective States which relate to the regulation of such business and which impose fees or taxes thereon.
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 so provides.

Section 3.
Nothing contained in the Federal Trade Commission Act, as amended, or the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall apply to the business of insurance or to acts in the conduct of that business.

Section 4.
a) Until July 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, shall not apply to the business of insurance, or to acts in the conduct of such business.
b) On or after July 1, 1948, the said Sherman Act shall not apply (1) to any agreement or concerted or cooperative action which prescribes the use of rates for insurance, insurance policy or bond forms or underwriting rules or plans if such rates, forms, rules or plans are required, by the law of the State in which they are to be used, either to be approved by the supervisory official or agency of such State having authority with respect thereto, or to be filed subject to disapproval by such official or agency; (2) to the use of any such rates, forms, rules or plans which have been so approved or filed; (3) to any cooperative or joint service, adjustment, investigation, or inspection agreement relating to insurance, or to acts under such agreement; (4) to any agreement or concerted or cooperative action among two or more insurers to insure, reinsure or otherwise apportion risks taken by the parties to such agreement or any of them, or to issue policies or bonds with joint or several liability; (5) to any agreement or concerted or cooperative action with respect to the payment of insurance agents' or brokers' commissions; (6) to any agreement or concerted or cooperative action with respect to the collection and use of statistics or with respect to policy or bond forms; or (7) to any agreement or concerted or cooperative action providing for the cooperative making of insurance rates, rules, or plans, if such arrangement does not require the use of such rates, rules or plans.
c) Nothing contained in this section shall render the said Sherman Act inapplicable to any act of boycott, coercion or intimidation.

Section 5.
Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the National Labor Relations Act, as amended, or the Fair Labor Standards Act of 1938, as amended.

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Section 6.
As used in this Act, the term "State" includes the several states, Alaska, Hawaii, Puerto Rico and the District of Columbia.

Section 7.
If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of eh 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 thereby.

COMPLETE TEXT OF THE McCARRAN-FERGUSON ACT

15 U.S. Code § 1011 - Declaration of policy
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.

15 U.S. Code § 1012 - Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948

(a) State regulation
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) Federal regulation
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 June 30, 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 [15 U.S.C. 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.

15 U.S. Code § 1013 - Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation

(a) Until June 30, 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 [15 U.S.C. 41 et seq.], 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 chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

15 U.S. Code § 1014 - Effect on other laws

Nothing contained in this chapter 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 [29 U.S.C. 151 et seq.], or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

15 U.S. Code § 1015 - "State" defined

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

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The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S. For more information, visit www.naic.org.