

Akerman Practice Update

Practice Update **INSURANCE**

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Congress Moves to Repeal Anti-trust Exemption for Insurers

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In response to the recent economic downturn, the President and Congress have made it a priority to overhaul the regulation of the insurance industry. While this will primarily affect health care insurers, a broader agenda is beginning to take shape and chief among the proposed reforms is the repeal of anti-trust exemptions for insurance companies.

The antitrust exemption dates back to the McCarran-Ferguson Act of 1945 which allowed states law to regulate the insurance industry by excluding companies from federal antitrust law and preventing federal government interference. The insurance industry trade group, America's Health Insurance Plans (AHIP), says the Act has been misinterpreted by lawmakers and does not exempt the industry from all antitrust laws but rather allows the states to play the central role in regulation.

Bills have recently been introduced in both the House and the Senate to strip the antitrust exemption. The Health Insurance Industry Antitrust Enforcement act of 2009 (HR 3596), currently in the House Judiciary Committee, would partially repeal the exemption from antitrust law for the health insurance industry. The bill, sponsored by Judiciary Chairman John Conyers (D-MI), would authorize the government to prosecute insurers if they are found to be participating in price fixing, bid rigging, or market allocations. Speaker Pelosi is in full support and says she expects the healthcare bill that she will bring to the floor will include this legislation.

After a hearing in the Senate Judiciary committee on October 14th, Sen. Charles Schumer (D-NY) called on his colleagues to add antitrust legislation as an amendment to the healthcare bill that Sen. Majority Leader Harry Reid (D-NV) plans to bring to the floor later this month. Reid is in strong support of the amendment.



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In June 2009, the Administration released their report on regulatory reform entitled “Financial Regulatory Reform: A New Foundation.” Although the report outlines wide-ranging policy changes, the calls for the formation of an Office of National Insurance, which would operate within Treasury, and the increased regulation of large insurance firms who have the potential to create systemic risk would be the most significant reforms for the insurance industry. Legislation has been introduced in Congress that would begin to implement parts of the Administration’s report.

An excellent review prepared by the Congressional Research Service with additional details is available at this website http://assets.opencrs.com/rpts/R40771_20090819.pdf. For more information on the proposed legislation to repeal the insurance industry’s anti-trust exemption, contact Jon Porter at 202.393.6222.

Former Congressman Jon Porter is the Director of Public Policy in the firm’s Washington, D.C. office. Prior to him serving in the U.S. House of Representatives, Jon was a successful business owner and District Manager of Farmer’s Insurance for over twenty years. Such diverse and extensive experience allows Jon to be a remarkable asset for our clients in the insurance industry.

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