Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
June 20, 2006

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Ranking Member, Judiciary Committee

Hearing on "The McCarran-Ferguson Act: Implications of Repealing the Insurers' Antitrust Exemption"

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As far back as 1945, the insurance industry has operated largely beyond the reach of federal antitrust laws. The McCarran-Ferguson Act created this exemption, and so long as the insurance business is regulated by the states, there is no room for federal oversight. Perhaps this was well-advised legislation at the time, and perhaps it served worthwhile policy. But times changed.

A common refrain of tort reform proponents is that "out-of-control juries" and large malpractice awards drive insurance costs higher. Medical professionals, we are told, are being crushed by the excessive costs of insurance. Just recently, the Senate considered legislation to cap punitive damage awards in medical malpractice cases. Yet, among the 15 best-rated medical malpractice insurance providers, premiums rose dramatically between 2000 and 2005 while the cost of claims paid out remained flat. If claims are not driving premiums, but insurance costs among competing companies are rising in lockstep with each other, it is time to admit that there are other causes of this problem.

I have introduced a bill - S. 1525, The Medical Malpractice Insurance Antitrust Act of 2005 - along with Senators Kennedy, Durbin, Rockefeller, Boxer, Feingold, Salazar, Obama, and Mikulski. This bill would repeal the antitrust exemption for medical malpractice insurance, and only for the most egregious cases of price fixing, bid rigging, and market allocation. 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.

If insurers around the country are operating in an honest and appropriate way, they should not object to being answerable under the same federal antitrust laws as virtually all other businesses. American consumers, from sophisticated multi-national businesses to individuals shopping for personal insurance, have the right to be confident that the cost of their insurance reflects competitive market conditions, not collusive behavior.

I recognize that the insurance industry has unique characteristics, including the dependence on collective claim and loss data, but I am confident that we can accommodate those legitimate needs while still providing Federal regulators with the tools to investigate and prevent collusion and other anticompetitive behavior. Individuals and businesses are compelled, sometimes by the law and sometimes by prudence, to purchase many kinds of insurance. We must ensure that those citizens are being treated fairly, and that the providers of the product are not stifling competition in the marketplace.

I thank our panel for their testimony today, and I also thank Chairman Specter for his efforts in convening this hearing.

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