McCarran-Ferguson Act of (1945)

The McCarran-Ferguson Act of 1945 (15 U.S.C.A. § 1011 et seq.) gives states the authority to regulate the "business of insurance" without interference from federal regulation, unless federal law specifically provides otherwise.

The act provides that 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." Congress passed the McCarran-Ferguson Act primarily in response to the Supreme Court case of *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533, 64 S. Ct. 1162, 88 L. Ed. 1440 (1944). Before the *South-Eastern Under-writers* case, the issuing of an insurance policy was not thought to be a transaction in commerce, which would subject the insurance industry to federal regulation under the **COMMERCE CLAUSE**. In *South-Eastern Underwriters*, the Court held that an insurance company that conducted substantial business across state lines was engaged in interstate commerce and thus was subject to federal antitrust regulations. Within a year of *South-Eastern Underwriters*, Congress enacted the McCarran-Ferguson Act in response to states' concerns that they no longer had broad authority to regulate the insurance industry in their boundaries.

The McCarran-Ferguson Act provides that state law shall govern the regulation of insurance and that no act of Congress shall invalidate any state law unless the federal law specifically relates to insurance. The act thus mandates that a federal law that does not specifically regulate the business of insurance will not **PREEMPT** a state law enacted for that purpose. A state law has the purpose of regulating the insurance industry if it has the "end, intention or aim of adjusting, managing, or controlling the business of insurance" (*U.S. Dept. of Treasury v. Fabe*, 508 U.S. 491, 113 S. Ct. 2202, 124 L. Ed. 2d 449 [1993]).

The act does not define the key phrase "business of insurance." Courts, however, analyze three factors when determining whether a particular commercial practice constitutes the business of insurance: whether the practice has the effect of transferring or spreading a policy-holder's risk, whether the practice is an integral part of the policy relationship between the insurer and the insured, and whether the practice is limited to entities within the insurance industry (*Union Labor Life Insurance Co. v. Pireno*, 458 U.S. 119, 102 S. Ct. 3002, 73 L. Ed. 2d 647 [1982]).

The McCarran-Ferguson Act does not prevent the federal government from regulating the insurance industry. It provides only that states have broad authority to regulate the insurance industry unless the federal government enacts legislation specifically intended to regulate insurance and to displace state law. The McCarran-Ferguson Act also provides that the **SHERMAN ANTI-TRUST ACT OF 1890**, 15 U.S.C.A. § 1 et seq., the **CLAYTON ACT OF 1914**, 15 U.S.C.A. § 12 et seq., and the Federal Trade Commission Act of 1914, 15 U.S.C.A. §§ 41–51, apply to the business of insurance to the extent that such business is not regulated by state law.

Courts have distinguished between the general regulatory exemption of the McCarran-Ferguson Act and the separate exemption provided for the Sherman Act, which is the federal **ANTITRUST LAW**. Cases involving the applicability of the Sherman Act to state-regulated insurance practices take a narrower approach to the phrase "business of insurance" and apply the three criteria set forth in the *Pireno* case. In other cases that do not involve the federal antitrust exemption of the McCarran-Ferguson Act, the Supreme Court takes a broader approach. It has thus defined laws enacted for the purpose of regulating the business of insurance to include laws "aimed at protecting or regulating the performance of an insurance contract" (*Fabe*). Insurance activities that fall within this broader definition of the business of insurance include those that involve the relationship between insurer and insured, the type of policies issued, and the policies'

reliability, interpretation, and enforcement (*Securities & Exchange Commission v. National Securities*, 393 U.S. 453, 89 S. Ct. 564, 21 L. Ed. 2d 668 [1969]).