

No. R-399. Joint resolution urging Congress not to diminish any aspect of the existing state regulatory authority over the insurance industry or consumer protection policy with respect to national banks.

(J.R.H.35)

Offered by: Representatives Botzow of Pownal, Kitzmiller of Montpelier, Bissonnette of Winooski, Clerkin of Hartford, Dickinson of St. Albans Town, Lorber of Burlington, Marcotte of Coventry, Shand of Weathersfield, Smith of Mendon, Turner of Milton and Wilson of Manchester

Whereas, in 1945, Congress enacted the McCarran-Ferguson Act, 59 Stat. 33, in which section one (15 U.S.C. § 1011) provided “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,” and

Whereas, section 2 of the act (15 U.S.C. § 1012) provided that “the business of insurance, and every person engaged therein, shall be subject to the laws of the several States,” and that “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,” and

Whereas, the exception to this broad grant of regulatory authority to the states was a proviso that those aspects of the business of insurance not regulated by state law would be subject to federal antitrust law, including the Sherman Act, the Clayton Act, and the Federal Trade Commission Act, and

Whereas, for over six decades, the McCarran-Ferguson Act has successfully continued as the law of the land, and the individual states have demonstrated great competence in regulating the insurance industry, and

Whereas, H.R. 1583, the “Insurance Industry Competition Act of 2009,” was introduced in the current Congress and referred to the House Committee on Financial Services, and

Whereas, this legislation would alter and impinge upon the scope of the states’ current exclusive authority over the insurance industry by amending federal law to modify federal jurisdiction with respect to insurance industry competition, and

Whereas, the House-passed version of H.R. 4173, “The Wall Street Reform and Consumer Protection Act of 2009,” establishes a federal insurance office which although not specifically intended to preempt state authority over the insurance industry does introduce a new federal regulatory mechanism over insurance that has not previously existed, and

Whereas, the states have fought to retain the authority to adopt consumer protection measures for national banks that are not directly related to the business of banking, and

Whereas, although H.R. 4173 does provide that states may adopt consumer protection policies related to national banks and halts the total monopoly that the U.S. Comptroller of the Currency has been asserting in recent years, the leeway granted to the states remains excessively restricted, and

Whereas, the legislation grants preemption authority to the U.S. Comptroller of the Currency, with respect to a legally adopted state consumer protection policy regarding national banks, that “prevents or significantly interferes with the ability of an insured depository institution chartered as a national bank to engage in the business of banking,” and

Whereas, the U.S. Comptroller of the Currency could interpret this language as a broad mandate to preempt state policies designed to protect consumers in their transactions with national banks, and

Whereas, with respect to comprehensive insurance regulation and to state consumer protection policies related to national banks, state regulators, such as the Vermont department of banking, insurance, securities, and health care administration, have a proven record of success, and their jurisdictional authority should not be diminished, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress not to diminish any aspect of the states’ existing regulatory authority over the insurance industry or consumer protection policy with respect to national banks, and

Resolved: That the Secretary of State be directed to send a copy of this resolution to Paulette J. Thabault, Commissioner of Banking, Insurance, Securities, and Health Care Administration, and to the Vermont Congressional Delegation.