

116TH CONGRESS
1ST SESSION

S. 2621

To provide for the restoration of legal rights for claimants under holocaust-era insurance policies.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2019

Mr. RUBIO (for himself, Ms. ROSEN, and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the restoration of legal rights for claimants under holocaust-era insurance policies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Holocaust Insurance
5 Accountability Act of 2019”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to—

8 (1) allow for the enforcement of State laws re-
9 quiring the disclosure of information about Holo-
10 caust-era insurance policies, notwithstanding the

1 holding of the Supreme Court of the United States
2 in *American Insurance Association v. Garamendi*,
3 539 U.S. 396 (2003) that such laws are preempted
4 by the foreign policy espoused by the executive
5 branch of the Federal Government addressed in that
6 case;

7 (2) facilitate the disclosure of information about
8 Holocaust-era insurance policies under applicable
9 State laws so that citizens of the United States (and
10 other persons on whose behalf such laws were en-
11 acted) may know whether they hold any rights under
12 the policies;

13 (3) create a new Federal private cause of action
14 and subject matter jurisdiction to allow the bene-
15 ficiaries of Holocaust-era insurance policies, many of
16 whom are citizens of the United States, to bring
17 suits in the courts of the United States to recover
18 any proceeds under the policies to which they may
19 be entitled, notwithstanding the defense that such
20 suits are preempted by the executive branch foreign
21 policy addressed in *Garamendi*, with the State law of
22 the forum or Federal common law providing the rule
23 of decision governing the right of a beneficiary to re-
24 cover under such policies;

(4) foreclose defenses to claims brought under section 4 of this Act arising from any prior judgments or settlement agreements (including the class action judgment and settlement agreement (M21–89, United States District Court for the Southern District of New York) in *In re: Assicurazioni General S.p.A. Holocaust Insurance Litigation*) that were entered and approved based on the erroneous conclusion that State law claims to recover under Holocaust-era insurance claims are preempted by the executive branch foreign policy addressed in *Garamendi*;

(5) provide for a uniform statute of limitations of 10 years after the date of enactment of this Act in any action to recover under Holocaust-era insurance policies under this Act or State law; and

(6) in carrying out the purposes described in paragraphs (1) through (5), preserve the lawmaking powers of Congress under article I of the Constitution of the United States, with which the judicial decisions cited in this section are inconsistent.

SEC. 3. DEFINITIONS.

In this Act:

(1) **BENEFICIARY.**—The term “beneficiary” includes—

1 (A) a named insured or named beneficiary
2 under a covered policy; and

3 (B) an heir, assignee, or legal representa-
4 tive of a named insured or named beneficiary
5 described in subparagraph (A).

6 (2) COVERED POLICY.—The term “covered pol-
7 icy” means any life, dowry, education, annuity, prop-
8 erty, or other insurance policy that was—

9 (A) in effect at any time during the period
10 beginning on January 31, 1933, and ending on
11 December 31, 1945; and

12 (B) issued to a policyholder domiciled in—

13 (i) any area that was occupied or con-
14 trolled by Nazi Germany; or

15 (ii) the territorial jurisdiction of Swit-
16 zerland.

17 (3) INSURER.—The term “insurer”—

18 (A) means any person engaged in the busi-
19 ness of insurance (including reinsurance) in
20 interstate or foreign commerce that issued a
21 covered policy; and

22 (B) includes any successor in interest to a
23 person described in subparagraph (A).

24 (4) NAZI GERMANY.—The term “Nazi Ger-
25 many” means—

1 (A) the Nazi government of Germany; and

2 (B) any government that—

3 (i) had friendly relations with the
4 Nazi government of Germany;

5 (ii) was allied with or controlled by
6 the Nazi government of Germany; or

7 (iii) exercised or claimed sovereignty
8 over any area occupied by the military
9 forces of the Nazi government of Germany.

10 (5) RELATED COMPANY.—The term “related
11 company” means an affiliate, as that term is defined
12 in section 104(g) of the Gramm-Leach-Bliley Act
13 (15 U.S.C. 6701(g)).

14 **SEC. 4. PRIVATE RIGHT OF ACTION; CIVIL ACTIONS.**

15 (a) CIVIL ACTIONS TO RECOVER UNDER COVERED
16 POLICIES.—This Act creates a new Federal private cause
17 of action and Federal subject matter jurisdiction for a
18 beneficiary of a covered policy to bring a civil action
19 against the insurer for the covered policy or a related com-
20 pany of the insurer to recover proceeds due under the cov-
21 ered policy or otherwise to enforce any rights under the
22 covered policy. The rule of decision governing the right
23 of a beneficiary to recover under a covered policy shall be
24 the law of the forum State in which the civil action is filed,
25 or Federal common law, at the option of the beneficiary.

1 (b) NATIONWIDE SERVICE OF PROCESS.—For a civil
 2 action brought under subsection (a) in a district court of
 3 the United States, process may be served in the judicial
 4 district where the case is brought or any other judicial
 5 district of the United States where the defendant may be
 6 found, resides, has an agent, or transacts business.

7 (c) REMEDIES.—

8 (1) DAMAGES.—

9 (A) IN GENERAL.—A court shall award to
 10 a prevailing beneficiary in a civil action brought
 11 under subsection (a)—

12 (i) the amount of the proceeds due
 13 under the covered policy;

14 (ii) prejudgment interest on the
 15 amount described in clause (i) from the
 16 date the amount was due until the date of
 17 judgment, calculated at a rate of 6 percent
 18 per year, compounded annually; and

19 (iii) any other appropriate relief nec-
 20 essary to enforce rights under the covered
 21 policy.

22 (B) TREBLE DAMAGES.—If a court finds
 23 that an insurer or related company of the in-
 24 surer acted in bad faith, the court shall award
 25 damages in an amount equal to 3 times the

1 amount otherwise to be awarded under sub-
 2 paragraph (A).

3 (2) ATTORNEY'S FEES AND COSTS.—A court
 4 shall award reasonable attorney's fees and costs to
 5 a prevailing beneficiary in a civil action brought
 6 under subsection (a).

7 (d) LIMITATION.—A civil action may not be brought
 8 under this section on or after the date that is 10 years
 9 after the date of enactment of this Act.

10 **SEC. 5. EFFECT OF PRIOR JUDGMENTS AND RELEASES.**

11 (a) IN GENERAL.—

12 (1) EFFECT.—Subject to subsection (b)(1), a
 13 judgment or release described in paragraph (2) shall
 14 not preclude, foreclose, bar, release, waive, acquit,
 15 discharge, or otherwise impair any claim brought
 16 under section 4 by any person.

17 (2) JUDGMENTS AND RELEASES.—A judgment
 18 or release described in this paragraph is—

19 (A) a judgment entered before the date of
 20 enactment of this Act for any claim arising
 21 under a covered policy in any civil action in a
 22 Federal or State court; or

23 (B) an agreement entered into before the
 24 date of enactment of this Act under which any
 25 person (on behalf of the person, any other per-

son, or a class of persons) agrees not to assert
or agrees to waive or release any claim de-
scribed in subparagraph (A), regardless of
whether the agreement is—

(i) denominated as a release, dis-
charge, covenant not to sue, or otherwise;
or

(ii) approved by a court.

(b) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—Except as provided in para-
graph (2), nothing in this section shall affect the va-
lidity or enforceability of any agreement entered into
between any claimant under a covered policy and the
International Commission on Holocaust Era Insur-
ance Claims or an insurer under which the claimant
has agreed to release or waive any claim in consider-
ation for payment under a covered policy.

(2) EXCEPTION.—Paragraph (1) shall not
apply to any agreement for which the payment is de-
nominated as humanitarian by the International
Commission on Holocaust Era Insurance Claims.

**SEC. 6. EFFECT OF EXECUTIVE AGREEMENTS AND EXECU-
TIVE FOREIGN POLICY.**

(a) EFFECT OF EXECUTIVE AGREEMENTS AND EX-
ECUTIVE FOREIGN POLICY ON STATE LAWS.—An execu-

1 tive agreement described in subsection (c)(1) and an execu-
 2 tive foreign policy described in subsection (c)(2) shall not
 3 supercede or preempt the law of any State—

4 (1) relating to a claim under or relating to a
 5 covered policy against the insurer for the covered
 6 policy or a related company of the insurer; or

7 (2) that requires an insurer doing business in
 8 the State or any related company of the insurer to
 9 disclose information regarding a covered policy
 10 issued by the insurer.

11 (b) EFFECT OF EXECUTIVE AGREEMENTS AND EX-
 12 ECUTIVE FOREIGN POLICY ON CLAIMS BROUGHT UNDER
 13 THIS ACT.—An executive agreement described in sub-
 14 section (c)(1) and an executive foreign policy described in
 15 subsection (c)(2) shall not compromise, settle, extinguish,
 16 waive, preclude, bar, or foreclose a claim brought under
 17 section 4.

18 (c) EXECUTIVE AGREEMENTS AND EXECUTIVE FOR-
 19 EIGN POLICY COVERED.—

20 (1) EXECUTIVE AGREEMENTS.—An executive
 21 agreement described in this paragraph is an execu-
 22 tive agreement between the United States and a for-
 23 eign government entered into before, on, or after the
 24 date of enactment of this Act.

1 (2) EXECUTIVE FOREIGN POLICY.—An execu-
2 tive foreign policy described in this paragraph is a
3 foreign policy of the executive branch of the Federal
4 Government established before, on, or after the date
5 of enactment of this Act.

6 **SEC. 7. EFFECT ON STATE LAWS.**

7 Nothing in this Act shall supersede or preempt any
8 State law except to the extent the law of the State conflicts
9 with this Act.

10 **SEC. 8. TIMELINESS OF ACTIONS BROUGHT UNDER STATE**
11 **LAW.**

12 A claim brought under any State law described in
13 section 6(a) shall not be deemed untimely on the basis
14 of any State or Federal statute of limitations or on the
15 basis of any other legal or equitable rule or doctrine (in-
16 cluding laches) governing the timeliness of claims if the
17 claim is filed not later than 10 years after the date of
18 enactment of this Act.

19 **SEC. 9. SEVERABILITY.**

20 If any provision of this Act or the application of such
21 provision to any person or circumstance is held to be un-
22 constitutional, the remainder of this Act and the applica-
23 tion of such provision to any other person or circumstance
24 shall not be affected thereby.

1 **SEC. 10. EFFECTIVE DATE; APPLICABILITY.**

2 This Act shall—

3 (1) take effect on the date of enactment of this

4 Act; and

5 (2) apply to any claim relating to a covered pol-

6 icy that is brought before, on, or after the date of

7 enactment of this Act.

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