II

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Holocaust Insurance Accountability Act of 2019''.

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) allow for the enforcement of State laws requiring the disclosure of information about Holocaust-era insurance policies, notwithstanding the

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

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

(3) create a new Federal private cause of action and subject matter jurisdiction to allow the beneficiaries of Holocaust-era insurance policies, many of whom are citizens of the United States, to bring suits in the courts of the United States to recover any proceeds under the policies to which they may be entitled, notwithstanding the defense that such suits are preempted by the executive branch foreign policy addressed in Garamendi, with the State law of the forum or Federal common law providing the rule of decision governing the right of a beneficiary to recover 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—

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

(B) an heir, assignee, or legal representative of a named insured or named beneficiary described in subparagraph (A).

(2) COVERED POLICY.—The term ''covered policy'' means any life, dowry, education, annuity, property, or other insurance policy that was—

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

(B) issued to a policyholder domiciled in—

(i) any area that was occupied or controlled by Nazi Germany; or

(ii) the territorial jurisdiction of Switzerland.

(3) INSURER.—The term ''insurer''—

(A) means any person engaged in the business of insurance (including reinsurance) in interstate or foreign commerce that issued a covered policy; and

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

(4) NAZI GERMANY.—The term ''Nazi Germany'' means—

(A) the Nazi government of Germany; and

(B) any government that—

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

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

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

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

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

(a) CIVIL ACTIONS TO RECOVER UNDER COVERED POLICIES.—This Act creates a new Federal private cause of action and Federal subject matter jurisdiction for a beneficiary of a covered policy to bring a civil action against the insurer for the covered policy or a related company of the insurer to recover proceeds due under the covered policy or otherwise to enforce any rights under the covered policy. The rule of decision governing the right of a beneficiary to recover under a covered policy shall be the law of the forum State in which the civil action is filed, or Federal common law, at the option of the beneficiary.

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

(c) REMEDIES.—

(1) DAMAGES.—

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

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

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

(iii) any other appropriate relief necessary to enforce rights under the covered policy.

(B) TREBLE DAMAGES.—If a court finds that an insurer or related company of the insurer acted in bad faith, the court shall award damages in an amount equal to 3 times the amount otherwise to be awarded under subparagraph (A).

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

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

SEC. 5. EFFECT OF PRIOR JUDGMENTS AND RELEASES.

(a) IN GENERAL.—

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

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

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

(B) an agreement entered into before the date of enactment of this Act under which any person (on behalf of the person, any other person, or a class of persons) agrees not to assert or agrees to waive or release any claim described in subparagraph (A), regardless of whether the agreement is—

(i) denominated as a release, discharge, covenant not to sue, or otherwise; or

(ii) approved by a court.

(b) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this section shall affect the validity or enforceability of any agreement entered into between any claimant under a covered policy and the International Commission on Holocaust Era Insurance Claims or an insurer under which the claimant has agreed to release or waive any claim in consideration for payment under a covered policy.

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

SEC. 6. EFFECT OF EXECUTIVE AGREEMENTS AND EXECUTIVE FOREIGN POLICY.

(a) EFFECT OF EXECUTIVE AGREEMENTS AND EXECUTIVE FOREIGN POLICY ON STATE LAWS.—An executive agreement described in subsection (c)(1) and an executive foreign policy described in subsection (c)(2) shall not supercede or preempt the law of any State—

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

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

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

(c) EXECUTIVE AGREEMENTS AND EXECUTIVE FOREIGN POLICY COVERED.—

(1) EXECUTIVE AGREEMENTS.—An executive agreement described in this paragraph is an executive agreement between the United States and a foreign government entered into before, on, or after the date of enactment of this Act.

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

SEC. 7. EFFECT ON STATE LAWS.

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

SEC. 8. TIMELINESS OF ACTIONS BROUGHT UNDER STATE LAW.

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

SEC. 9. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of such provision to any other person or circumstance shall not be affected thereby.

SEC. 10. EFFECTIVE DATE; APPLICABILITY.

This Act shall—

(1) take effect on the date of enactment of this Act; and

(2) apply to any claim relating to a covered policy that is brought before, on, or after the date of enactment of this Act.

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