To require disclosure of Holocaust-era policies by insurers and establish a federal cause of action for claims arising out of a covered policy.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2007

Ms. ROS-LEHTINEN (for herself, Mr. WEXLER, Mr. CANTOR, Mr. PENCE, and Mr. CHABOT) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Foreign Affairs and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require disclosure of Holocaust-era policies by insurers and establish a federal cause of action for claims arising out of a covered policy.

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 2007”.

SEC. 2. FINDINGS.

Congress finds the following:
(1) The Holocaust, an event in which millions of people endured enormous suffering through torture and other violence, including the murder of 6,000,000 Jews and millions of others, the destruction of families and communities, and the theft of their assets, was one of the most heinous crimes in human history.

(2) Before and during World War II, millions of people purchased insurance policies to safeguard family assets, plan for retirement, provide for a dowry, or save for their children’s education.

(3) When Holocaust survivors or heirs of Holocaust victims presented claims to insurance companies after World War II, many were rejected because they did not have death certificates or physical possession of policy documents that had been confiscated by the Nazis or lost in the devastation of the Holocaust.

(4) In many instances, insurance company records and records in government archives are the only proof of the existence of insurance policies belonging to Holocaust victims.

(5) Holocaust survivors and heirs have been attempting for decades to persuade insurance companies to settle unpaid insurance claims.
(6) In 1998, the International Commission on Holocaust Era Insurance Claims (in this section referred to as the “ICHEIC”) was established by the National Association of Insurance Commissioners in cooperation with several European insurance companies, European regulators, the Government of Israel, and non-governmental organizations with the promise that it would expeditiously address the issue of unpaid insurance policies issued to Holocaust victims.

(7) On July 17, 2000, the United States and Germany signed an Executive Agreement in support of the German Foundation “Remembrance, Responsibility, and the Future”, which designated the ICHEIC to resolve all Holocaust-era insurance policies issued by German companies and their subsidiaries.

(8) On January 17, 2001, the United States and Austria signed an Executive Agreement, which designated the ICHEIC to resolve all Holocaust-era insurance policies issued by Austrian companies and their subsidiaries.

(9) Between 1998 and the closing of the ICHEIC claims deadline on December 31, 2003, few names of the Jewish policy holders from Eastern
Europe were published, though more than two-thirds of the Jewish population of the territory occupied by the Nazis and their allies were from Eastern Europe.

(10) The ICHEIC is scheduled to close in 2007 without the disclosure of thousands of names of policies sold to Jewish residents of Europe prior to World War II as of February of 2007.

(11) With the ICHEIC process essentially completed, companies holding Holocaust-era insurance policies continue to withhold names of owners and beneficiaries of thousands of insurance policies sold to Jewish customers prior to World War II.

(12) Experts estimate that the value in 2006 of unpaid life, annuity, endowment, and dowry insurance theft from European Jewry from the Holocaust and its aftermath ranges between $17,000,000,000 and $200,000,000,000.

(13) As of the latest report by the ICHEIC on February 20, 2007, the value of claims paid in recognition of victims’ policies was approximately $250,000,000 and fewer than 5 percent of the policies estimated to have been sold to Jews at the beginning of World War II have been paid through ICHEIC.
(14) As of 2006, ICHEIC has not provided the State Department with the information required by paragraphs (3) through (7) of section 704(a) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228), which requires the Secretary of State to report to the appropriate congressional committees on the status of the implementation of the Executive Agreement between Germany and the United States.

(15) In American Insurance Association, Inc., v. Garamendi, the United States Supreme Court held that under the supremacy clause of the Constitution of the United States, executive agreements and Federal Government policy calling for insurance claims against German and Austrian companies to be handled within ICHEIC preempted State laws authorizing State insurance commissioners to subpoena company records and require publication of the names of Holocaust era policy holders.

(16) In the Garamendi case, the Supreme Court stated that Congress, which has the power to regulate international commerce, and prescribe Federal Court jurisdiction, had not addressed disclosure and restitution of Holocaust victims’ insurance policies.
(17) Subsequent court decisions have dismissed survivors’ suits against Assicurazioni Generali, S.p.A., even though there is no executive agreement between the United States and Italy.

(18) Congress believes that United States courts do currently have jurisdiction to entertain actions by Holocaust victims and heirs of Holocaust victims to recover insurance proceeds sold to their families before the Holocaust.

(19) Due to lower court interpretations of the Garamendi case, this Act expresses the intent of Congress to legislate to the maximum extent allowed by the Constitution regarding the rights of Holocaust survivors and the heirs and beneficiaries of Holocaust victims to obtain information from insurers and to bring actions in United States courts to recover unpaid funds from entities that participated in the theft of family insurance assets or the affiliates of such entities.

(20) The ICHEIC either chose not to pursue or did not put forth sufficient effort to investigate or obtain restitution for forms of insurance other than life, annuity, endowment, or dowry insurance sold to Holocaust victims, despite documentation that other forms of insurance benefits such as property and
casualty insurance, disability insurance, health insurance, transport insurance, and marine insurance were also improperly withheld from Jews, nor did the ICHEIC make sufficient effort to investigate the records of reinsurers who provided coverage for Jews’ policies prior to World War II, despite evidence that reinsurers and reinsurance played a significant role in the theft of the family assets of Holocaust victims.

(21) Disclosures in 2006 concerning the vast Nazi archives at Bad Arolsen Germany, which have been closed to direct access by Holocaust survivors, families of Holocaust victims, and researchers since 1955, underscores the necessity a comprehensive opening of all archival sources of information for Holocaust victims and their families.

(22) Insurance payments should be expedited to the victims of the most heinous crime of the 20th Century to ensure that justice is served.

(23) States should be allowed to collect Holocaust-era insurance information from any insurance companies that want to do business in such States.

(24) Tens of thousands of Holocaust survivors around the world, including in the United States, live below or near the poverty level, and cannot meet
their basic day-to-day needs for food, medicine, shelter, and other necessities.

(25) This Act will enable survivors, heirs, and beneficiaries to obtain compensation commensurate with the real monetary value of their losses, and to penalize unjustly enriched insurers for their fraudulent, deceptive, and unfair practices, which continue to the present day, and to deter such conduct in the future.

(26) Holocaust victims and their families should be able to recover claims arising from Holocaust era insurance policies and the Federal Government should be able to recover for the unjust enrichment of insurers in Federal court when they consider it necessary to seek redress through the judicial system.

(27) Under the circumstances faced by Holocaust victims and their families, the courts of the United States should be open to Holocaust victims and their families for a reasonable number of years after enactment of this Act, without regard to any other statutes of limitation.
SEC. 3. HOLOCAUST INSURANCE REGISTRY.

(a) ESTABLISHMENT AND MAINTENANCE.—Chapter 21 of title 44, United States Code, is amended by adding at the end the following:

“§ 2119. Holocaust Insurance Registry

“(a) ESTABLISHMENT.—The Archivist shall establish and maintain a collection of records that shall—

“(1) consist of the information provided to the Archivist under section 5 of the Holocaust Victims Insurance Relief Act of 2007;

“(2) be known as the Holocaust Insurance Registry.

“(b) PUBLIC ACCESS TO THE RECORDS.—The Archivist shall make all the aforementioned records accessible to the public and searchable by means of the Internet and by any other means the Archivist deems appropriate.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 21 of title 44, United States Code, is amended by adding at the end the following:

“2119. Holocaust Insurance Registry.”.

(c) AGREEMENTS WITH EUROPEAN COUNTRIES.—

(1) AGREEMENTS.—The Secretary of State shall seek to enter into agreements with European countries to make available to the Holocaust Insurance Registry information on covered policies that is
stored in the archives or other government repositories of such countries.

(2) REPORT.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Secretary of State shall submit to Congress a report on efforts to carry out this subsection.

SEC. 4. DISCLOSURE OF HOLOCAUST-ERA POLICIES BY INSURERS.

(a) REQUIREMENT.—An insurer shall file, in an electronic format, with the Secretary of Commerce the following information:

(1) The first name, last name, date of birth, and domicile of the policyholder of each covered policy issued or reinsured by the insurer or a related company of the insurer.

(2) The name of the entity that issued the covered policy.

(3) The name of the entity that is responsible for the liabilities of the entity that issued the covered policy.

(b) FILING.—Information under subsection (a) shall be filed not later than 90 days after the date of the enactment of this Act.
SEC. 5. PROVISION OF INFORMATION TO ARCHIVIST.

The Secretary of Commerce shall provide to the Archivist of the United States any information filed with the Secretary under section 4(a) promptly after the filing of such information.

SEC. 6. PENALTY.

The Secretary of Commerce shall assess a civil penalty of not less than $5,000 for each day that an insurer fails to comply with the requirements of section 4, as determined by the Secretary.

SEC. 7. USE OF AMOUNTS RECEIVED AS CIVIL PENALTIES.

To the extent or in the amounts provided in advance in appropriation Acts, the Archivist of the United States may use amounts received by the Government as civil penalties under section 6 to maintain the Holocaust Insurance Registry.

SEC. 8. NOTIFICATION.

(a) INITIAL NOTIFICATION.—Not later than 180 days after the date of the enactment of this Act, and periodically thereafter, the Secretary of Commerce shall notify each State’s commissioner of insurance of the identity of each insurer that has failed to comply with the requirements of section 4 or has not satisfied any civil penalty for which the insurer is liable under section 6.

(b) REQUESTS BY STATES.—On request by the commissioner of insurance of a State concerning an insurer...
operating in that State, the Secretary of Commerce shall inform the commissioner of insurance whether the insurer has failed to comply with the requirements of section 4 or has not satisfied any civil penalty for which the insurer is liable under section 6.

SEC. 9. STATE HOLOCAUST INSURANCE STATUTES.

(a) PREEMPTION.—Nothing in this Act preempts—

(1) any State law requiring an insurer in such State to disclose information regarding covered policies sold or for which reinsurance was provided; or

(2) any rights or remedies available to a claimant under State law relating to a covered policy.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that if any litigation challenging any State law described in subsection (a) is dismissed because the State’s commissioner of insurance chooses to rely on this Act and therefore no longer seeks to enforce the State law, each party should bear its own legal fees and costs.

SEC. 10. FEDERAL CAUSE OF ACTION FOR COVERED CLAIMS.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for any claim arising out of or related to a covered policy against any insurer or related company.
(2) **Effect on other causes of action.**—An action under paragraph (1) shall be maintainable in addition to any cause of action arising under State or international law.

(3) **Standing.**—A claim under paragraph (1) may be brought by the person who purchased such covered policy, a beneficiary or heir of such person, or an assignee of such person or a beneficiary or heir of such person.

(4) **Treble damages; interest.**—In an action under this subsection, the measure of damages shall be not less than three times the amount of—

(A) the claim under the covered policy in United States dollars as of December 31, 1938; and

(B) interest at a rate of 6 percent per year compounded annually from the date when the claim for which an action exists under this subsection could have first been made until the date of judgment under this subsection.

(5) **Attorneys fees.**—In an action under this subsection, a court shall award a successful claimant reasonable attorneys fees and costs incurred in investigating and prosecuting the claim.
(b) **SUBJECT MATTER JURISDICTION.**—The district courts shall have original jurisdiction of any civil action arising out of or related to a covered policy (whether brought under subsection (a) or otherwise).

(c) **PERSONAL JURISDICTION.**—Notwithstanding any provision of Rule 4 of the Federal Rules of Civil Procedure to the contrary, in a civil action arising from or related to a covered policy (whether brought under subsection (a) or otherwise) commenced in a district where the defendant is not a resident—

(1) the court may exercise jurisdiction over such defendant on any basis not inconsistent with the Constitution of the United States; and

(2) service of process, summons, and subpoena may be made on such defendant in any manner not inconsistent with the Constitution of the United States.

(d) **RETROACTIVE APPLICATION.**—This Act shall apply retroactively to any claim arising out of or related to a covered policy to the fullest extent permitted by the Constitution of the United States, including claims previously dismissed on the ground of executive preemption and claims for which class action settlements occurring prior to the effective date of this Act purport to effect a release of claims not accompanied by an actual payment.
(c) **Statute of Limitations.**—Any action brought under this Act shall be filed not later than 10 years after the effective date of this Act.

**SEC. 11. Definitions.**

In this Act:

(1) **Commissioner of Insurance.**—The term “commissioner of insurance” means the highest ranking officer of a State responsible for regulating insurance.

(2) **Covered Policy.**—The term “covered policy” means any life, dowry, education, property or other insurance policy that was—

(A) in effect at any time after January 30, 1933, and before December 31, 1945; and

(B) issued to a policyholder domiciled in any area that was occupied or controlled by Nazi Germany or by any ally or sympathizer of Nazi Germany at any time during the period described in subparagraph (A).

(3) **Insurer.**—The term “insurer” means any person engaged in the business of insurance (including reinsurance) in interstate or foreign commerce, if the person or a related company of the person issued or reinsured a covered policy, regardless of
when the related company became a related company of the insurer.

(4) 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)).