

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1746
OFFERED BY MS. ROS-LEHTINEN OF FLORIDA
AND MR. LANTOS OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Holocaust Insurance
3 Accountability Act of 2007”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) The Holocaust, an event in which millions
7 of people endured enormous suffering through tor-
8 ture and other violence, including the murder of
9 6,000,000 Jews and millions of others, the destruc-
10 tion of families and communities, and the theft of
11 their assets, was one of the most heinous crimes in
12 human history.

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

1 (3) When Holocaust survivors or heirs of Holo-
2 caust victims presented claims to insurance compa-
3 nies after World War II, many were rejected because
4 they did not have death certificates or physical pos-
5 session of policy documents that had been con-
6 fiscated by the Nazis or lost in the devastation of
7 the Holocaust.

8 (4) In many instances, insurance company
9 records and records in government archives are the
10 only proof of the existence of insurance policies be-
11 longing to Holocaust victims.

12 (5) Holocaust survivors and heirs attempted for
13 decades to persuade insurance companies to settle
14 unpaid insurance claims.

15 (6) In 1998, the International Commission on
16 Holocaust Era Insurance Claims (in this section re-
17 ferred to as the “ICHEIC”) was established by the
18 National Association of Insurance Commissioners in
19 cooperation with several European insurance compa-
20 nies, European regulators, the Government of Israel,
21 and nongovernmental organizations with the promise
22 that it would expeditiously address the issue of un-
23 paid insurance policies issued to Holocaust victims.

24 (7) On July 17, 2000, the United States and
25 Germany signed an Executive Agreement in support

1 of the German Foundation “Remembrance, Respon-
2 sibility, and the Future”, which designated the
3 ICHEIC to resolve all Holocaust-era insurance poli-
4 cies issued by German companies and their subsidi-
5 aries.

6 (8) On January 17, 2001, the United States
7 and Austria signed an Executive Agreement.

8 (9) Between 1998 and the closing of the
9 ICHEIC claims deadline on December 31, 2003,
10 ICHEIC undertook an effort to identify and publish
11 the names of Jewish policy holders throughout Eu-
12 rope. Working with a number of available relevant
13 archives in 15 countries, ICHEIC researchers lo-
14 cated almost 78,000 policy records, and there re-
15 main additional archival files to be examined.

16 (10) The ICHEIC closed in 2007 after the dis-
17 closure of thousands of names and payments on
18 thousands of policies sold to Jewish residents of Eu-
19 rope prior to World War II. However, experts and
20 survivors assert that thousands of names and poli-
21 cies have not been disclosed or paid.

22 (11) In total, ICHEIC helped secure a total of
23 \$306,000,000 on behalf of 48,000 Holocaust sur-
24 vivors and their heirs, of whom 17,000 survivors and

1 heirs received payments on policies and 31,000 re-
2 ceived humanitarian payments of \$1,000 each.

3 (12) Notwithstanding ICHEIC's efforts, some
4 experts have disputed the ICHEIC determination to
5 be low.

6 (13) Therefore, with the ICHEIC process es-
7 sentially completed, names of owners and bene-
8 ficiaries of insurance policies sold to Jewish cus-
9 tomers prior to World War II remain to be made
10 public.

11 (14) It is estimated that the value in 2006 of
12 unpaid life, annuity, endowment, and dowry insur-
13 ance theft from European Jewry from the Holocaust
14 and its aftermath ranges between \$17,000,000,000
15 and \$200,000,000,000.

16 (15) As of the final report by ICHEIC on Feb-
17 ruary 20, 2007, it is estimated that the value of
18 claims paid through ICHEIC has been fewer than
19 five percent of the policies estimated to have been
20 sold to Jews at the beginning of World War II.

21 (16) Although ICHEIC provided occasional re-
22 ports regarding its activities to members, alternates,
23 and observers of the Commission, at its conclusion
24 in 2007, ICHEIC has not provided the Department
25 of State with the information required by para-

1 graphs (3) through (7) of section 704(a) of the For-
2 eign Relations Authorization Act, Fiscal Year 2003
3 (Public Law 107–228), which required the Secretary
4 of State to report to the Committee on Foreign Af-
5 fairs of the House of Representatives and the Com-
6 mittee on Foreign Relations of the Senate on the
7 status of the implementation of the Executive Agree-
8 ment between Germany and the United States.

9 (17) In *American Insurance Association, Inc.,*
10 *v. Garamendi*, the United States Supreme Court
11 held that under the supremacy clause of the Con-
12 stitution of the United States, executive agreements
13 and Federal Government policy calling for insurance
14 claims against German and Austrian companies to
15 be handled within ICHEIC preempted State laws
16 authorizing State insurance commissioners to sub-
17 poena company records and require publication of
18 the names of Holocaust era policy holders.

19 (18) In the *Garamendi* case, the Supreme
20 Court stated that Congress, which has the power to
21 regulate international commerce, and prescribe Fed-
22 eral court jurisdiction, had not addressed disclosure
23 and restitution of Holocaust victims' insurance poli-
24 cies.

1 (19) Congress believes that United States
2 courts do currently have jurisdiction to entertain ac-
3 tions by Holocaust victims and heirs of Holocaust
4 victims to recover insurance proceeds sold to their
5 families before the Holocaust, notwithstanding any
6 Executive Agreements previously entered into, the
7 establishment of the ICHEIC process, statements by
8 high-level Executive branch officials, or prior court
9 decisions to the contrary.

10 (20) Due to lower court interpretations of the
11 Garamendi case, this Act expresses the intent of
12 Congress to legislate to the maximum extent allowed
13 by the Constitution regarding the rights of Holo-
14 caust survivors and the heirs and beneficiaries of
15 Holocaust victims to obtain information from insur-
16 ers and to bring actions in United States courts to
17 recover unpaid funds from entities that participated
18 in the theft of family insurance assets or the affili-
19 ates of such entities.

20 (21) Based on its analysis of possible policies
21 owned prior to the period in question, ICHEIC did
22 not generally obtain restitution for forms of insur-
23 ance other than life, annuity, endowment, or dowry
24 insurance sold to Holocaust victims, such as prop-
25 erty and casualty insurance, disability insurance,

1 health insurance, transport insurance, and marine
2 insurance which were also improperly withheld from
3 Jews, nor did the ICHEIC investigate the records of
4 reinsurers who provided coverage for policies during
5 the period in question.

6 (22) It is the intent of Congress to ensure that
7 insurance companies, their subsidiaries, and related
8 entities are held accountable to survivors, heirs,
9 beneficiaries, and the public for their handling of in-
10 surance sold to Holocaust victims, including prop-
11 erty and casualty insurance, health insurance, trans-
12 port insurance, and marine insurance, the benefits
13 of which were improperly withheld from their Jewish
14 owners, and provide full restitution thereof.

15 (23) Disclosures in 2006 concerning the vast
16 Nazi archives at Bad Arolsen, Germany, which have
17 been closed to direct access by Holocaust survivors,
18 families of Holocaust victims, and researchers since
19 1955, underscores the necessity a comprehensive
20 opening of all archival sources of information for
21 Holocaust victims and their families.

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

1 (25) States should be allowed to collect Holo-
2 caust-era insurance information from any insurance
3 companies that want to do business in such States.

4 (26) Tens of thousands of Holocaust survivors
5 around the world, including in the United States,
6 live below or near the poverty level, and cannot meet
7 their basic day-to-day needs for food, medicine, shel-
8 ter, and other necessities.

9 (27) This Act will enable survivors, heirs, and
10 beneficiaries to obtain compensation commensurate
11 with the real monetary value of their losses, and to
12 penalize unjustly enriched insurers for their fraudu-
13 lent, deceptive, and unfair practices, which continue
14 to the present day, and to deter such conduct in the
15 future.

16 (28) Holocaust victims and their families should
17 be able to recover claims arising from Holocaust era
18 insurance policies and the Federal Government
19 should be able to recover for the unjust enrichment
20 of insurers in Federal court when they consider it
21 necessary to seek redress through the judicial sys-
22 tem.

23 (29) Under the circumstances faced by Holo-
24 caust victims and their families, the courts of the
25 United States should be open to Holocaust victims

1 and their families for a reasonable number of years
2 after the enactment of this Act, without regard to
3 any other statutes of limitation.

4 **SEC. 3. HOLOCAUST INSURANCE REGISTRY.**

5 (a) ESTABLISHMENT AND MAINTENANCE.—Chapter
6 21 of title 44, United States Code, is amended by adding
7 at the end the following:

8 **“SEC. 2119. HOLOCAUST INSURANCE REGISTRY.**

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

11 “(1) consist of the information provided to the
12 Archivist under section 5 of the Holocaust Insurance
13 Accountability Act of 2007; and

14 “(2) be known as the Holocaust Insurance Reg-
15 istry.

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

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

“2119. Holocaust Insurance Registry.”.

23 (c) AGREEMENTS WITH EUROPEAN COUNTRIES.—

24 (1) AGREEMENTS.—The Secretary of State
25 shall seek to enter into agreements with European

1 countries to make available to the Holocaust Insur-
2 ance Registry information on covered policies that is
3 stored in the archives or other government reposi-
4 tories of such countries.

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

10 **SEC. 4. DISCLOSURE OF HOLOCAUST-ERA POLICIES BY IN-**
11 **SURERS.**

12 (a) REQUIREMENT.—An insurer shall file, in an elec-
13 tronic format, with the Secretary of Commerce the fol-
14 lowing information:

15 (1) The first name, last name, date of birth,
16 and domicile of the policyholder of each covered pol-
17 icy issued or reinsured by the insurer or a related
18 company of the insurer.

19 (2) The name of the entity that issued the cov-
20 ered policy.

21 (3) The name of the entity that is responsible
22 for the liabilities of the entity that issued the cov-
23 ered policy.

1 (b) FILING.—Information under subsection (a) shall
2 be filed not later than 90 days after the date of the enact-
3 ment of this Act.

4 **SEC. 5. PROVISION OF INFORMATION TO ARCHIVIST.**

5 The Secretary of Commerce shall provide to the Ar-
6 chivist of the United States any information filed with the
7 Secretary under section 4(a) promptly after the filing of
8 such information.

9 **SEC. 6. PENALTY.**

10 The Secretary of Commerce shall assess a civil pen-
11 alty of not less than \$5,000 for each day that an insurer
12 fails to comply with the requirements of section 4, as de-
13 termined by the Secretary.

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

15 To the extent or in the amounts provided in advance
16 in appropriation Acts, the Archivist of the United States
17 may use amounts received by the Government as civil pen-
18 alties under section 6 to maintain the Holocaust Insurance
19 Registry.

20 **SEC. 8. NOTIFICATION.**

21 (a) INITIAL NOTIFICATION.—Not later than 180 days
22 after the date of the enactment of this Act, and periodi-
23 cally thereafter, the Secretary of Commerce shall notify
24 each State's commissioner of insurance of the identity of
25 each insurer that has failed to comply with the require-

1 ments of section 4 or has not satisfied any civil penalty
2 for which the insurer is liable under section 6.

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

10 **SEC. 9. STATE HOLOCAUST INSURANCE STATUTES.**

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

12 (1) any State law requiring an insurer in such
13 State to disclose information regarding covered poli-
14 cies sold or for which reinsurance was provided; or

15 (2) any rights or remedies available to a claim-
16 ant under State law relating to a covered policy.

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

23 **SEC. 10. FEDERAL CAUSE OF ACTION FOR COVERED**
24 **CLAIMS.**

25 (a) FEDERAL CAUSE OF ACTION.—

1 (1) IN GENERAL.—There shall exist a Federal
2 cause of action for any claim arising out of or re-
3 lated to a covered policy against any insurer or re-
4 lated company.

5 (2) EFFECT ON OTHER CAUSES OF ACTION.—
6 An action under paragraph (1) shall be maintainable
7 in addition to any cause of action arising under
8 State or international law.

9 (3) STANDING.—A claim under paragraph (1)
10 may be brought by the person who purchased such
11 covered policy, a beneficiary or heir of such person,
12 or an assignee of such person or a beneficiary or
13 heir of such person.

14 (4) TREBLE DAMAGES; INTEREST.—In an ac-
15 tion under this subsection, the measure of damages
16 shall be not less than three times the amount of—

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

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

1 (5) ATTORNEYS FEES.—In an action under this
2 subsection, a court shall award a successful claimant
3 reasonable attorneys fees and costs incurred in in-
4 vestigating and prosecuting the claim.

5 (b) SUBJECT MATTER JURISDICTION.—The district
6 courts shall have original jurisdiction of any civil action
7 arising out of or related to a covered policy (whether
8 brought under subsection (a) or otherwise).

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

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

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

22 (d) RETROACTIVE APPLICATION.—This Act shall
23 apply retroactively to any claim arising out of or related
24 to a covered policy to the fullest extent permitted by the
25 Constitution of the United States, including claims pre-

1 viously dismissed on the ground of executive preemption
2 and claims for which class action settlements occurring
3 prior to the effective date of this Act purport to effect
4 a release of claims not accompanied by an actual payment,
5 for which a recipient signed a release.

6 (e) STATUTE OF LIMITATIONS.—Any action brought
7 under this Act shall be filed not later than ten years after
8 the effective date of this Act.

9 (f) SEVERABILITY.—If any provision of this section
10 or the application thereof to any person or circumstance
11 is held invalid, the invalidity shall not affect other provi-
12 sions or applications of the section which can be given ef-
13 fect without the invalid provision or application, and to
14 this end the provisions of this section are declared sever-
15 able.

16 **SEC. 11. DEFINITIONS.**

17 In this Act:

18 (1) COMMISSIONER OF INSURANCE.—The term
19 “commissioner of insurance” means the highest
20 ranking officer of a State responsible for regulating
21 insurance.

22 (2) COVERED POLICY.—The term “covered pol-
23 icy” means any life, dowry, education, property or
24 other insurance policy that was—

1 (A) in effect at any time after January 30,
2 1933, and before December 31, 1945; and

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

8 (3) INSURER.—The term “insurer” means any
9 person engaged in the business of insurance (includ-
10 ing reinsurance) in interstate or foreign commerce,
11 if the person or a related company of the person
12 issued or reinsured a covered policy, regardless of
13 when the related company became a related company
14 of the insurer.

15 (4) RELATED COMPANY.—The term “related
16 company” means an affiliate, as that term is defined
17 in section 104(g) of the Gramm-Leach-Bliley Act
18 (15 U.S.C. 6701(g)).