

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 11, 1998 Revised: 4/14/98 \_\_\_\_\_

Subject: Holocaust Victims Insurance Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 2540 is entitled the "Holocaust Victims Insurance Act" and its intent is to provide for the "potential and actual insurance claims of Holocaust victims and their heirs and beneficiaries be expeditiously identified and properly paid and that such victims and their families receive appropriate assistance in filing and payment of their rightful claims."

The bill provides that any insurer doing business in this state that receives a claim from a Holocaust victim or their beneficiaries, descendants, or heirs would be required to investigate the claim, allow the claimant to meet a reasonable standard of proof as established by the Department of Insurance, and permit claims, regardless of any statute of limitations imposed either by statute or contract, under the policy. Claimants would have until 10 years after the effective date of the bill to submit their claims.

The bill would impose an affirmative duty upon insurance companies to ascertain and report to the department within 90 days of the effective date of the bill and on an annual basis any legal relationship it might have with an international insurer that issued a policy to a Holocaust victim between 1920 and 1945; as well as the number and total value of such policies, attempts made to locate beneficiaries of such policies, any claims filed by such victims, beneficiary, heir or descendent which was paid, denied or is pending and an explanation of such denial or pending claim. The department in turn would annually report to the Legislature certain prescribed information relating to the above.

Insurers or persons who violate provisions contained in the bill are subject to a \$1,000 per day administrative penalty. Additionally, a private cause of action to recover damages caused by a violation of the provisions of the act is authorized and persons who sustain damages shall recover three times the actual damages sustained as well as costs up to \$50,000, plus attorneys' fees.

The department would be required to establish a toll-free number to assist Holocaust victims or their beneficiaries, descendants, or heirs in filing claims for life, property and education insurance policies.

This bill creates section 626.9543 of the Florida Statutes.

## **II. Present Situation:**

After World War II, there were Holocaust survivors who filed claims for life insurance policies with the major European insurance companies. In many cases, these claims were left unpaid because the claimant lacked information required by the insurer, such as a claim number, death certificate, or other documentation. In some cases, the insurer did business in eastern Europe, where the company was nationalized by the government and any records were taken from the company by the government. As a result, victims of the Holocaust and their beneficiaries were frequently unable to collect the money that was rightfully theirs, further compounding the injustice they had already suffered.

The Department of Insurance is aware of at least five insurance companies doing business in Florida that are affiliated with a European company that wrote life insurance policies between 1920 and 1945. These companies include Generali, an Italian company, and Allianz Insurance Group of Germany. The U.S. subsidiary of Generali is Business Men's Assurance Company, and Allianz's U.S. subsidiaries include the Fireman's Fund Insurance Company. Other companies are Winterthur, AXA, and Zuerich. Winterthur does business in Florida as a reinsurer, and AXA is an international conglomerate that does business as Equitable Life. Zuerich also does business as Kemper, Empire Fire and Marine, and Florida Select Insurance Company, which is a Florida domiciled insurance company. Allianz Insurance Group has set up a toll-free hotline as to this issue and the company has settled three claims in the U.S. during the past year. The average claim was for \$5,000 and it took Allianz from 4 to 5 months to settle the claim.

The National Association of Insurance Commissioners (NAIC) has established a Holocaust Insurance Issues Working Group. This working group has held workshops and taken public testimony in Washington, D.C. as well as Miami, Skokie, Illinois, and Spokane, Washington. The goal of the working group is to look into the role of the states in protecting those Holocaust victims, beneficiaries and heirs who have filed insurance claims. Further public forums are tentatively scheduled in Pennsylvania and California.

Legislation substantially similar to the instant bill has been filed in New York and California to pursue and enforce the insurance claims filed by the beneficiaries and descendants of Holocaust victims.

Legislation is also pending in the U.S. Congress. H.R. 3143 would prohibit a foreign insurance company from doing business in the U.S. unless it disclosed any financial dealings it had with Holocaust victims. H.R. 3121 would require insurance companies to compensate for valid claims filed for life insurance policies issued between 1920 and 1945 to Holocaust victims.

The National Holocaust Memorial Museum estimates that there could be 4,600 Holocaust survivors residing in the state of Florida.<sup>1</sup>

An insurance contract between the insurer and insured is governed by the terms of the policy, subject to being in compliance with requirements of Florida law.<sup>2</sup> Additionally, the notice requirements for the filing of claims and the proof of claim that must be submitted to the insurer is primarily governed by the contract, subject to certain statutorily prohibited unfair insurance trade practices. For example, s. 626.9531(1)(i), F.S., provides that it is an unfair insurance trade practice if an insurer fails to adopt and implement standards for the proper investigation of claims; fails to acknowledge and act promptly upon communications with respect to claims; or denies claims without conducting reasonable investigations based upon available information. If an insured files a legal action in civil court against an insurer based on the terms of the insurance contract, any such action must be commenced within 5 years, as provided in the statute of limitations, s. 95.11, F.S.

### III. Effect of Proposed Changes:

**Section 1.** Creates s. 626.9543, F.S., to provide that insurers doing business in Florida (this includes domestic, foreign and alien insurers) that receive a claim from a Holocaust victim, their beneficiaries, descendants, or heirs would be required to investigate the claim, allow the claimant to meet a reasonable standard of proof as established by the Department of Insurance, and permit claims, regardless of any statute of limitations imposed either by statute or contract, under the policy. Proceeds from such an insurance policy would include the payout value of the policy and reasonable interest to date of payments without diminution for wartime or postwar currency devaluation. Claimants would have until 10 years after the effective date of the bill to submit their claims.

An affirmative duty would be imposed upon insurance companies to ascertain and report to the department within 90 days after the effective date of the act and on an annual basis, any legal relationship it might have with an international insurer that issued a policy to a Holocaust victim between 1920 and 1945, the number and total value of such policies, attempts made to locate beneficiaries of such policies for which no claim of benefits has been made, any claims filed by such victim, beneficiary, heir or descendent which was paid, denied or is pending and an explanation of such denial or pending claim. The department in turn would annually report to the Legislature the number of insurers doing business in this state which have a legal relationship with an international insurer that could have issued a policy to a Holocaust victim between 1920 and 1945, a list of claims paid, denied or pending and a summary of the length of time for the processing and disposition of the claim.

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<sup>1</sup> This number includes only those Holocaust survivors who have registered with the National Holocaust Memorial Museum and for whom the museum has a valid address.

<sup>2</sup> Section 627.418(1), F.S., provides: "Any insurance policy, rider, or endorsement otherwise valid which contains any condition or provision not in compliance with the requirements of this code shall not be thereby rendered invalid, . . . but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code. . . ."

Insurers or persons who violate provisions contained in the bill are subject to a \$1,000 per day administrative penalty. Additionally, a private cause of action to recover damages caused by a violation of the provisions of the act is authorized and persons who sustain damages shall recover three times the actual damages sustained as well as costs up to \$50,000, plus attorneys' fees.

The department would be required to establish a toll-free number to assist Holocaust victims or their beneficiaries, descendants, or heirs in filing claims for life, property and education insurance policies. The department is authorized to promulgate rules for implementing the provisions of this bill, including related procedures and forms for monitoring and verifying compliance, as well as establishing a restitution program for victims, survivors, heirs and beneficiaries. Lastly, the bill provides a severability clause.

The bill does *not* expressly provide that an authorized Florida insurer is liable for claims under policies issued to Holocaust victims by an international insurer with which the Florida insurer has a "legal relationship," defined by the bill to include an "affiliated company" which is not defined. A spokesperson for the department stated that the bill is not intended to create a contractual liability that did not already (or previously) exist. However, where it is clear that a contractual relationship (privity of contract) existed between a Florida insurer and a Holocaust victim (heir, beneficiary, etc.), then the Florida insurer would be liable for such policy provisions, even though such policies may have been issued more than 50 to 70 years ago, and the insurer would be required to waive any statute of limitations or notice requirements that may have applied. In addition, the insurer must allow claimants to meet a reasonable, but not unduly restrictive, standard of proof to substantiate a claim pursuant to standards set by the department. This would require the insurer to waive any more restrictive standards of proof specified by the terms of the policy.

The only use of the term *legal relationship* in the bill, is the imposition of an affirmative duty on a Florida authorized insurer to ascertain and report to the department (which then reports to the Legislature) any legal relationship it might have with an international insurer that issued a policy to a Holocaust victim between 1920 and 1945 and to report specified information related to such policies, as described above.

**Section 2.** Provides that this act shall take effect upon becoming a law.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 10 of the State Constitution, prohibits laws impairing the obligation of contracts. The Supreme Court of Florida has held that laws cannot constitutionally be applied retroactively to insurance contracts in existence *prior to* the effective date of the legislation *Hassen v. State Farm Mutual Auto. Ins. Co.*, 674 So.2d 106 (Fla. 1996). That means that the respective laws in effect on the date of the policy at issue govern the respective rights, obligations of the parties, time limits as to the policy contract and terms as to the filing of claims.

To the extent that the bill permits claims irrespective of any statute of limitations or notice requirements imposed by any insurance policy issued which could retroactively impact obligations or rights under contract could possibly be subject to constitutional challenge as being violative of the prohibition against impairment of contracts. *Hassen v. State Farm Mutual Auto. Ins. Co.*, 674 So.2d 106 (Fla. 1996).

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Beneficiaries, heirs and families of Holocaust victims would benefit under the provisions of the bill by having their claims reviewed and “permitted,” irrespective of notice and statute of limitations provisions, by insurance companies doing business in this state. Additionally, these persons would be aided by the information reported by insurance companies to the department as well as by the department’s efforts in establishing a restitution program, toll-free hotline and compliance activities vis-a-vis insurers.

Insurers would be obligated to expend funds and resources to investigate claims, review and “permit claims” and report data as specified under the bill to the department.

C. Government Sector Impact:

The Department of Insurance estimates that it will need \$508,614 and 1 FTE for FY 1998-1999 from the Insurance Commissioner’s Regulatory Trust Fund to implement the provisions of this bill. Additionally, it will need \$96,379 for FY 1998-1999 and the following 2 fiscal years.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Banking and Insurance:

Provides that insurers doing business in this state who are mandated to report specified Holocaust-related information to the Department of Insurance shall have an affirmative duty to ascertain to the extent possible all efforts made and results of such efforts to ascertain that specified information.