

SUBJECT: Authorizing Holocaust victims to sue to recover insurance proceeds

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Bosse, Janek, Hope, Nixon, Smithee, Zbrank
0 nays
3 absent — Clark, Dutton, Martinez Fischer

WITNESSES: For — Ivan Solti; Terrell E. Hunt
Against — None

BACKGROUND: Under current law, a claim for breach of a contract, such as an insurance contract, must be brought within four years of when the claim arose.

DIGEST: CSHB 845 would suspend the bar against late claims (the statute of limitations) for Holocaust victims or their heirs, beneficiaries, assignees, or successors if the plaintiff lived in Texas and sued before December 31, 2012. The person would have to make a claim against an insurer that arose out of an insurance policy purchased or in effect before 1946 and delivered, issued for delivery, or renewed by an insurer who does business in Texas.

The bill would define “Holocaust victim” as a person who was killed, injured, or lost property or financial assets from 1920 through 1945 because the person was a member of a group against whom discriminatory laws, policies, or actions were directed in Germany, an area occupied by Germany, or a country allied with Germany.

Holocaust victims could file suits in a court of competent jurisdiction against insurance companies doing business in Texas, including companies affiliated with a Texas insurer by virtue of at least half of the stock of the parent, subsidiary, or affiliate being commonly owned with the Texas insurer.

The bill would make it a violation of the Insurance Code for an insurer or the insurer’s affiliate to raise a statute-of-limitations defense against a Holocaust

victim or the victim's heir, beneficiary, assignee, or successor in a suit for which the bill would suspend limitations. In the case of such a violation, the insurance commissioner, after notice and a hearing, could:

- ! fine the insurer up to \$25,000;
- ! force the insurer to make restitution;
- ! refer the matter to the attorney general for enforcement;
- ! initiate a financial audit of the insurer under the Insurance Code;
- ! initiate a proceeding to revoke or suspend the insurer's certificate of authority; or
- ! pursue other action that the commissioner deemed appropriate under the Insurance Code or another law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001. Its provisions would expire January 1, 2013.

**SUPPORTERS
SAY:**

CSHB 845 is needed to help Holocaust victims and their families recover the insurance proceeds they are owed. Many European insurance companies sold insurance policies to people who later became victims of the Holocaust. When these policy holders died or the Nazis took their insured property from them, their heirs and beneficiaries found it difficult or impossible to collect the benefits due to them under the policies. This adds insult to the injury of their imprisonment, persecution, and, in many instances, murder.

Many of these insurers also do business in Texas, whether under their own names or through affiliates. However, even if these companies are subject to suit in Texas, they cannot be sued by Holocaust victims or their heirs or beneficiaries because of the statute of limitations on filing claims. CSHB 845 would eliminate the statute of limitations restriction when the insurer otherwise could be sued in Texas courts.

Other avenues for Holocaust victims to collect benefits, such as the International Commission on Holocaust Era Insurance Claims (ICHEIC), are insufficient. Of the 113 Texans whose claims have been identified and referred to ICHEIC, only one claim has been paid in more than two years, and that claimant received only a very small percentage of the claim.

Also, despite efforts at reaching global settlements that would pay the claims of all Holocaust survivors and their families, the tentative agreements recently reached — which are not treaties — are not adequate to pay existing claims. For instance, the Austrian agreement would provide only \$105 million for property claims. Also, it is unclear how burdensome the claims processes, which have yet to be established, will turn out to be. Moreover, because these agreements are not treaties and only call for the U.S. government to encourage dismissal of private lawsuits, CSHB 845 would not interfere with the federal government's right to conduct foreign policy. Individual claims are and should be an option.

Suspending the statute of limitations for Holocaust victims would be fair because of the unconscionable treatment they received at the hands of insurers who universally denied claims for payment of policy benefits to Holocaust victims after World War II. The insurers often relied on technicalities, such as the fact that the claimant lacked a copy of the policy or lacked a death certificate for the insured person. Through these practices, insurers often treated the policy holders and claimants who were Holocaust victims differently from other policy holders and claimants.

Insurers also denied benefits on the grounds that policies had lapsed because the policy holders had ceased paying the premiums. However, there is evidence that insurance companies sought permission from the German government to cancel payments on annuities, to refuse to pay claims on property, life, and health policies, and to refuse to cash out policies at their face value when policy holders requested it. Furthermore, policy proceeds and the cash value of many policies were paid to the German government to finance the war effort.

In other words, insurance companies may have colluded with the government that was preventing the policy holders from being able to pay their premiums, and insurers cited that nonpayment to cancel policies and deny claims. CSHB 845 would allow Holocaust victims to litigate the propriety of such practices without facing the procedural bar of a time limit.

It would be appropriate to allow the insurance commissioner to take action against Texas insurers who ignored the bill's determination that the statute of limitations should be suspended and who resisted a Holocaust victim's claim

on the grounds that it was time-barred. If these firms wish to do business in Texas, they should respect the policy determination embodied in this bill — that the unique situation of Holocaust victims requires allowing their claims regarding their insurance policies to be litigated on the merits.

OPPONENTS
SAY:

CSHB 845 is unnecessary. Global settlements have been reached with Austrian and German corporations and the governments of those countries that would establish funds of \$900 million and \$5 billion, respectively, to pay the claims of Holocaust victims. However, the settlements require dismissal of all court cases brought outside of the class-action lawsuits that the agreements would settle before any Holocaust victim could be paid from the two funds. By encouraging Texans to bring such claims, CSHB 845 would hamper those global settlements.

CSHB 845 unconstitutionally would subject European insurance companies to suits in Texas courts when they lack the contacts in Texas necessary to make those suits consistent with due process. The bill also would interfere impermissibly with the federal government's power to conduct international relations and negotiations with Germany and other European countries regarding Holocaust-era reparations.

OTHER
OPPONENTS
SAY:

CSHB 845 would not go far enough. Unlike other states' laws, it would not require insurance companies to search their records for information regarding policies and beneficiaries of, claims made by, and claims paid to Holocaust victims, and to send the information to the insurance department.

NOTES:

The committee substitute moved the beginning of the time frame for when policies would have to be written to be covered by the bill from 1929 to 1920, extended the suspension of the statute of limitations from 2010 to 2012, and extended the expiration of the statute from 2011 to 2013. It changed references to "Nazi Germany" to "Germany." The substitute added provisions that would make the bill applicable to reinsurers and to affiliate companies such as parent and subsidiary corporations. The substitute also

added sanctions other than revoking the insurer's certificate of authority to the actions that the insurance commissioner could take against an insurer that violated the act. Finally, the substitute added the provision that the bill could take immediate effect if it received the necessary vote.