

114TH CONGRESS  
2D SESSION

# S. 3155

To amend chapter 97 of title 28, United States Code, to clarify the exception to foreign sovereign immunity set forth in section 1605(a)(3) of such title.

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## IN THE SENATE OF THE UNITED STATES

JULY 11, 2016

Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. CORNYN, Mr. COONS, Mr. LEE, Mr. SCHUMER, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend chapter 97 of title 28, United States Code, to clarify the exception to foreign sovereign immunity set forth in section 1605(a)(3) of such title.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Foreign Cultural Ex-  
5 change Jurisdictional Immunity Clarification Act”.

1 **SEC. 2. CLARIFICATION OF JURISDICTIONAL IMMUNITY OF**  
2 **FOREIGN STATES.**

3 (a) IN GENERAL.—Section 1605 of title 28, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 “(h) JURISDICTIONAL IMMUNITY FOR CERTAIN ART  
7 EXHIBITION ACTIVITIES.—

8 “(1) IN GENERAL.—If—

9 “(A) a work is imported into the United  
10 States from any foreign state pursuant to an  
11 agreement that provides for the temporary exhi-  
12 bition or display of such work entered into be-  
13 tween a foreign state that is the owner or cus-  
14 todian of such work and the United States or  
15 one or more cultural or educational institutions  
16 within the United States;

17 “(B) the President, or the President’s des-  
18 ignee, has determined, in accordance with sub-  
19 section (a) of Public Law 89–259 (22 U.S.C.  
20 2459(a)), that such work is of cultural signifi-  
21 cance and the temporary exhibition or display  
22 of such work is in the national interest; and

23 “(C) the notice thereof has been published  
24 in accordance with subsection (a) of Public Law  
25 89–259 (22 U.S.C. 2459(a)),

1 any activity in the United States of such foreign  
2 state, or of any carrier, that is associated with the  
3 temporary exhibition or display of such work shall  
4 not be considered to be commercial activity by such  
5 foreign state for purposes of subsection (a)(3).

6 “(2) EXCEPTIONS.—

7 “(A) NAZI-ERA CLAIMS.—Paragraph (1)  
8 shall not apply in any case asserting jurisdic-  
9 tion under subsection (a)(3) in which rights in  
10 property taken in violation of international law  
11 are in issue within the meaning of that sub-  
12 section and—

13 “(i) the property at issue is the work  
14 described in paragraph (1);

15 “(ii) the action is based upon a claim  
16 that such work was taken in connection  
17 with the acts of a covered government dur-  
18 ing the covered period;

19 “(iii) the court determines that the  
20 activity associated with the exhibition or  
21 display is commercial activity, as that term  
22 is defined in section 1603(d); and

23 “(iv) a determination under clause  
24 (iii) is necessary for the court to exercise

1 jurisdiction over the foreign state under  
2 subsection (a)(3).

3 “(B) OTHER CULTURALLY SIGNIFICANT  
4 WORKS.—In addition to cases exempted under  
5 subparagraph (A), paragraph (1) shall not  
6 apply in any case asserting jurisdiction under  
7 subsection (a)(3) in which rights in property  
8 taken in violation of international law are in  
9 issue within the meaning of that subsection  
10 and—

11 “(i) the property at issue is the work  
12 described in paragraph (1);

13 “(ii) the action is based upon a claim  
14 that such work was taken in connection  
15 with the acts of a foreign government  
16 against members of a targeted group as  
17 part of a systematic confiscation or mis-  
18 appropriation of works in a manner similar  
19 to the actions of a covered government in  
20 subparagraph (A);

21 “(iii) the taking occurred after 1900;

22 “(iv) the court determines that the ac-  
23 tivity associated with the exhibition or dis-  
24 play is commercial activity, as that term is  
25 defined in section 1603(d); and

1           “(v) a determination under clause (iv)  
2           is necessary for the court to exercise juris-  
3           diction over the foreign state under sub-  
4           section (a)(3).

5           “(3) DEFINITIONS.—For purposes of this sub-  
6           section—

7           “(A) the term ‘work’ means a work of art  
8           or other object of cultural significance;

9           “(B) the term ‘covered government’  
10          means—

11           “(i) the Government of Germany dur-  
12           ing the covered period;

13           “(ii) any government in any area in  
14           Europe that was occupied by the military  
15           forces of the Government of Germany dur-  
16           ing the covered period;

17           “(iii) any government in Europe that  
18           was established with the assistance or co-  
19           operation of the Government of Germany  
20           during the covered period; and

21           “(iv) any government in Europe that  
22           was an ally of the Government of Germany  
23           during the covered period; and

1           “(C) the term ‘covered period’ means the  
2           period beginning on January 30, 1933, and  
3           ending on May 8, 1945.”.

4           (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to any civil action commenced on  
6 or after the date of the enactment of this Act.

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