

# Calendar No. 632

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, Mr. TILLIS, Mr. BLUMENTHAL, Mr. DURBIN, Mr. FRANKEN, Mr. GRAHAM, Mr. UDALL, Ms. KLOBUCHAR, Mr. GRASSLEY, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 15, 2016

Reported by Mr. GRASSLEY, without amendment

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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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