

112TH CONGRESS
2D SESSION

S. 2212

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

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2012

Mrs. FEINSTEIN (for herself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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”.

6 **SEC. 2. CLARIFICATION OF JURISDICTIONAL IMMUNITY OF**
7 **FOREIGN STATES.**

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

1 “(h) JURISDICTIONAL IMMUNITY FOR CERTAIN ART
2 EXHIBITION ACTIVITIES.—

3 “(1) IN GENERAL.—If—

4 “(A) a work is imported into the United
5 States from any foreign country pursuant to an
6 agreement providing for the temporary exhi-
7 bition or display of such work entered into be-
8 tween a foreign state that is the owner or cus-
9 todian of such work and the United States or
10 1 or more cultural or educational institutions
11 within the United States;

12 “(B) the President, or the President’s des-
13 ignee, has determined, in accordance with Pub-
14 lic Law 89–259 (79 Stat. 985; 22 U.S.C.
15 2459), that such work is of cultural significance
16 and the temporary exhibition or display of such
17 work is in the national interest; and

18 “(C) notice has been published in the Fed-
19 eral Register in accordance with Public Law
20 89–259,

21 any activity in the United States of such foreign
22 state or any carrier associated with the temporary
23 exhibit or display of such work shall not be consid-
24 ered to be commercial activity for purposes of sub-
25 section (a)(3).

1 “(2) NAZI-ERA CLAIMS.—Paragraph (1) shall
2 not apply in any case in which—

3 “(A) the action is based upon a claim that
4 the work was taken in Europe in violation of
5 international law by a covered government dur-
6 ing the covered period;

7 “(B) the court determines that the activity
8 associated with the exhibition or display is com-
9 mercial activity; and

10 “(C) a determination under subparagraph
11 (B) is necessary for the court to exercise juris-
12 diction over the foreign state under subsection
13 (a)(3).

14 “(3) DEFINITIONS.—For purposes of this sub-
15 section—

16 “(A) the term ‘work’ means a work of art
17 or other object of cultural significance; and

18 “(B) the term ‘covered government’
19 means—

20 “(i) the Nazi government of Germany;

21 “(ii) any government in any area oc-
22 cupied by the military forces of the Nazi
23 government of Germany;

1 “(iii) any government established with
2 the assistance or cooperation of the Nazi
3 government; and

4 “(iv) any government that was an ally
5 of the Nazi government of Germany; and

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

9 (b) APPLICABILITY.—The amendment made by sub-
10 section (a) shall apply to cases commenced after the date
11 of the enactment of this Act.

○