

1975

Arts and Humanities: Background (1975-1995): Report 01

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ARTS AND ARTIFACTS INDEMNITY ACT

NOVEMBER 20, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor,
submitted the following

REPORT

[To accompany H.R. 7782]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7782) to amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for the improvement of museum services, and to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in italic type in the reported bill.

The title of the bill is amended to reflect the amendment to the text of the bill.

PURPOSE

H.R. 7782, as amended, establishes a new program to be administered by the existing Federal Council on the Arts and Humanities, under which certain art works and artifacts brought into this country or elsewhere when part of an existing exchange of exhibitions would be indemnified against loss or damage.

Items to be covered by an indemnity agreement are defined as works of arts, including tapestries, paints, sculpture, folk art, graphics, craft arts, manuscripts, rare documents books and other printed and published materials other artifacts and objects (which could include stamps and coins), and photographs, motion pictures, and audio and video tapes which are of educational, cultural, historical, or scientific value. These exhibitions would be certified by the Secretary of State or his designee as being in the national interest.

The indemnity agreement would constitute a contract which is, in effect, guaranteed by the full faith and credit of the United States.

BACKGROUND

It has long been recognized that international goodwill and greater understanding of foreign cultures can be effected through the exchange of cultural activities and the sharing by nations of the world of their cultural institutions, national wealth, and treasures. Exhibitions, whether unilateral in nature, or in the form of international exchanges, of paintings, statues, and other arts and artifacts, have long been recognized as an integral part of the relations of the people of the United States with the peoples of other nations.

This type of international cooperation not only creates goodwill on a government-to-government basis but also has the laudable effect of bringing to the peoples of the countries involved pictures, statues, prehistoric relics, and other items which would not normally be available to citizens unless they traveled to foreign countries.

Nancy Hanks, Chairman, National Endowment for the Arts, testified at joint hearings before the House Subcommittee on Select Education and the Senate Special Subcommittee on Arts and Humanities:

It has long been generally accepted that international exhibitions and exchanges between countries benefit the individual citizen in terms of the spiritual and cultural awareness and enlightenment that results from exposure to the artistic and cultural products and artifacts of other civilizations, both contemporary and ancient. By increasing man's knowledge of mankind, through the exhibition of these objects, we enhance man's knowledge of himself and, hopefully, stimulate future artistic and cultural activities to the ultimate benefit of the nation and its people.

The practice of exchanges of artistic and other treasures has grown over the years through active participation by this country's museums, on their own initiative and in cooperation with the Department of State.

In recent years, the frequency of this type of international cooperation has been hampered by one major factor: the cost of insurance.

It has been estimated that from two-thirds to three-fourths of the total cost of an international exhibition is the cost of insuring the matter to be exhibited. As Sherman Lee, Director of the Cleveland Museum, Cleveland, Ohio, testified before the Subcommittees:

To cite only one example, the insurance premium for foreign works lent to the Cleveland Museum during the Carravaggio and his Followers Exhibition of 1971-1972 was \$10,200, for a coverage value of \$3,800,000 in contrast to a premium for a forthcoming exhibition of Johann Liss, organized by the same museum, of \$25,000 for a coverage value of \$4,000,000.

The following table presented to the Subcommittee on Select Education by Thomas Hoving, Director of the Metropolitan Museum of Art, clearly illustrates this point:

MMA MAJOR INTERNATIONAL EXHIBITIONS OF WORKS OF ART

Date—Title	Valuation of works of art (millions)	Premiums paid
1970—The Year 1200	\$9.8	\$46,000
1970—Before Cortes	1.3	16,200
1971—Cubist Epoch	5.5	60,000
1972—Masterpieces of the Metropolitan Museum sent to Japan	27.6	1,298,000
1974—Masterpieces of Tapestry	9.1	87,000
1974-75—The Impressionist Epoch ¹	63.0	131,000
1975—Metropolitan Museum—U.S.S.R. Exchanges ²	82.0	(3)
1975—Art of the Momoyama Period	20.0	20,000
1975—French Painting 1774-1830: The Age of Revolution	43.5	1,160,000
Total	261.8	818,200

¹ Costs paid by a major Japanese newspaper.

² Major funding support provided by Federal Government (NEA and NEH).

³ U.S. Government indemnity; otherwise premiums estimated at more than \$450,000.

⁴ Shared with Detroit Institute of Art; Metropolitan Museum portion \$80,000.

As insurance premiums have risen, exhibitions which had been contemplated were not planned and ones which had been planned were cancelled. More important, many exhibitions also have been reduced in scope because of prohibitive insurance costs. Exhibitions at the Minneapolis Institute of Art, the Detroit Institute of Arts, the Cleveland Museum of Art, the Museum of Modern Art in New York City, and the Boston Museum of Fine Art, have had to be cut short because of the insurance costs.

Indeed, the Subcommittee heard from Irving Pfeffer, Professor, Virginia Polytechnic Institute, who said:

Insurance is in fact a very significant cost element in the special exhibition area and the return to the insurance premium is abnormally low from the standpoint of conventional insurance experience. . . . On most of the special exhibition policies which are written for relatively high limits, a fairly small proportion of the total premium in fact remains in the United States. . . . I would estimate in the field we are discussing here at this time approximately 75 percent of all the premium dollars in fact go to the London market.

Mr. Pfeffer provided the following table to the Committee based on research he had done for the American Association of Museum Directors:

FINE ARTS MUSEUMS, LOSS RATIOS, SPECIAL EXHIBITIONS, 1970-73, UNITED STATES AND CANADA

	1970	1971	1972	1973	1970-73
Losses paid	\$35,281	\$14,286	\$65,752	\$56,322	\$171,641
Premiums paid	\$271,900	\$344,330	\$382,019	\$391,872	\$1,390,121
Loss ratio (percent)	13.0	4.2	17.2	14.3	12.3

Source: 1973 and 1974 survey data; A.A.M.D. Study.

2. FINE ARTS MUSEUMS, CLAIMS FREQUENCY AND SEVERITY, SPECIAL EXHIBITIONS, 1970-73, UNITED STATES AND CANADA

Size of loss reported	Number of losses	Percentage of total
Less than \$1,000	153	88.9
\$1,000 to \$2,000	8	4.7
\$2,000 to \$3,000	1	.6
\$3,000 to \$4,000	2	1.2
\$4,000 to \$5,000	3	1.7
\$5,000 to \$10,000	3	1.7
More than \$10,000	2	1.2
Total	172	100.0

Source: 1973 and 1974 survey data, A.A.M.D. Study.

Museums have turned to special funds or sponsors to find support for the insurance for exhibitions which could not otherwise have been held. For example, the Museum of Modern Art in New York City has an exhibition on loan to Australia which was only made possible because the Australian Government provided an indemnity for the exhibit. A show of old masters from the Hermitage in Leningrad was exhibited in Houston recently only because a private donor met the insurance costs. However, such private support is necessarily limited.

In the 93d Congress, the cost of insuring international exhibitions became the subject of special legislation. In furtherance of the Nation's foreign relations, two specific exhibitions were announced. To facilitate those exhibitions, special legislation pertaining to indemnification against loss was enacted.

Two bills passed by the Congress provided special indemnification and made possible the showing of the Chinese archeological exhibition and the Exhibition of Scythian gold from the Soviet Union. As Dr. Ronald Berman, Chairman of the Federal Council on the Arts and Humanities, testified:

Were it not for the special legislation that pledged the faith and credit of the United States government to indemnify works of these exchanges, the insurance costs would have been prohibitive.

For example, had Congress not passed the legislation providing indemnification by the Federal Government for the cost of insuring the exhibition of Scythian gold, the cost of insurance to the sponsoring organization in the United States—the Metropolitan Museum of Art—

would have totalled an estimated \$500,000 and the exhibition would have therefore been impossible to hold.

With the history of international exhibitions, the pressure of higher insurance costs, and the precedents set by two specific pieces of legislation, the Committee deemed it proper that a generic program of indemnification for international exhibitions be established.

While there are undoubtedly foreign policy advantages resulting from international exhibitions, this legislation is not intended to result in the use of these artistic and humanistic exhibitions for political purposes. Rather, these exhibitions are viewed by the Committee as beneficial in their own right, with important cultural benefits accruing to all those who gain the opportunity to see them. As Chairman Hanks stated in her testimony :

Cultural exhibitions and exchanges of high quality should be encouraged by the laws and policies of the United States Government. They are in the national interest because of the personal esthetic, intellectual, and cultural benefits accruing to every man, woman, and child of this nation who has the opportunity to experience these beautiful and enlightening presentations. We believe that this country should do as much as any nation in the world to insure that these vitally important programs are strengthened.

THE LEGISLATIVE CONSIDERATION

The Subcommittee on Select Education of the House Education and Labor Committee held joint hearings on H.R. 7782 with the Special Subcommittee on Arts and Humanities of the Senate Committee of Labor and Public Welfare, on June 4, 1975. In addition, the House Subcommittee on Select Education held hearings in New York, New York on July 14, 1975.

Among the witnesses heard during the hearings were: the Honorable Douglas Dillon, President, Board of Trustees, Metropolitan Museum of Art, New York, N.Y.; George C. Seybolt, President Emeritus, Museum of Fine Arts, Boston, Mass.; Sherman E. Lee, Director, the Cleveland Museum of Art, Cleveland, Ohio; Barbara Shissler, Director, University Art Gallery, University of Minnesota, Minneapolis, Minn.; and Mitchell Wilder, Director, Amon Carter Museum of Western Art, Fort Worth, Texas.

In addition, testimony was received from: Dr. Ronald Berman, Chairman, Federal Council on the Arts and the Humanities; and Nancy Hanks, Chairman, National Endowment for the Arts, accompanied by Michael Straight, Deputy Chairman, and John R. Spencer, Director, Museum program; Wilder Green, Executive Director, American Federation of the Arts; Thomas Hoving, Director, Metropolitan Museum of Art, New York, accompanied by Daniel Herrick, Vice Director for Financial Affairs; Thomas M. Messer, Director, Solomon R. Guggenheim Museum, New York, trustee and former president of the Association of Art Museum Directors.

Also testifying were: Joseph Veach Noble, President of the American Association of Museums and Director, Museum of the City of New York; Richard Oldenberg, Director, the Museum of Modern Art, New York, N.Y.; Irving Pfeffer, Professor, Virginia Polytechnic

Institute; and Palmer B. Wald, Administrator, Whitney Museum of American Art.

The Subcommittee thereafter met in mark-up session on the bill H.R. 7782 on July 17, with the bill being ordered reported with an amendment to the full committee by a unanimous vote.

The Full Committee on Education and Labor met on October 29, 1975, and ordered reported to the House by a unanimous vote of 38-0, the bill H.R. 7782 as amended. A similar bill passed the Senate by voice vote on July 25, 1975.

Nancy Hanks, Chairman of the National Endowment for the Arts, who testified on behalf of the administration on this legislation, submitted the following statement on November 20, 1975, to the Committee on Education and Labor:

I am very pleased to hear that H.R. 7782, the Arts and Artifacts Indemnity Act, is being favorably considered by the Committee on Education and Labor.

The Endowment has long supported the enactment of legislation for the purposes described in the bill, and applauds this action by the Committee as a major step forward in the solution of a very serious problem for the nation's museums.

The Committee also notes that the House Appropriations Committee, in House Report 94-374, made the following statement:

The Gallery (the National Gallery of Art) has recently sponsored several exhibitions involving valuable art objects from foreign countries. To insure these exhibits the Gallery has had to purchase expensive policies or seek relief from Congress. The committee believes it would be desirable for the appropriate legislative committees to consider general legislation to obviate this need.

EXPLANATION OF H.R. 7782, AS AMENDED

Thirty days following enactment of this legislation, the Federal Council on the Arts and the Humanities would have the authority to make indemnity agreements for international exhibitions which are deemed to be in the national interest by the Secretary of State or his designee. The requirement of the Secretary of State to determine that the exhibition is in the national interest will insure that the indemnity program is used in the interests of the people of the United States and will guard against the possibility of its becoming a simple insurance relief mechanism.

The indemnity agreement made under this Act would cover the items from the period of time they leave the premises of the lender until they return; in museum terms, this is "wall-to-wall coverage." An indemnity agreement could be applied for by any person, non-profit agency, institution or government. This language is specifically broad due to the fact that the owner of the articles to be exhibited, be it a foreign government, a museum, or a private individual, may wish to have the technical details of dealing with the Federal Council on the Arts and the Humanities attended to by a designated representative in this country. The language does not include profit-making organizations, but is limited strictly to non-profit agencies.

While an indemnity agreement could be applied for by any person, non-profit agency, institution, or government, and is intended to protect the owners of the objects to be exhibited, the agreement will be issued, in most cases, to the museum responsible for arranging the exhibition and the transportation of the objects, with the actual owners of the objects being third-party beneficiaries.

Private insurance plays an important part in the field of international exhibitions of art and other artifacts. Therefore, to insure continued participation by the private insurance industry of the United States. The bill sets limitations upon the size of the indemnities which may be issued. There is an aggregate limit of \$250,000,000 of indemnity obligations which may be outstanding at any given time, while no individual indemnity may exceed \$50,000,000.

The Committee fully understands that many international exhibitions may be worth two or three times \$50,000,000. However, the Committee believes that private insurance companies should be given an opportunity to participate and that the Federal government should not preempt the field of insurance for international exhibitions. Similarly, the bill provides for a deductible from coverage for the first \$15,000 of loss, for it is not the intent of the Federal government to pay for the normal wear and tear experienced during an exhibition, such as a broken frame or a piece of chipped glass. It is expected that private insurance companies could be utilized to cover the first \$15,000 of loss.

The aggregate of \$250,000,000 upper limit should not be viewed as a figure to be aimed at, and the Committee does not envision ten exhibitions of \$25,000,000 each. The Committee feels that greater emphasis is needed to expand availability of foreign art and other artifacts to Americans who previously have not had an opportunity to view them. Both a good geographic balance of exhibitions sites and multiple sites for indemnified exhibits are encouraged. Smaller exhibits within the capability of museums in relatively small cities and those serving rural areas should also be important participants under the indemnity authority. Thus, priorities should be given to a rational mixture of large and small exhibitions to be held throughout the nation. As Mitchell Wilder, Director of the Amon Carter Museum of Western Art in Fort Worth, Texas, testified before the Committee:

While small museums, such as the one I represent, have fewer occasions to require a very large insurance coverage, there is nonetheless a real need for aid to our institutions.

The Committee also believes that where there is an international exchange of exhibitions, each country should be encouraged to reach mutual and reciprocal agreements with regard to indemnification.

The Committee recognizes that the Federal Council on the Arts and the Humanities is not necessarily expected to have the expertise required to make judgments concerning the possibility of such mutual or reciprocal agreements. Should such a question arise, the Council is expected to seek advice from the Department of State. In determining whether or not an indemnity agreement is in the national interest of the United States the Secretary of State, or his designee, should attempt to provide to the Federal Council relevant information and recommendation on circumstances where mutual and reciprocal indemnity is not possible.

The amount of the indemnity agreement is set by the Federal Council on the Arts and the Humanities after reviewing the value of the item or items as set by the owner thereof. If the Council disagrees with the value set by the owner, and the owner disagrees with the value set by the Council, no indemnity agreement shall be issued. It is contemplated that the Council shall make use of consultants, both with regard to the evaluation and estimation of the articles to be covered, and with regard to the packaging, transportation, and exhibition of that article.

Nowhere in the legislation is there found a definition of "loss." It is understood that a "loss" under the indemnity agreement including partial damage to covered articles as well as loss or complete destruction.

Should a claim of loss be filed under the indemnity agreement where there is a complete loss—where the item has been totally destroyed—the total amount shall be paid. However, where there has been damage but not total loss, there is provision for the use of arbitration with regard to the dollar amount of the loss. Once that figure is agreed upon, the claim covering such loss shall be certified to the Speaker of the House and to the president pro tempore of the Senate, who would then approach the Appropriation Committees for an actual appropriation of Federal funds.

BUDGET STATEMENT

In accordance with Rule XI of the Rules of the House of Representatives the Congressional Budget Office has submitted the following report:

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., November 19, 1975.

HON. CARL D. PERKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 7782, a bill to amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for indemnities for exhibits of artistic and humanistic endeavors, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

NOVEMBER 19, 1975.

1. Bill No: H.R. 7782.
2. Bill title: To amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for indemnities for exhibits of artistic and humanistic endeavors, and for other purposes.

3. Purpose of bill: This bill would authorize the Federal Council on the Arts and Humanities to make agreements to indemnify against loss or damage works of art while on exhibition in the United States or elsewhere when part of an international exchange of exhibitions. The bill is an authorization, and does not directly provide budget authority. Funding to cover loss or damage covered by indemnity agreements would be subject to subsequent appropriations action.

4. Budget impact:

[In millions]

	Fiscal year—					
	1976	Transition quarter	1977	1978	1979	1980
Possible outlays.....	\$0.3	\$0.2	\$0.7	\$0.8	\$0.9	\$1.0
Maximum indemnity agreements.....	500	250	1,000	1,000	1,000	1,000

5. Basis for estimate: Section 5 of this bill states that "the aggregate of loss or damage covered by indemnity agreements issued under this Act shall not exceed \$250 million at any one time." For the purpose of making this cost estimate, it was assumed that maximum use of this authority would be made at any one time and that the average exhibit would be covered for a period of three months. The maximum annual amount of the indemnity agreements, then, would be (4 x \$250 million) \$1,000 million. It is assumed that this bill would cover the second half of fiscal year 1976.

With (1970-74) data provided by the Association of Art Museum Directors and Virginia Polytechnic Institute, a loss rate of 5 cents per \$100 of insured value of special exhibitions above \$15,000 was derived. This loss rate, when multiplied by the annual amount of the indemnity agreements, yields the expected outlays needed to cover exhibition losses. An annual inflation rate of 15 percent was used to compute the expected losses between fiscal year 1977-1980. Administrative costs (i.e., staff, supplies, travel, etc.) were assumed to be 10 percent of expected outlays.

6. Estimate comparison: No other estimate known to be available at this time.

7. Previous CBO estimate: No previous estimate.

8. Estimate prepared by: Jeffrey J. Koshel (225-4972).

9. Estimate approved by:

C. G. NUCKOLS,
Deputy Assistant Director for Budget Estimates.

ESTIMATE OF COST

It is difficult to estimate the cost of H.R. 7782, as amended. There will be, of course, certain administrative costs incurred by the Federal Council on the Arts and the Humanities, which will become an agency as defined in Title V of the U.S. Code for this purpose, with the ability to hire staff, promulgate regulations, and perform other basic housekeeping functions.

Theoretically, there could be a loss of up to \$250,000,000 if every item covered by outstanding indemnity agreements were destroyed.

However, experience indicates minimal amounts of loss on these types of exhibitions. Testimony presented to the Committee showed that ninety percent of the losses in previous exchanges were losses in the amount of less than \$1,000. Douglas Dillon, President of the Metropolitan Museum of Art, stated to the Committee:

We have obtained detailed figures showing the British record under this system for the past six years. Works of art valued at approximately \$275,000,000 were indemnified with only one loss of over \$25,000, which amounted to about \$35,000. This is a loss ratio of only slightly over 1/100 of one percent—a minute fraction of what the cost of insurance would have been.

This history, in conjunction with the \$15,000 deductible, indicates that the probable cost of the legislation to the Federal government would be minimal.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1) (4), Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 7782, as amended, will have little inflationary impact on prices and cost in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the total Federal budget is negligible and under most circumstances would require no additional appropriations by the Congress.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 7782, as amended.

No specific oversight activities, other than the hearings accompanying the Committee's consideration of H.R. 7782, as amended, were made by the Committee, within the definition of Rule XI of the House.

SECTION-BY-SECTION SUMMARY

Section 1. Short Title

Section one of the bill provides that the bill may be cited as the "Arts and Artifacts Indemnity Act".

Section 2. Federal Council

This section authorizes the Federal Council on the Arts and Humanities, established under the National Foundation on the Arts and Humanities Act of 1965, to make agreements to indemnify against loss or damage eligible items, in accordance with the provisions of this Act and on such terms and conditions as the Council shall prescribe, by regulation, to protect the financial interest of the United States. For the purpose of this Act, the Council shall be deemed an "agency", within the meaning of Title 5 of the United States Code.

Section 3. Eligible Items

This section provides that the Council may make an indemnity agreement with respect to works of art (including tapestries, paintings, sculpture, folk art, graphics, and craft arts); manuscripts, rare documents, books, and other printed or published materials; other artifacts or objects; and photographs, motion pictures, or audio and video tape. To be indemnifiable, such articles must be of educational, cultural, historical, or scientific value. In addition, the exhibition must be certified by the Secretary of State or his designee as being in the national interest.

The indemnity agreement shall cover eligible items while they are on exhibition in the United States or elsewhere when part of an exchange of exhibitions; but in no case shall both parts of such an exchange be covered. "On exhibition" is defined as that period of time beginning at the point when the items leave the premises of the lender, or place designated by the lender, and ending when such items are returned to the lender or the designated place.

Section 4. Application

This section provides that any person, nonprofit agency, institution, or government desiring to make an indemnity agreement shall apply therefor, in accordance with procedures and in the form and manner prescribed by the Council, by regulation. The application shall describe each item to be covered by the agreement (including its estimated value), show evidence that the items are eligible to be covered by the agreement, and set forth policies and procedures with respect to preparation for and conduct of the exhibition, including any related transportation.

Upon receipt of the application, the Council shall approve it, if it conforms to the requirements of the Act. When so approved, the agreement shall constitute a contract between the Council and the applicant, pledging the full faith and credit of the United States to pay any amount for which the Council becomes liable under the agreement. For this purpose, the Council is authorized to pledge the full faith and credit of the United States.

Section 5. Indemnity Agreement

This section provides that, upon receipt of an approvable application, the Council shall review the estimated value of the items for which coverage by the indemnity agreement is sought. If the Council agrees with such estimated value, it shall make an indemnity agreement.

The aggregate of loss or damage covered by indemnity agreements issued under the Act shall not exceed \$250 million at any one time; no indemnity agreement for a single exhibition shall cover loss or damage in excess of \$50 million. In addition, coverage under the Act shall only extend to loss or damage in excess of the first \$15,000, out of a single exhibition.

Section 6. Regulations

This section provides that the Council shall issue regulations providing for prompt adjustment of valid claims for losses covered by an indemnity agreement, including provision for arbitration of questions of the dollar value of damages involving less than total loss or destruc-

tion of the items covered. In the case of a claim of loss of a covered item, the Council shall certify the validity of the claim and the amount of the loss to the Speaker of the House of Representatives and to the President of the Senate.

Section 7. Authorization of Appropriations.

This section authorizes the appropriation of such sums as may be necessary to enable the Council to carry out its functions under the Act, plus such sums necessary to pay certified claims.

Section 8. Report.

This section requires the Council to report annually to the Congress all claims actually paid pursuant to the Act during the preceding fiscal year, pending claims as of the close of the fiscal year, and the aggregate face value of agreements entered into by the Council which are outstanding at the close of such year.

Section 9. Effective Date.

This section provides that the Act shall become effective 30 days after its enactment.



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