

(1) to carry out the trust responsibility of the United States to Indian Tribes;

(2) to increase the maximum penalty for actions taken in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, as added by that Act), in order to strengthen deterrence;

(3) to stop the export, and facilitate the international repatriation, of cultural items prohibited from being trafficked by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, as added by that Act) and archaeological resources prohibited from being trafficked by the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) by—

(A) explicitly prohibiting the export;

(B) creating an export certification system; and

(C) confirming the authority of the President to request from foreign nations agreements or provisional measures to prevent irreparable damage to Native American cultural heritage;

(4) to establish a Federal framework in order to support the voluntary return by individuals and organizations of items of tangible cultural heritage, including items covered by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, as added by that Act) and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.);

(5) to establish an interagency working group to ensure communication between Federal agencies to successfully implement this chapter, the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, as added by that Act), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), and other relevant Federal laws;

(6) to establish a Native working group of Indian Tribes and Native Hawaiian organizations to assist in the implementation of this chapter, the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, as added by that Act), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), and other relevant Federal laws;

(7) to exempt from disclosure under section 552 of title 5 (commonly known as the “Freedom of Information Act”)—

(A) information submitted by Indian Tribes or Native Hawaiian organizations pursuant to this chapter; and

(B) information relating to an Item Requiring Export Certification for which an export certification was denied pursuant to this chapter; and

(8) to encourage buyers to purchase legal contemporary art made by Native artists for commercial purposes.

(Pub. L. 117-258, §2, Dec. 21, 2022, 136 Stat. 2372.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in the provision preceding par. (1) and in pars. (5) to (7), was in the original “this Act”, meaning Pub. L. 117-258, Dec. 21, 2022, 136 Stat. 2372, known as the Safeguard Tribal Objects of Patrimony Act of 2021, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Native American Graves Protection and Repatriation Act, referred to in pars. (2) to (6), is Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Archaeological Resources Protection Act of 1979, referred to in pars. (3) to (6), is Pub. L. 96-95, Oct. 31, 1979, 93 Stat. 721, which is classified generally to chapter 1B (§470aa et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 470aa of Title 16 and Tables.

Statutory Notes and Related Subsidiaries

SHORT TITLE

Pub. L. 117-258, §1, Dec. 21, 2022, 136 Stat. 2372, provided that: “This Act [enacting this chapter and amending section 1170 of Title 18, Crimes and Criminal Procedure] may be cited as the ‘Safeguard Tribal Objects of Patrimony Act of 2021’.”

§ 3072. Definitions

In this chapter:

(1) Archaeological resource

The term “archaeological resource” means an archaeological resource (as defined in section 470bb of title 16) that is Native American.

(2) Cultural affiliation

The term “cultural affiliation” means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present day Indian Tribe or Native Hawaiian organization and an identifiable earlier group.

(3) Cultural item

The term “cultural item” means any 1 or more cultural items (as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)).

(4) Indian Tribe

The term “Indian Tribe” has the meaning given the term “Indian tribe” in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

(5) Item Prohibited from Exportation

The term “Item Prohibited from Exportation” means—

(A) a cultural item prohibited from being trafficked, including through sale, purchase, use for profit, or transport for sale or profit, by—

(i) section 1170(b) of title 18, as added by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); or

(ii) any other Federal law or treaty; and

(B) an archaeological resource prohibited from being trafficked, including through

sale, purchase, exchange, transport, receipt, or offer to sell, purchase, or exchange, including in interstate or foreign commerce, by—

- (i) subsections (b) and (c) of section 470ee of title 16; or
- (ii) any other Federal law or treaty.

(6) Item Requiring Export Certification

(A) In general

The term “Item Requiring Export Certification” means—

- (i) a cultural item; and
- (ii) an archaeological resource.

(B) Exclusion

The term “Item Requiring Export Certification” does not include an item described in clause (i) or (ii) of subparagraph (A) for which an Indian Tribe or Native Hawaiian organization with a cultural affiliation with the item has provided a certificate authorizing exportation of the item.

(7) Native American

The term “Native American” means—

(A) Native American (as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)); and

(B) Native Hawaiian (as so defined).

(8) Native Hawaiian organization

The term “Native Hawaiian organization” has the meaning given the term in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

(9) Secretary

The term “Secretary” means the Secretary of the Interior.

(10) Tangible cultural heritage

The term “tangible cultural heritage” means—

(A) Native American human remains; or

(B) culturally, historically, or archaeologically significant objects, resources, patrimony, or other items that are affiliated with a Native American culture.

(Pub. L. 117-258, § 3, Dec. 21, 2022, 136 Stat. 2373.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 117-258, Dec. 21, 2022, 136 Stat. 2372, known as the Safeguard Tribal Objects of Patrimony Act of 2021, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3071 of this title and Tables.

The Native American Graves Protection and Repatriation Act, referred to in par. (5)(A)(i), is Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

§ 3073. Export prohibitions; export certification system; international agreements

(a) Export prohibitions

(1) In general

It shall be unlawful for any person—

(A) to export, attempt to export, or otherwise transport from the United States any Item Prohibited from Exportation;

(B) to conspire with any person to engage in an activity described in subparagraph (A); or

(C) to conceal an activity described in subparagraph (A).

(2) Penalties

Any person who violates paragraph (1) and knows, or in the exercise of due care should have known, that the Item Prohibited from Exportation was taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any Federal law or treaty, shall be fined in accordance with section 3571 of title 18, imprisoned for not more than 1 year and 1 day for a first violation, and not more than 10 years for a second or subsequent violation, or both.

(3) Detention, forfeiture, and repatriation

(A) Detention and delivery

The Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, shall—

(i) detain any Item Prohibited from Exportation that is exported, attempted to be exported, or otherwise transported from the United States in violation of paragraph (1); and

(ii) deliver the Item Prohibited from Exportation to the Secretary.

(B) Forfeiture

Any Item Prohibited from Exportation that is exported, attempted to be exported, or otherwise transported from the United States in violation of paragraph (1) shall be subject to forfeiture to the United States in accordance with chapter 46 of title 18 (including section 983(c) of that chapter).

(C) Repatriation

Any Item Prohibited from Exportation that is forfeited under subparagraph (B) shall be expeditiously repatriated to the appropriate Indian Tribe or Native Hawaiian organization in accordance with, as applicable—

(i) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, as added by that Act); or

(ii) the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

(b) Export certification system

(1) Export certification requirement

(A) In general

No Item Requiring Export Certification may be exported from the United States without first having obtained an export certification in accordance with this subsection.

(B) Publication

The Secretary, in consultation with Indian Tribes and Native Hawaiian organizations, shall publish in the Federal Register a notice that includes—