

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4230

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IN THE SENATE OF THE UNITED STATES

AUGUST 9 (legislative day, AUGUST 8), 1994

Received; read twice and referred to the Committee on Indian Affairs

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## AN ACT

To amend the American Indian Religious Freedom Act to provide for the traditional use of peyote by Indians for religious purposes, and for other purposes.

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 “American Indian  
5 Religious Freedom Act Amendments of 1994”.

1 **SEC. 2. TRADITIONAL INDIAN RELIGIOUS USE OF THE**  
2 **PEYOTE SACRAMENT.**

3 The Act of August 11, 1978 (42 U.S.C. 1996), com-  
4 monly referred to as the “American Indian Religious Free-  
5 dom Act”, is amended by adding at the end thereof the  
6 following new section:

7 “SEC. 3. (a) The Congress finds and declares that—

8 “(1) for many Indian people, the traditional  
9 ceremonial use of the peyote cactus as a religious  
10 sacrament has for centuries been integral to a way  
11 of life, and significant in perpetuating Indian tribes  
12 and cultures;

13 “(2) since 1965, this ceremonial use of peyote  
14 by Indians has been protected by Federal regulation;

15 “(3) while at least 28 States have enacted laws  
16 which are similar to, or are in conformance with, the  
17 Federal regulation which protects the ceremonial use  
18 of peyote by Indian religious practitioners, 22 States  
19 have not done so, and this lack of uniformity has  
20 created hardship for Indian people who participate  
21 in such religious ceremonies;

22 “(4) the Supreme Court of the United States,  
23 in the case of *Employment Division v. Smith*, 494  
24 U.S. 872 (1990), held that the First Amendment  
25 does not protect Indian practitioners who use peyote  
26 in Indian religious ceremonies, and also raised un-

1       certainty whether this religious practice would be  
2       protected under the compelling State interest stand-  
3       ard; and

4               “(5) the lack of adequate and clear legal protec-  
5       tion for the religious use of peyote by Indians may  
6       serve to stigmatize and marginalize Indian tribes  
7       and cultures, and increase the risk that they will be  
8       exposed to discriminatory treatment.

9               “(b)(1) Notwithstanding any other provision of law,  
10      the use, possession, or transportation of peyote by an In-  
11      dian for bona fide traditional ceremonial purposes in con-  
12      nection with the practice of a traditional Indian religion  
13      is lawful, and shall not be prohibited by the United States  
14      or any State. No Indian shall be penalized or discrimi-  
15      nated against on the basis of such use, possession or  
16      transportation, including, but not limited to, denial of oth-  
17      erwise applicable benefits under public assistance pro-  
18      grams.

19              “(2) This section does not prohibit such reasonable  
20      regulation and registration by the Drug Enforcement Ad-  
21      ministration of those persons who cultivate, harvest, or  
22      distribute peyote as may be consistent with the purposes  
23      of this Act.

24              “(3) This section does not prohibit application of the  
25      provisions of section 481.111(a) of Vernon’s Texas Health

1 and Safety Code Annotated, in effect on the date of enact-  
2 ment of this section, insofar as those provisions pertain  
3 to the cultivation, harvest, and distribution of peyote.

4 “(4) Nothing in this section shall prohibit any Fed-  
5 eral department or agency, in carrying out its statutory  
6 responsibilities and functions, from promulgating regula-  
7 tions establishing reasonable limitations on the use or in-  
8 gestion of peyote prior to or during the performance of  
9 duties by sworn law enforcement officers or personnel di-  
10 rectly involved in public transportation or any other safe-  
11 ty-sensitive positions where the performance of such duties  
12 may be adversely affected by such use or ingestion. Such  
13 regulations shall be adopted only after consultation with  
14 representatives of traditional Indian religions for which  
15 the sacramental use of peyote is integral to their practice.  
16 Any regulation promulgated pursuant to this section shall  
17 be subject to the balancing test set forth in section 3 of  
18 the Religious Freedom Restoration Act (Public Law 103-  
19 141; 42 U.S.C. 2000bb-1).

20 “(5) This section shall not be construed as requiring  
21 prison authorities to permit, nor shall it be construed to  
22 prohibit prison authorities from permitting access to pe-  
23 yote by Indians while incarcerated within Federal or State  
24 prison facilities.

1       “(6) Subject to the provisions of the Religious Free-  
2 dom Restoration Act (Public Law 103–141; 42 U.S.C.  
3 2000bb–1), this section shall not be construed to prohibit  
4 States from enacting or enforcing reasonable traffic safety  
5 laws or regulations.

6       “(7) Subject to the provisions of the Religious Free-  
7 dom Restoration Act (Public Law 103–141; 42 U.S.C.  
8 2000bb–1), this section does not prohibit the Secretary of  
9 Defense from promulgating regulations establishing rea-  
10 sonable limitations on the use, possession, transportation,  
11 or distribution of peyote to promote military readiness,  
12 safety, or compliance with international law or laws of  
13 other countries. Such regulations shall be adopted only  
14 after consultation with representatives of traditional In-  
15 dian religions for which the sacramental use of peyote is  
16 integral to their practice.

17       “(c) For purposes of this section—

18               “(1) the term ‘Indian’ means a member of an  
19 Indian tribe;

20               “(2) the term ‘Indian tribe’ means any tribe,  
21 band, nation, pueblo, or other organized group or  
22 community of Indians, including any Alaska Native  
23 village (as defined in, or established pursuant to, the  
24 Alaska Native Claims Settlement Act (43 U.S.C.  
25 1601 et seq.)), which is recognized as eligible for the

1 special programs and services provided by the  
2 United States to Indians because of their status as  
3 Indians;

4 “(3) the term ‘Indian religion’ means any reli-  
5 gion—

6 “(A) which is practiced by Indians, and

7 “(B) the origin and interpretation of which  
8 is from within a traditional Indian culture or  
9 community; and

10 “(4) the term ‘State’ means any State of the  
11 United States, and any political subdivision thereof.

12 “(d) Nothing in this section shall be construed as ab-  
13 rogating, diminishing, or otherwise affecting—

14 “(1) the inherent rights of any Indian tribe;

15 “(2) the rights, express or implicit, of any In-  
16 dian tribe which exist under treaties, executive or-  
17 ders, and laws of the United States;

18 “(3) the inherent right of Indians to practice  
19 their religions; and

20 “(4) the right of Indians to practice their reli-  
21 gions under any Federal or State law.”.

Passed the House of Representatives August 8,  
1994.

Attest: DONNALD K. ANDERSON,  
*Clerk.*