

117<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2930

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## AN ACT

To enhance protections of Native American tangible cultural heritage, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Safeguard Tribal Ob-  
3 jects of Patrimony Act of 2021”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are—

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

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

14 (3) to stop the export, and facilitate the inter-  
15 national repatriation, of cultural items prohibited  
16 from being trafficked by the Native American  
17 Graves Protection and Repatriation Act (25 U.S.C.  
18 3001 et seq.) (including section 1170 of title 18,  
19 United States Code, as added by that Act) and ar-  
20 chaeological resources prohibited from being traf-  
21 ficked by the Archaeological Resources Protection  
22 Act of 1979 (16 U.S.C. 470aa et seq.) by—

23 (A) explicitly prohibiting the export;

24 (B) creating an export certification system;

25 and

1 (C) confirming the authority of the Presi-  
2 dent to request from foreign nations agree-  
3 ments or provisional measures to prevent irre-  
4 mediable damage to Native American cultural  
5 heritage;

6 (4) to establish a Federal framework in order  
7 to support the voluntary return by individuals and  
8 organizations of items of tangible cultural heritage,  
9 including items covered by the Native American  
10 Graves Protection and Repatriation Act (25 U.S.C.  
11 3001 et seq.) (including section 1170 of title 18,  
12 United States Code, as added by that Act) and the  
13 Archaeological Resources Protection Act of 1979 (16  
14 U.S.C. 470aa et seq.);

15 (5) to establish an interagency working group  
16 to ensure communication between Federal agencies  
17 to successfully implement this Act, the Native Amer-  
18 ican Graves Protection and Repatriation Act (25  
19 U.S.C. 3001 et seq.) (including section 1170 of title  
20 18, United States Code, as added by that Act), the  
21 Archaeological Resources Protection Act of 1979 (16  
22 U.S.C. 470aa et seq.), and other relevant Federal  
23 laws;

24 (6) to establish a Native working group of In-  
25 dian Tribes and Native Hawaiian organizations to

1 assist in the implementation of this Act, the Native  
2 American Graves Protection and Repatriation Act  
3 (25 U.S.C. 3001 et seq.) (including section 1170 of  
4 title 18, United States Code, as added by that Act),  
5 the Archaeological Resources Protection Act of 1979  
6 (16 U.S.C. 470aa et seq.), and other relevant Fed-  
7 eral laws;

8 (7) to exempt from disclosure under section 552  
9 of title 5, United States Code (commonly known as  
10 the “Freedom of Information Act”)—

11 (A) information submitted by Indian  
12 Tribes or Native Hawaiian organizations pursu-  
13 ant to this Act; and

14 (B) information relating to an Item Re-  
15 quiring Export Certification for which an export  
16 certification was denied pursuant to this Act;  
17 and

18 (8) to encourage buyers to purchase legal con-  
19 temporary art made by Native artists for commercial  
20 purposes.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) **ARCHAEOLOGICAL RESOURCE.**—The term  
24 “archaeological resource” means an archaeological  
25 resource (as defined in section 3 of the Archae-

1 ological Resources Protection Act of 1979 (16  
2 U.S.C. 470bb)) that is Native American.

3 (2) CULTURAL AFFILIATION.—The term “cul-  
4 tural affiliation” means that there is a relationship  
5 of shared group identity that can be reasonably  
6 traced historically or prehistorically between a  
7 present day Indian Tribe or Native Hawaiian orga-  
8 nization and an identifiable earlier group.

9 (3) CULTURAL ITEM.—The term “cultural  
10 item” means any 1 or more cultural items (as de-  
11 fined in section 2 of the Native American Graves  
12 Protection and Repatriation Act (25 U.S.C. 3001)).

13 (4) INDIAN TRIBE.—The term “Indian Tribe”  
14 has the meaning given the term “Indian tribe” in  
15 section 2 of the Native American Graves Protection  
16 and Repatriation Act (25 U.S.C. 3001).

17 (5) ITEM PROHIBITED FROM EXPORTATION.—  
18 The term “Item Prohibited from Exportation”  
19 means—

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

23 (i) section 1170(b) of title 18, United  
24 States Code, as added by the Native Amer-

1            ican Graves Protection and Repatriation  
2            Act (25 U.S.C. 3001 et seq.); or

3                    (ii) any other Federal law or treaty;

4            and

5                    (B) an archaeological resource prohibited  
6            from being trafficked, including through sale,  
7            purchase, exchange, transport, receipt, or offer  
8            to sell, purchase, or exchange, including in  
9            interstate or foreign commerce, by—

10                    (i) subsections (b) and (c) of section  
11                    6 of the Archaeological Resources Protec-  
12                    tion Act of 1979 (16 U.S.C. 470ee); or

13                    (ii) any other Federal law or treaty.

14            (6)    ITEM    REQUIRING    EXPORT    CERTIFI-  
15            CATION.—

16                    (A)    IN    GENERAL.—The term “Item Re-  
17                    quiring Export Certification” means—

18                            (i) a cultural item; and

19                            (ii) an archaeological resource.

20                    (B)    EXCLUSION.—The term “Item Requir-  
21                    ing Export Certification” does not include an  
22                    item described in clause (i) or (ii) of subpara-  
23                    graph (A) for which an Indian Tribe or Native  
24                    Hawaiian organization with a cultural affli-

1           ation with the item has provided a certificate  
2           authorizing exportation of the item.

3           (7) NATIVE AMERICAN.—The term “Native  
4           American” means—

5                   (A) Native American (as defined in section  
6                   2 of the Native American Graves Protection  
7                   and Repatriation Act (25 U.S.C. 3001)); and

8                   (B) Native Hawaiian (as so defined).

9           (8) NATIVE HAWAIIAN ORGANIZATION.—The  
10          term “Native Hawaiian organization” has the mean-  
11          ing given the term in section 2 of the Native Amer-  
12          ican Graves Protection and Repatriation Act (25  
13          U.S.C. 3001).

14          (9) SECRETARY.—The term “Secretary” means  
15          the Secretary of the Interior.

16          (10) TANGIBLE CULTURAL HERITAGE.—The  
17          term “tangible cultural heritage” means—

18                   (A) Native American human remains; or

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

23 **SEC. 4. ENHANCED NAGPRA PENALTIES.**

24          Section 1170 of title 18, United States Code, is  
25          amended—

1           (1) by striking “5 years” each place it appears  
2           and inserting “10 years”; and

3           (2) in subsection (a), by striking “12 months”  
4           and inserting “1 year and 1 day”.

5 **SEC. 5. EXPORT PROHIBITIONS; EXPORT CERTIFICATION**  
6           **SYSTEM; INTERNATIONAL AGREEMENTS.**

7           (a) EXPORT PROHIBITIONS.—

8           (1) IN GENERAL.—It shall be unlawful for any  
9           person—

10                   (A) to export, attempt to export, or other-  
11                   wise transport from the United States any Item  
12                   Prohibited from Exportation;

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

15                   (C) to conceal an activity described in sub-  
16                   paragraph (A).

17           (2) PENALTIES.—Any person who violates  
18           paragraph (1) and knows, or in the exercise of due  
19           care should have known, that the Item Prohibited  
20           from Exportation was taken, possessed, transported,  
21           or sold in violation of, or in a manner unlawful  
22           under, any Federal law or treaty, shall be fined in  
23           accordance with section 3571 of title 18, United  
24           States Code, imprisoned for not more than 1 year  
25           and 1 day for a first violation, and not more than

1 10 years for a second or subsequent violation, or  
2 both.

3 (3) DETENTION, FORFEITURE, AND REPATRI-  
4 ATION.—

5 (A) DETENTION AND DELIVERY.—The  
6 Secretary of Homeland Security, acting through  
7 the Commissioner of U.S. Customs and Border  
8 Protection, shall—

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

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

16 (B) FORFEITURE.—Any Item Prohibited  
17 from Exportation that is exported, attempted to  
18 be exported, or otherwise transported from the  
19 United States in violation of paragraph (1)  
20 shall be subject to forfeiture to the United  
21 States in accordance with chapter 46 of title  
22 18, United States Code (including section  
23 983(c) of that chapter).

24 (C) REPATRIATION.—Any Item Prohibited  
25 from Exportation that is forfeited under sub-

1 paragraph (B) shall be expeditiously repatriated  
2 to the appropriate Indian Tribe or Native Ha-  
3 waiian organization in accordance with, as ap-  
4 plicable—

5 (i) the Native American Graves Pro-  
6 tection and Repatriation Act (25 U.S.C.  
7 3001 et seq.) (including section 1170 of  
8 title 18, United States Code, as added by  
9 that Act); or

10 (ii) the Archaeological Resources Pro-  
11 tection Act of 1979 (16 U.S.C. 470aa et  
12 seq.).

13 (b) EXPORT CERTIFICATION SYSTEM.—

14 (1) EXPORT CERTIFICATION REQUIREMENT.—

15 (A) IN GENERAL.—No Item Requiring Ex-  
16 port Certification may be exported from the  
17 United States without first having obtained an  
18 export certification in accordance with this sub-  
19 section.

20 (B) PUBLICATION.—The Secretary, in con-  
21 sultation with Indian Tribes and Native Hawai-  
22 ian organizations, shall publish in the Federal  
23 Register a notice that includes—

1 (i) a description of characteristics typ-  
2 ical of Items Requiring Export Certifi-  
3 cation, which shall—

4 (I) include the definitions of the  
5 terms—

6 (aa) “cultural items” in sec-  
7 tion 2 of the Native American  
8 Graves Protection and Repatri-  
9 ation Act (25 U.S.C. 3001); and

10 (bb) “archaeological re-  
11 source” in section 3 of the Ar-  
12 chaeological Resources Protection  
13 Act of 1979 (16 U.S.C. 470bb);

14 (II) describe the provenance re-  
15 quirements associated with the traf-  
16 ficking prohibition applicable to—

17 (aa) cultural items under  
18 section 1170(b) of title 18,  
19 United States Code; and

20 (bb) archaeological resources  
21 under subsections (b) and (c) of  
22 section 6 of Archaeological Re-  
23 sources Protection Act of 1979  
24 (16 U.S.C. 470ee);

1 (III)(aa) include the definitions  
2 of the terms “Native American” and  
3 “Native Hawaiian” in section 2 of the  
4 Native American Graves Protection  
5 and Repatriation Act (25 U.S.C.  
6 3001); and

7 (bb) describe how those terms  
8 apply to archaeological resources  
9 under this Act; and

10 (IV) be sufficiently specific and  
11 precise to ensure that—

12 (aa) an export certification  
13 is required only for Items Requir-  
14 ing Export Certification; and

15 (bb) fair notice is given to  
16 exporters and other persons re-  
17 garding which items require an  
18 export certification under this  
19 subsection; and

20 (ii) a description of characteristics  
21 typical of items that do not qualify as  
22 Items Requiring Export Certification and  
23 therefore do not require an export certifi-  
24 cation under this subsection, which shall  
25 clarify that—

1 (I) an item made solely for com-  
2 mercial purposes is presumed to not  
3 qualify as an Item Requiring Export  
4 Certification, unless an Indian Tribe  
5 or Native Hawaiian organization chal-  
6 lenges that presumption; and

7 (II) in some circumstances, re-  
8 ceipts or certifications issued by In-  
9 dian Tribes or Native Hawaiian orga-  
10 nizations with a cultural affiliation  
11 with an item may be used as evidence  
12 to demonstrate a particular item does  
13 not qualify as an Item Requiring Ex-  
14 port Certification.

15 (2) ELIGIBILITY FOR EXPORT CERTIFI-  
16 CATION.—An Item Requiring Export Certification is  
17 eligible for an export certification under this sub-  
18 section if—

19 (A) the Item Requiring Export Certifi-  
20 cation is not under ongoing Federal investiga-  
21 tion;

22 (B) the export of the Item Requiring Ex-  
23 port Certification would not otherwise violate  
24 any other provision of law; and

1 (C) the Item Requiring Export Certifi-  
2 cation—

3 (i) is not an Item Prohibited from Ex-  
4 portation;

5 (ii) was excavated or removed pursu-  
6 ant to a permit issued under section 4 of  
7 the Archaeological Resources Protection  
8 Act of 1979 (16 U.S.C. 470cc) and in  
9 compliance with section 3(c) of the Native  
10 American Graves Protection and Repatri-  
11 ation Act (25 U.S.C. 3002(c)), if the per-  
12 mit for excavation or removal authorizes  
13 export; or

14 (iii) is accompanied by written con-  
15 firmation from the Indian Tribe or Native  
16 Hawaiian organization with authority to  
17 alienate the Item Requiring Export Certifi-  
18 cation that—

19 (I) the exporter has a right of  
20 possession (as defined in section 2 of  
21 the Native American Graves Protec-  
22 tion and Repatriation Act (25 U.S.C.  
23 3001)) of the Item Requiring Export  
24 Certification; or

1 (II) the Indian Tribe or Native  
2 Hawaiian organization has relin-  
3 quished title or control of the Item  
4 Requiring Export Certification in ac-  
5 cordance with section 3 of the Native  
6 American Graves Protection and Re-  
7 patriation Act (25 U.S.C. 3002).

8 (3) EXPORT CERTIFICATION APPLICATION AND  
9 ISSUANCE PROCEDURES.—

10 (A) APPLICATIONS FOR EXPORT CERTIFI-  
11 CATION.—

12 (i) IN GENERAL.—An exporter seek-  
13 ing to export an Item Requiring Export  
14 Certification from the United States shall  
15 submit to the Secretary an export certifi-  
16 cation application in accordance with  
17 clause (iii).

18 (ii) CONSEQUENCES OF FALSE STATE-  
19 MENT.—Any willful or knowing false state-  
20 ment made on an export certification appli-  
21 cation form under clause (i) shall—

22 (I) subject the exporter to crimi-  
23 nal penalties pursuant to section 1001  
24 of title 18, United States Code; and

1 (II) prohibit the exporter from  
2 receiving an export certification for  
3 any Item Requiring Export Certifi-  
4 cation in the future unless the ex-  
5 porter submits additional evidence in  
6 accordance with subparagraph  
7 (B)(iii)(I).

8 (iii) FORM OF EXPORT CERTIFICATION  
9 APPLICATION.—The Secretary, in consulta-  
10 tion with Indian Tribes and Native Hawai-  
11 ian organizations, and at the discretion of  
12 the Secretary, in consultation with third  
13 parties with relevant expertise, including  
14 institutions of higher education, museums,  
15 dealers, and collector organizations, shall  
16 develop an export certification application  
17 form, which shall require that an appli-  
18 cant—

19 (I) describe, and provide pictures  
20 of, each Item Requiring Export Cer-  
21 tification that the applicant seeks to  
22 export;

23 (II) include all available informa-  
24 tion regarding the provenance of each

1 such Item Requiring Export Certifi-  
2 cation; and

3 (III) include the attestation de-  
4 scribed in subparagraph (B)(i).

5 (B) EVIDENCE.—

6 (i) IN GENERAL.—In completing an  
7 export certification application with respect  
8 to an Item Requiring Export Certification  
9 that the exporter seeks to export, the ex-  
10 porter shall attest that, to the best of the  
11 knowledge and belief of the exporter, the  
12 exporter is not attempting to export an  
13 Item Prohibited from Exportation.

14 (ii) SUFFICIENCY OF ATTESTATION.—  
15 An attestation under clause (i) shall be  
16 considered to be sufficient evidence to sup-  
17 port the application of the exporter under  
18 subparagraph (A)(iii)(III), on the condition  
19 that the exporter is not required to provide  
20 additional evidence under clause (iii)(I).

21 (iii) ADDITIONAL REQUIREMENTS.—

22 (I) IN GENERAL.—The Secretary  
23 shall give notice to an exporter that  
24 submits an export certification appli-  
25 cation under subparagraph (A)(i) that

1 the exporter is required to submit ad-  
2 ditional evidence in accordance with  
3 subclause (III) if the Secretary has  
4 determined under subparagraph  
5 (A)(ii) that the exporter made a will-  
6 ful or knowing false statement on the  
7 application or any past export certifi-  
8 cation application.

9 (II) DELAYS OR DENIALS.—The  
10 Secretary shall give notice to an ex-  
11 porter that submits an export certifi-  
12 cation application under subparagraph  
13 (A)(i) that the exporter may submit  
14 additional evidence in accordance with  
15 subclause (III) if the issuance of an  
16 export certification is—

17 (aa) delayed pursuant to the  
18 examination by the Secretary of  
19 the eligibility of the Item Requir-  
20 ing Export Certification for an  
21 export certification; or

22 (bb) denied by the Secretary  
23 because the Secretary determined  
24 that the Item Requiring Export  
25 Certification is not eligible for an

1 export certification under this  
2 subsection.

3 (III) ADDITIONAL EVIDENCE.—

4 On receipt of notice under subclause  
5 (I), an exporter shall, or on receipt of  
6 a notice under subclause (II), an ex-  
7 porter may, provide the Secretary  
8 with such additional evidence as the  
9 Secretary may require to establish  
10 that the Item Requiring Export Cer-  
11 tification is eligible for an export cer-  
12 tification under this subsection.

13 (C) DATABASE APPLICATIONS.—

14 (i) IN GENERAL.—The Secretary shall  
15 establish and maintain a secure central  
16 Federal database information system (re-  
17 ferred to in this subparagraph as the  
18 “database”) for the purpose of making ex-  
19 port certification applications available to  
20 Indian Tribes and Native Hawaiian organi-  
21 zations.

22 (ii) COLLABORATION REQUIRED.—The  
23 Secretary shall collaborate with Indian  
24 Tribes, Native Hawaiian organizations,  
25 and the interagency working group con-

1                   vened under section 7(a) in the design and  
2                   implementation of the database.

3                   (iii) AVAILABILITY.—Immediately on  
4                   receipt of an export certification applica-  
5                   tion, the Secretary shall make the export  
6                   certification application available on the  
7                   database.

8                   (iv) DELETION FROM DATABASE.—On  
9                   request by an Indian Tribe or Native Ha-  
10                  waiian organization, the Secretary shall de-  
11                  lete an export certification application from  
12                  the database.

13                  (v) TECHNICAL ASSISTANCE.—If an  
14                  Indian Tribe or Native Hawaiian organiza-  
15                  tion lacks sufficient resources to access the  
16                  database or respond to agency communica-  
17                  tions in a timely manner, the Secretary, in  
18                  consultation with Indian Tribes and Native  
19                  Hawaiian organizations, shall provide tech-  
20                  nical assistance to facilitate that access or  
21                  response, as applicable.

22                  (D) ISSUANCE OF EXPORT CERTIFI-  
23                  CATION.—

24                  (i) On receipt of an export certifi-  
25                  cation application for an Item Requiring

1           Export Certification that meets the re-  
2           quirements of subparagraphs (A) and (B),  
3           if the Secretary, in consultation with In-  
4           dian Tribes and Native Hawaiian organiza-  
5           tions with a cultural affiliation with the  
6           Item Requiring Export Certification, deter-  
7           mines that the Item Requiring Export Cer-  
8           tification is eligible for an export certifi-  
9           cation under paragraph (2), the Secretary  
10          may issue an export certification for the  
11          Item Requiring Export Certification.

12           (ii) On receipt of an export certifi-  
13          cation application for an Item Requiring  
14          Export Certification that meets the re-  
15          quirements of subparagraphs (A) and  
16          (B)—

17                   (I) the Secretary shall have 1  
18                   business day to notify the relevant In-  
19                   dian Tribes and Native Hawaiian Or-  
20                   ganizations of an application for ex-  
21                   port of an Item Requiring Export  
22                   Certification;

23                   (II) Indian Tribes and Native  
24                   Hawaiian organizations shall have 9

1 business days to review the export cer-  
2 tification application;

3 (III) if an Indian Tribe or Native  
4 Hawaiian organization notifies the  
5 Secretary that the Item Requiring Ex-  
6 port Certification may not be eligible  
7 for an export certification under para-  
8 graph (2), the Secretary shall have 7  
9 business days to review the applica-  
10 tion;

11 (IV) if no Indian Tribe or Native  
12 Hawaiian organization so notifies the  
13 Secretary, the Secretary shall have 1  
14 business day to review the application;

15 (V) with notice to the exporter,  
16 the Secretary may extend the review  
17 of an application for up to 30 busi-  
18 ness days if credible evidence is pro-  
19 vided that the Item Requiring Export  
20 Certification may not be eligible for  
21 an export certification under para-  
22 graph (2); and

23 (VI) the Secretary shall make a  
24 determination to approve or deny the

1 export certification application within  
2 the time allotted.

3 (E) REVOCATION OF EXPORT CERTIFI-  
4 CATION.—

5 (i) IN GENERAL.—If credible evidence  
6 is provided that indicates that an item that  
7 received an export certification under sub-  
8 paragraph (D) is not eligible for an export  
9 certification under paragraph (2), the Sec-  
10 retary may immediately revoke the export  
11 certification.

12 (ii) DETERMINATION.—In deter-  
13 mining whether a revocation is warranted  
14 under clause (i), the Secretary shall con-  
15 sult with Indian Tribes and Native Hawai-  
16 ian organizations with a cultural affiliation  
17 with the affected Item Requiring Export  
18 Certification.

19 (4) DETENTION, FORFEITURE, REPATRIATION,  
20 AND RETURN.—

21 (A) DETENTION AND DELIVERY.—The  
22 Secretary of Homeland Security, acting through  
23 the Commissioner of U.S. Customs and Border  
24 Protection, shall—

1 (i) detain any Item Requiring Export  
2 Certification that an exporter attempts to  
3 export or otherwise transport without an  
4 export certification; and

5 (ii) deliver the Item Requiring Export  
6 Certification to the Secretary, for seizure  
7 by the Secretary.

8 (B) FORFEITURE.—Any Item Requiring  
9 Export Certification that is detained under sub-  
10 paragraph (A)(i) shall be subject to forfeiture  
11 to the United States in accordance with chapter  
12 46 of title 18, United States Code (including  
13 section 983(c) of that chapter).

14 (C) REPATRIATION OR RETURN TO EX-  
15 PORTER.—

16 (i) IN GENERAL.—Not later than 60  
17 days after the date of delivery to the Sec-  
18 retary of an Item Requiring Export Cer-  
19 tification under subparagraph (A)(ii), the  
20 Secretary shall determine whether the Item  
21 Requiring Export Certification is an Item  
22 Prohibited from Exportation.

23 (ii) REPATRIATION.—If an Item Re-  
24 quiring Export Certification is determined  
25 by the Secretary to be an Item Prohibited

1 from Exportation and is forfeited under  
2 subparagraph (B), the item shall be expe-  
3 ditiously repatriated to the appropriate In-  
4 dian Tribe or Native Hawaiian organiza-  
5 tion in accordance with, as applicable—

6 (I) the Native American Graves  
7 Protection and Repatriation Act (25  
8 U.S.C. 3001 et seq.) (including sec-  
9 tion 1170 of title 18, United States  
10 Code, as added by that Act); or

11 (II) the Archaeological Resources  
12 Protection Act of 1979 (16 U.S.C.  
13 470aa et seq.).

14 (iii) RETURN TO EXPORTER.—

15 (I) IN GENERAL.—If the Sec-  
16 retary determines that credible evi-  
17 dence does not establish that the Item  
18 Requiring Export Certification is an  
19 Item Prohibited from Exportation, or  
20 if the Secretary does not complete the  
21 determination by the deadline de-  
22 scribed in clause (i), the Secretary  
23 shall return the Item Requiring Ex-  
24 port Certification to the exporter.

1 (II) EFFECT.—The return of an  
2 Item Requiring Export Certification  
3 to an exporter under subclause (I)  
4 shall not mean that the Item Requir-  
5 ing Export Certification is eligible for  
6 an export certification under this sub-  
7 section.

8 (5) PENALTIES.—

9 (A) ITEMS REQUIRING EXPORT CERTIFI-  
10 CATION.—

11 (i) IN GENERAL.—It shall be unlawful  
12 for any person to export, attempt to ex-  
13 port, or otherwise transport from the  
14 United States any Item Requiring Export  
15 Certification without first obtaining an ex-  
16 port certification.

17 (ii) PENALTIES.—Except as provided  
18 in subparagraph (D), any person who vio-  
19 lates clause (i) shall be—

20 (I) assessed a civil penalty in ac-  
21 cordance with such regulations as the  
22 Secretary promulgates pursuant to  
23 section 10; and

24 (II) subject to any other applica-  
25 ble penalties under this Act.

1 (B) ITEMS PROHIBITED FROM EXPOR-  
2 TATION.—Whoever exports an Item Prohibited  
3 from Exportation without first securing an ex-  
4 port certification shall be liable for a civil  
5 money penalty, the amount of which shall equal  
6 the total cost of storing and repatriating the  
7 Item Prohibited from Exportation.

8 (C) USE OF FINES COLLECTED.—Any  
9 amounts collected by the Secretary as a civil  
10 penalty under subparagraph (A)(ii)(I) or (B)  
11 shall be credited to the currently applicable ap-  
12 propriation, account, or fund of the Department  
13 of the Interior as discretionary offsetting collec-  
14 tions and shall be available only to the extent  
15 and in the amounts provided in advance in ap-  
16 propriations Acts—

17 (i) to process export certification ap-  
18 plications under this subsection; and

19 (ii) to store and repatriate the Item  
20 Prohibited from Exportation.

21 (D) VOLUNTARY RETURN.—

22 (i) IN GENERAL.—Any person who at-  
23 tempts to export or otherwise transport  
24 from the United States an Item Requiring  
25 Export Certification without first obtaining

1 an export certification, but voluntarily re-  
2 turns the Item Requiring Export Certifi-  
3 cation, or directs the Item Requiring Ex-  
4 port Certification to be returned, to the ap-  
5 propriate Indian Tribe or Native Hawaiian  
6 organization in accordance with section 6  
7 prior to the commencement of an active  
8 Federal investigation shall not be pros-  
9 ecuted for a violation of subparagraph (A)  
10 with respect to the Item Requiring Export  
11 Certification.

12 (ii) ACTIONS NOT COMMENCING A  
13 FEDERAL INVESTIGATION.—For purposes  
14 of clause (i), the following actions shall not  
15 be considered to be actions that commence  
16 an active Federal investigation:

17 (I) The submission by the ex-  
18 porter of an export certification appli-  
19 cation for the Item Requiring Export  
20 Certification under paragraph  
21 (3)(A)(i).

22 (II) The detention of the Item  
23 Requiring Export Certification by the  
24 Secretary of Homeland Security, act-  
25 ing through the Commissioner of U.S.

1 Customs and Border Protection,  
2 under paragraph (4)(A)(i).

3 (III) The delivery to the Sec-  
4 retary of the Item Requiring Export  
5 Certification by the Secretary of  
6 Homeland Security, acting through  
7 the Commissioner of U.S. Customs  
8 and Border Protection, under para-  
9 graph (4)(A)(ii).

10 (IV) The seizure by the Secretary  
11 of the Item Requiring Export Certifi-  
12 cation under paragraph (4)(A)(ii).

13 (6) FEES.—

14 (A) IN GENERAL.—The Secretary may as-  
15 sess reasonable fees to process export certifi-  
16 cation applications under this subsection, sub-  
17 ject to subparagraph (B).

18 (B) AVAILABILITY OF AMOUNTS COL-  
19 LECTED.—Fees authorized under subparagraph  
20 (A) shall be collected and available only to the  
21 extent and in the amounts provided in advance  
22 in appropriations Acts.

23 (7) ADMINISTRATIVE APPEAL.—If the Secretary  
24 denies an export certification or an Item Requiring  
25 Export Certification is detained under this sub-

1 section, the exporter, on request, shall be given a  
2 hearing on the record in accordance with such rules  
3 and regulations as the Secretary promulgates pursu-  
4 ant to section 10.

5 (8) TRAINING.—

6 (A) IN GENERAL.—The Secretary, the Sec-  
7 retary of State, the Attorney General, and the  
8 heads of all other relevant Federal agencies  
9 shall require all appropriate personnel to par-  
10 ticipate in training regarding applicable laws  
11 and consultations to facilitate positive govern-  
12 ment-to-government interactions with Indian  
13 Tribes and Native Hawaiian Organizations.

14 (B) U.S. CUSTOMS AND BORDER PROTEC-  
15 TION TRAINING.—The Secretary of Homeland  
16 Security, acting through the Commissioner of  
17 U.S. Customs and Border Protection, shall re-  
18 quire all appropriate personnel of U.S. Customs  
19 and Border Protection to participate in training  
20 provided by the Secretary of the Interior or an  
21 Indian Tribe or Native Hawaiian organization  
22 to assist the personnel in identifying, handling,  
23 and documenting in a culturally sensitive man-  
24 ner Items Requiring Export Certification for  
25 purposes of this Act.

1           (C) CONSULTATION.—In developing or  
2           modifying and delivering trainings under sub-  
3           paragraphs (A) and (B), the applicable heads of  
4           Federal agencies shall consult with Indian  
5           Tribes and Native Hawaiian organizations.

6           (c) AGREEMENTS TO REQUEST RETURN FROM FOR-  
7 EIGN COUNTRIES.—The President may request from for-  
8 eign nations agreements that specify concrete measures  
9 that the foreign nation will carry out—

10           (1) to discourage commerce in, and collection  
11           of, Items Prohibited from Exportation;

12           (2) to encourage the voluntary return of tan-  
13           gible cultural heritage; and

14           (3) to expand the market for the products of  
15           Indian art and craftsmanship in accordance with  
16           section 2 of the Act of August 27, 1935 (49 Stat.  
17           891, chapter 748; 25 U.S.C. 305a) (commonly  
18           known as the “Indian Arts and Crafts Act”).

19 **SEC. 6. VOLUNTARY RETURN OF TANGIBLE CULTURAL**  
20 **HERITAGE.**

21           (a) LIAISON.—The Secretary and the Secretary of  
22 State shall each designate a liaison to facilitate the vol-  
23 untary return of tangible cultural heritage.

24           (b) TRAININGS AND WORKSHOPS.—The liaisons des-  
25 igned under subsection (a) shall offer to representatives

1 of Indian Tribes and Native Hawaiian organizations and  
2 collectors, dealers, and other individuals and organizations  
3 trainings and workshops regarding the voluntary return  
4 of tangible cultural heritage.

5 (c) REFERRALS.—

6 (1) IN GENERAL.—The Secretary shall refer in-  
7 dividuals and organizations to 1 or more Indian  
8 Tribes and Native Hawaiian organizations with a  
9 cultural affiliation to tangible cultural heritage for  
10 the purpose of facilitating the voluntary return of  
11 tangible cultural heritage.

12 (2) REFERRAL REPRESENTATIVES.—The Sec-  
13 retary shall compile a list of representatives from  
14 each Indian Tribe and Native Hawaiian organization  
15 for purposes of referral under paragraph (1).

16 (3) CONSULTATION.—The Secretary shall con-  
17 sult with Indian Tribes, Native Hawaiian organiza-  
18 tions, and the Native working group convened under  
19 section 8(a) before making a referral under para-  
20 graph (1).

21 (4) THIRD-PARTY EXPERTS.—The Secretary  
22 may use third parties with relevant expertise, includ-  
23 ing institutions of higher education, museums, deal-  
24 ers, and collector organizations, in determining to  
25 which Indian Tribe or Native Hawaiian organization

1 an individual or organization should be referred  
2 under paragraph (1).

3 (d) **LEGAL LIABILITY.**—Nothing in this section im-  
4 poses on any individual or entity any additional penalties  
5 or legal liability.

6 (e) **TAX DOCUMENTATION.**—In facilitating the vol-  
7 untary return of tangible cultural heritage under this sec-  
8 tion, the Secretary shall include provision of tax docu-  
9 mentation for a deductible gift to an Indian Tribe or Na-  
10 tive Hawaiian organization, if the recipient Indian Tribe  
11 or Native Hawaiian organization consents to the provision  
12 of tax documentation.

13 (f) **REPATRIATION UNDER NATIVE AMERICAN**  
14 **GRAVES PROTECTION AND REPATRIATION ACT.**—The vol-  
15 untary return provisions of this section shall apply to a  
16 specific item of tangible cultural heritage only to the ex-  
17 tent that the repatriation provisions under section 7 of the  
18 Native American Graves Protection and Repatriation Act  
19 (25 U.S.C. 3005) do not apply to the item of tangible cul-  
20 tural heritage.

21 **SEC. 7. INTERAGENCY WORKING GROUP.**

22 (a) **IN GENERAL.**—The Secretary shall designate a  
23 coordinating office to convene an interagency working  
24 group consisting of representatives from the Departments  
25 of the Interior, Justice, State, and Homeland Security.

1 (b) GOALS.—The goals of the interagency working  
2 group convened under subsection (a) are—

3 (1) to facilitate the repatriation to Indian  
4 Tribes and Native Hawaiian organizations of items  
5 that have been illegally removed or trafficked in vio-  
6 lation of applicable law;

7 (2) to protect tangible cultural heritage, cul-  
8 tural items, and archaeological resources still in the  
9 possession of Indian Tribes and Native Hawaiian or-  
10 ganizations; and

11 (3) to improve the implementation by the appli-  
12 cable Federal agencies of—

13 (A) the Native American Graves Protection  
14 and Repatriation Act (25 U.S.C. 3001 et seq.)  
15 (including section 1170 of title 18, United  
16 States Code, as added by that Act);

17 (B) the Archaeological Resources Protec-  
18 tion Act of 1979 (16 U.S.C. 470aa et seq.); and

19 (C) other relevant Federal laws.

20 (c) RESPONSIBILITIES.—The interagency working  
21 group convened under subsection (a) shall—

22 (1) aid in implementation of this Act and the  
23 amendments made by this Act, including by aiding  
24 in—

1 (A) the voluntary return of tangible cul-  
2 tural heritage under section 6; and

3 (B) halting international sales of items  
4 that are prohibited from being trafficked under  
5 Federal law; and

6 (2) collaborate with—

7 (A) the Native working group convened  
8 under section 8(a);

9 (B) the review committee established under  
10 section 8(a) of the Native American Graves  
11 Protection and Repatriation Act (25 U.S.C.  
12 3006(a));

13 (C) the Cultural Heritage Coordinating  
14 Committee established pursuant to section 2 of  
15 the Protect and Preserve International Cultural  
16 Property Act (Public Law 114–151; 19 U.S.C.  
17 2601 note); and

18 (D) any other relevant committees and  
19 working groups.

20 **SEC. 8. NATIVE WORKING GROUP.**

21 (a) IN GENERAL.—The Secretary shall convene a Na-  
22 tive working group consisting of not fewer than 12 rep-  
23 resentatives of Indian Tribes and Native Hawaiian organi-  
24 zations with relevant expertise, who shall be nominated by  
25 Indian Tribes and Native Hawaiian organizations, to ad-

1 vise the Federal Government in accordance with this sec-  
2 tion.

3 (b) RECOMMENDATIONS.—The Native working group  
4 convened under subsection (a) may provide recommenda-  
5 tions regarding—

6 (1) the voluntary return of tangible cultural  
7 heritage by collectors, dealers, and other individuals  
8 and non-Federal organizations that hold such tan-  
9 gible cultural heritage; and

10 (2) the elimination of illegal commerce of cul-  
11 tural items and archaeological resources in the  
12 United States and foreign markets.

13 (c) REQUESTS.—The Native working group convened  
14 under subsection (a) may make formal requests to initiate  
15 certain agency actions, including requests that—

16 (1) the Department of Justice initiate judicial  
17 proceedings domestically or abroad to aid in the re-  
18 patriation cultural items and archaeological re-  
19 sources; and

20 (2) the Department of State initiate dialogue  
21 through diplomatic channels to aid in that repatri-  
22 ation.

23 (d) AGENCY AND COMMITTEE ASSISTANCE.—

24 (1) IN GENERAL.—On request by the Native  
25 working group convened under subsection (a), the

1 agencies and committees described in paragraph (2)  
2 shall make efforts to provide information and assist-  
3 ance to the Native working group.

4 (2) DESCRIPTION OF AGENCIES AND COMMIT-  
5 TEES.—The agencies and committees referred to in  
6 paragraph (1) are the following:

7 (A) The Department of the Interior.

8 (B) The Department of Justice.

9 (C) The Department of Homeland Secu-  
10 rity.

11 (D) The Department of State.

12 (E) The review committee established  
13 under section 8(a) of the Native American  
14 Graves Protection and Repatriation Act (25  
15 U.S.C. 3006(a)).

16 (F) The Cultural Heritage Coordinating  
17 Committee established pursuant to section 2 of  
18 the Protect and Preserve International Cultural  
19 Property Act (Public Law 114–151; 19 U.S.C.  
20 2601 note).

21 (G) Any other relevant Federal agency,  
22 committee, or working group.

23 (e) APPLICABILITY OF FEDERAL ADVISORY COM-  
24 MITTEE ACT.—The Federal Advisory Committee Act (5

1 U.S.C. App.) shall not apply to the Native working group  
2 convened under subsection (a).

3 **SEC. 9. TREATMENT UNDER FREEDOM OF INFORMATION**  
4 **ACT.**

5 (a) IN GENERAL.—Except as provided in subsection  
6 (c), the following information shall be exempt from dislo-  
7 sure under section 552 of title 5, United States Code:

8 (1) Information that a representative of an In-  
9 dian Tribe or Native Hawaiian organization—

10 (A) submits to a Federal agency pursuant  
11 to this Act or an amendment made by this Act;  
12 and

13 (B) designates as sensitive or private ac-  
14 cording to Native American custom, law, cul-  
15 ture, or religion.

16 (2) Information that any person submits to a  
17 Federal agency pursuant to this Act or an amend-  
18 ment made by this Act that relates to an item for  
19 which an export certification is denied under this  
20 Act.

21 (b) APPLICABILITY.—For purposes of subsection (a),  
22 this Act shall be considered a statute described in section  
23 552(b)(3)(B) of title 5, United States Code.

24 (c) EXCEPTION.—An Indian Tribe or Native Hawai-  
25 ian organization may request and shall receive its own in-

1 formation, as described in subsection (a), from the Federal  
2 agency to which the Indian Tribe or Native Hawaiian or-  
3 ganization submitted the information.

4 **SEC. 10. REGULATIONS.**

5 Not later than 1 year after the date of enactment  
6 of this Act, the Secretary, in consultation with the Sec-  
7 retary of State, the Secretary of Homeland Security, and  
8 the Attorney General, and after consultation with Indian  
9 Tribes and Native Hawaiian organizations, shall promul-  
10 gate rules and regulations to carry out this Act.

11 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

12 There is authorized to be appropriated to carry out  
13 this Act \$3,000,000 for each of fiscal years 2022 through  
14 2027.

15 **SEC. 12. DETERMINATION OF BUDGETARY EFFECTS.**

16 The budgetary effects of this Act, for the purpose of  
17 complying with the Statutory Pay-As-You-Go Act of 2010,  
18 shall be determined by reference to the latest statement  
19 titled “Budgetary Effects of PAYGO Legislation” for this  
20 Act, submitted for printing in the Congressional Record  
21 by the Chairman of the House Budget Committee, pro-

1 vided that such statement has been submitted prior to the  
2 vote on passage.

Passed the House of Representatives December 2,  
2021.

Attest:

*Clerk.*



117<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 2930**

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**AN ACT**

To enhance protections of Native American tangible  
cultural heritage, and for other purposes.