

**TITLE 42 - THE PUBLIC HEALTH AND WELFARE**  
**CHAPTER 21 - CIVIL RIGHTS**  
**SUBCHAPTER I - GENERALLY**

**§ 1996a. Traditional Indian religious use of peyote**

**(a) Congressional findings and declarations**

The Congress finds and declares that—

- (1) for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures;
- (2) since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation;
- (3) while at least 28 States have enacted laws which are similar to, or are in conformance with, the Federal regulation which protects the ceremonial use of peyote by Indian religious practitioners, 22 States have not done so, and this lack of uniformity has created hardship for Indian people who participate in such religious ceremonies;
- (4) the Supreme Court of the United States, in the case of *Employment Division v. Smith*, 494 U.S. 872 (1990), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and
- (5) the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.

**(b) Use, possession, or transportation of peyote**

- (1) Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.
- (2) This section does not prohibit such reasonable regulation and registration by the Drug Enforcement Administration of those persons who cultivate, harvest, or distribute peyote as may be consistent with the purposes of this section and section 1996 of this title.
- (3) This section does not prohibit application of the provisions of section 481.111(a) of Vernon's Texas Health and Safety Code Annotated, in effect on October 6, 1994, insofar as those provisions pertain to the cultivation, harvest, and distribution of peyote.
- (4) Nothing in this section shall prohibit any Federal department or agency, in carrying out its statutory responsibilities and functions, from promulgating regulations establishing reasonable limitations on the use or ingestion of peyote prior to or during the performance of duties by sworn law enforcement officers or personnel directly involved in public transportation or any other safety-sensitive positions where the performance of such duties may be adversely affected by such use or ingestion. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice. Any regulation promulgated pursuant to this section shall be subject to the balancing test set forth in section 3 of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb-1).
- (5) This section shall not be construed as requiring prison authorities to permit, nor shall it be construed to prohibit prison authorities from permitting, access to peyote by Indians while incarcerated within Federal or State prison facilities.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

(6) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1) [42 U.S.C. 2000bb et seq.], this section shall not be construed to prohibit States from enacting or enforcing reasonable traffic safety laws or regulations.

(7) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1), this section does not prohibit the Secretary of Defense from promulgating regulations establishing reasonable limitations on the use, possession, transportation, or distribution of peyote to promote military readiness, safety, or compliance with international law or laws of other countries. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice.

**(c) Definitions**

For purposes of this section—

- (1) the term “Indian” means a member of an Indian tribe;
- (2) the term “Indian tribe” means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;
- (3) the term “Indian religion” means any religion—
  - (A) which is practiced by Indians, and
  - (B) the origin and interpretation of which is from within a traditional Indian culture or community; and
- (4) the term “State” means any State of the United States, and any political subdivision thereof.

**(d) Protection of rights of Indians and Indian tribes**

Nothing in this section shall be construed as abrogating, diminishing, or otherwise affecting—

- (1) the inherent rights of any Indian tribe;
- (2) the rights, express or implicit, of any Indian tribe which exist under treaties, Executive orders, and laws of the United States;
- (3) the inherent right of Indians to practice their religions; and
- (4) the right of Indians to practice their religions under any Federal or State law.

(Pub. L. 95–341, § 3, as added Pub. L. 103–344, § 2, Oct. 6, 1994, 108 Stat. 3125.)

**References in Text**

The Religious Freedom Restoration Act, referred to in subsec. (b)(6), (7), probably means the Religious Freedom Restoration Act of 1993, Pub. L. 103–141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to chapter 21B (§ 2000bb et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000bb of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(2), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.