



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SPO-16-046

**TITLE: Supporting Policies to Reduce Commercial Tobacco Use, Secondhand Smoke Exposure and Tobacco-Related Disease among American Indians and Alaska Natives**

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, Alaska Natives and American Indians are carrying a disproportionate burden of disease and early death due to tobacco use and secondhand smoke exposure; cigarette smoking is the leading cause of preventable disease and death in the United States accounting for 1 of every 5 deaths (CDC Office on Smoking and Health, 2014); and

**WHEREAS**, tobacco use causes chronic diseases like cancer, cardiovascular disease, and pulmonary disease, and exacerbates diabetes, all of which are diseases that are increasing rapidly among Alaska Natives and American Indians; and

**WHEREAS**, American Indian adult rates of smoking are as high as 50% compared to 16.8% tobacco use rate of non-Native adults (BRFSS, 2012); and that American Indian high school students have the highest smoking prevalence of all racial/ethnic groups. (YRBS, 2013); and

**WHEREAS**, smokeless tobacco use is widely prevalent among certain regions, on the rise among Alaska Native and American Indians girls (YRBS 2013), and not a safe alternative to smoking; and

**WHEREAS**, children who breathe secondhand smoke are more likely to suffer from ear infections, decreased lung function, decreased cognitive function, and are at a significantly increased risk for sudden infant death syndrome (SIDS); and children are sacred and therefore steps should be taken to ensure that they have good quality of air to breathe and that they are sufficiently protected from secondhand smoke, which is a health hazard that is beyond their control; and

**WHEREAS**, it is estimated that 32.8% of government healthcare spending by Indian Health Service is attributable to smoking (Medical Expenditure Panel Survey, 2010); and

**WHEREAS**, the quality of commercial tobacco products has been compromised due to the chemical engineering by the tobacco industry and commercial tobacco contains 7,000 chemical additives (such as rat poison, formaldehyde, ammonia, acetone, arsenic and many more) that are harmful to health; and commercial tobacco disrespects the fundamental cultural traditions of American Indians and Alaska Natives; and

**WHEREAS**, Alaska Natives and American Indians have a right to not use commercial tobacco and to breathe smoke free air indoors; and

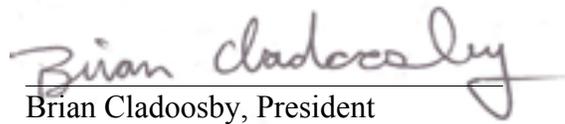
**WHEREAS**, interventions such as tobacco price increases, comprehensive tobacco-free laws, high impact mass media campaigns and barrier-free access to quitting assistance are proven to reduce tobacco use and tobacco-related disease and death.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians does hereby endorse policies for the protection of tribal community members from tobacco use and secondhand smoke exposure through comprehensive tribal commercial tobacco-free air policies (including all forms of commercial tobacco products) in indoor workplaces and public places (including tribal casinos), providing access to high quality tobacco cessation services, and promotes the creation of policy to dis-incentivize individuals from purchasing and using commercial tobacco products; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2016 Midyear Session of the National Congress of American Indians, held at the Spokane Convention Center, June 27 to June 30, 2016, with a quorum present.

  
Brian Cladoosby, President

**ATTEST:**

  
Aaron Payment, Recording Secretary

BE IT ENACTED:

**Section One. Title**

This article shall be known as “The \_\_\_\_\_ Tribe Commercial Tobacco-Free Air Act” and is dedicated to all the \_\_\_\_\_ tribal members who have died or who suffer from commercial tobacco related illnesses.

**Section Two. Findings and Intent**

- A. The \_\_\_\_\_ Tribe is committed to improving the Health and Welfare of all tribal members, to promote a healthy environment, and has an obligation to enact policies that protect members from harm.
- B. The \_\_\_\_\_ Tribe finds that the United States Surgeon General has found that massive and conclusive scientific evidence documents adverse effects of involuntary smoking on children and adults, including cancer and cardiovascular disease in adults, and adverse respiratory effects in children and adults.
- C. The \_\_\_\_\_ Tribe finds that there are no safe levels of exposure to secondhand smoke and there is no available adequate ventilation technology based upon scientific studies that can ensure the protection and prevention of secondhand smoke health-related illnesses.
- D. The \_\_\_\_\_ Tribe recognizes that everyone has the right to breathe clean air and be free from the pollution of commercial tobacco products.
- E. The \_\_\_\_\_ Tribe finds \_\_\_\_\_ (insert data that tribal members support smoke-free air) \_\_\_\_\_.
- E. The \_\_\_\_\_ Tribe finds use of commercial tobacco products are a leading cause of preventable death on the \_\_\_\_\_ Reservation.
- F. The \_\_\_\_\_ Tribe finds that exposure to environmental tobacco smoke (ETS) places non-smoking adults at significantly increased risk for heart disease, hypertension, stroke, and respiratory diseases, all of which lead to the disproportionately higher death rates among American Indians as compared to the general population.
- G. The \_\_\_\_\_ Tribe finds children who breathe ETS are more likely to suffer from ear infections, decreased lung function, decreased cognitive function, experience more frequent trips to the hospital, and are at a significantly increased risk for sudden infant death syndrome (SIDS), which is disproportionally high among the Northern Plains tribes.
- H. The \_\_\_\_\_ Tribe finds children are sacred and therefore steps should be taken to ensure that they have good quality of air to breathe and that they are sufficiently protected from ETS, which is a health hazard that is beyond their control.
- I. The \_\_\_\_\_ Tribe finds that smoking prevalence, and therefore the incidence of ETS, is disproportionately higher amongst \_\_\_\_\_ Tribal members at a rate \_\_\_\_\_ (insert data on adult smoking rate for your tribe) \_\_\_\_\_ as compared to \_\_\_\_\_ (insert data on adult smoking rate for your state),

1 putting American Indian non-smokers and children at great risk for the health consequences caused by  
2 ETS exposure.  
3

- 4 J. The \_\_\_\_\_ Tribe finds ETS causes diseases of the respiratory system, which is the leading  
5 cause of hospitalization for American Indians throughout the Northern Plains tribes.  
6
- 7 K. The \_\_\_\_\_ Tribe finds heart disease, of which ETS is a major risk factor, is the leading cause  
8 of death for American Indians throughout the Northern Plains Tribes.  
9
- 10 L. The \_\_\_\_\_ Tribe finds over the entire Indian Health Service (IHS) service population, the  
11 Northern Plains region experiences the highest rate of lung cancer, of which ETS exposure is a significant  
12 risk factor.  
13
- 14 M. The \_\_\_\_\_ Tribe finds the financial burden imposed upon the \_\_\_\_\_ Tribe  
15 health care and IHS systems for direct medical expenditures due to ETS exposure can be significantly  
16 reduced by the provisions of this ordinance.  
17
- 18 N. The \_\_\_\_\_ Tribe finds commercial tobacco disrespects the fundamental cultural traditions of  
19 the Sioux.  
20
- 21 O. The \_\_\_\_\_ Tribe finds that the quality of commercial tobacco products has been  
22 compromised due to the chemical engineering by the tobacco industry. This engineering has contaminated  
23 commercial tobacco with 7,000 chemical additives (such as rat poison, formaldehyde, ammonia, acetone,  
24 arsenic and many more). These chemicals are used to purposefully increase the addictive properties of the  
25 products. As a result, commercial tobacco, whether smoked or chewed, is a highly toxic substance altered  
26 to promote addiction and is linked to disease and death of American Indian people.  
27
- 28 P. The \_\_\_\_\_ Tribe finds that an individual's use of traditional tobacco shall not be restricted.  
29
- 30 Q. The \_\_\_\_\_ Tribe finds and declares that the purposes of this ordinance are (1) to protect the  
31 public health and welfare by prohibiting smoking in public places and places of employment; and (2) to  
32 guarantee the right of nonsmokers to breathe smoke-free air.  
33

### 34 **Section Three. Definitions**

35  
36 The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:  
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- 38 A. "Commercial tobacco" means all forms of commercial tobacco use including but not limited to cigarettes,  
39 cigars, smokeless, electronic cigarettes or any other form of commercial tobacco products.  
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- 41 B. "Traditional tobacco use" as defined by the \_\_\_\_\_ Tribe means \_\_\_\_\_.  
42 Traditional tobacco is never abused because it is in its natural form without additives.
- 43 C. "Indoor area" means all space between a floor and a ceiling that is bounded by walls, doorways, or  
44 windows, whether open or closed, covering more than 50 percent of the combined surface area of the  
45 vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door,  
46 or other physical barrier, whether temporary or permanent.  
47
- 48 D. "Place of Employment" means an area under the control of a public or private employer including, but not  
49 limited to auditoriums; cafeterias; classrooms; conference and public meeting rooms; elevators; employee  
50 lounges; hallways; medical facilities; private offices; restrooms; stairways; vehicles used in whole or in

1 part for work purposes; and work areas. A private residence is not a “workplace” unless it is used as a  
2 child care, adult day care, or health care facility.  
3

4 E. “Public place” means any enclosed area to which the public is permitted or invited, including but not  
5 limited to, aquariums; banks; bars; bingo facilities; child and adult care facilities; common use areas in  
6 apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple  
7 unit residential facilities; convention facilities; educational facilities (both public and private); elevators;  
8 galleries; gaming facilities; health care facilities; hotels and motels excluding designated sleeping rooms  
9 rented to guests; laundromats; libraries; museums; offices; places of public meeting or assembly including  
10 school buildings, service lines, shopping malls, and enclosed sports arenas; polling places; public  
11 restrooms; public transportation vehicles and facilities including buses, taxi cabs, and ticket, boarding, and  
12 waiting areas of public transit depots; reception areas; restaurants and other facilities which provide food  
13 and/or beverage service; retail food production and marketing establishments; retail service  
14 establishments; retail stores; shopping malls; sports arenas; theaters and other facilities used primarily for  
15 exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances; veteran,  
16 fraternal, and similar clubs; and waiting rooms.  
17

18 F. “Smoking” of commercial tobacco means inhaling, exhaling, burning, carrying or possessing any lighted or  
19 heated commercial tobacco product, including but not limited to cigars, cigarettes, pipe tobacco, hookah  
20 pipes, or using any battery operated “Electronic cigarettes” or other gadget oral smoking devices promoted  
21 with the purpose of circumventing public anti-smoking laws.  
22

23 G. “Secondhand smoke” means the particulate matter, gases, and other by-products of combustion emitted  
24 from a lighted pipe, the lit end of a cigarette or cigar, or an other form of commercial tobacco and also the  
25 exhaled by-products of tobacco combustion previously inhaled during the smoking of a pipe, cigarette, or  
26 cigar, or any other form of commercial tobacco.  
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#### 28 **Section Four. Prohibition of Smoking in Enclosed Public Places**

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30 The smoking of commercial tobacco products shall be prohibited in all enclosed public places within the  
31 \_\_\_\_\_ Reservation. This does not include a private residence, unless it is used as a child care,  
32 adult day care, or health care facility.  
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#### 34 **Section Five. Prohibition of Smoking in Places of Employment**

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36 A. The smoking of commercial tobacco products shall be prohibited in all enclosed places of employment  
37 within the \_\_\_\_\_ Reservation. This does not include a private residence, unless it is used as  
38 a child care, adult day care, or health care facility.  
39

40 B. This prohibition on the smoking of commercial tobacco products shall be communicated to all existing  
41 employees both orally and in writing by the effective date of the Article and to all prospective employees  
42 upon their application for employment. This will be the responsibility of the owner, manager, operator, or  
43 employee of the establishment.  
44

#### 45 **Section Six. Reasonable Distance**

46  
47 The smoking of commercial tobacco products is prohibited within 50 feet of outside entrances, operable  
48 windows, and ventilation intakes (such as air conditioners) of enclosed areas where smoking is prohibited  
49 (enclosed public places and places of employment), so as to ensure that secondhand smoke does not enter  
50 those areas.  
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**Section Seven. Public Awareness**

- A. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.
- B. All ashtrays, matchbooks, or similar smoking equipment intended for use on the premises shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager or other person having control of the area.

**Section Eight. Where Commercial Tobacco Use is Not Regulated**

Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the restrictions of this Act.

- A. Private residences unless made available to the general public for commercial business uses, including but not limited to child, adult or health care facilities.
- B. Outdoors, except as described in Section Six.
- C. Hotel or motel sleeping rooms rented to guests, provided the rooms are designated as smoking areas.
- D. The \_\_\_\_\_ Tribe hereby continues to recognize the fundamental use of traditional tobacco.

**Section Nine. Enforcement**

- A. This Article shall be enforced by Law Enforcement or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the \_\_\_\_\_ Tribe of South Dakota.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the appropriate Law Enforcement.
- D. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform any person violating this Article of the appropriate provisions thereof, and shall ask the person to refrain from smoking. If the person does not refrain from smoking after being asked to do so, the owner, manager, operator, or employee shall ask the person to leave. If the person refuses to leave, the owner, manager, operator, or employee shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.
- E. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- F. In addition to the remedies provided by the provisions of this Section, Law Enforcement or any person aggrieved by the failure of the owner, operator, manager or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**Section Ten. Civil Violations**

- 1 A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall pay a  
2 civil penalty not exceeding fifty dollars (\$50) for each violation.  
3
- 4 B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and  
5 who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by a fine  
6 not exceeding one hundred dollars (\$100) for each violation.  
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- 8 C. In addition to the fines established by the Section, violation of this Article by a person who owns,  
9 manages, operates, or otherwise controls a public place or place of employment may result in the  
10 suspension or revocation of any permit or license issued to the person for the premises on which the  
11 violation occurred.  
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- 13 D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by Law  
14 Enforcement by restraining order, preliminary and permanent injunction, or other means provided for by  
15 law, and the \_\_\_\_\_ Tribe may take action to recover the costs of the nuisance abatement.  
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- 17 E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.  
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- 19 F. Ignorance of the requirements of this ordinance is not a defense to the civil penalties.  
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21 **Section Eleven. Public Education**

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23 The (insert appropriate tribal employee title, ex. Health Educator) shall engage in a continuing  
24 program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to  
25 guide owners, operators, and managers in their compliance with it. The program may include publication of a  
26 brochure for affected business and individuals explaining the provisions of this ordinance.  
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28 **Section Twelve. Liberal Construction**

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30 This Article shall be liberally construed so as to further its purposes.  
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32 **Section Thirteen. Amendment**

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34 This Act shall not be amended except by recommendation by the \_\_\_\_\_ Committee of the  
35 \_\_\_\_\_ Tribe.  
36

37 **Section Fourteen. Effective Date.**

38 This Article shall be effective 30 days following the date of this Article's adoption.