

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0174-21_

SPONSOR: Daniel E. Tso

TITLE: An Action Relating to Health, Education and Human Services, Law and Order, Budget and Finance and Naabik'iyáti Committees and the Navajo Nation Council; Enacting the Navajo Nation Nilch' Éí Bee Ílíná – Air is Life Act of 2021

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0174-21

DATE: August 18, 2021

TITLE OF RESOLUTION: AN ACT RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ENACTING THE NAVAJO NATION NILCH' ÉÍ BEE ÍÍNÁ – AIR IS LIFE ACT OF 2021

PURPOSE: This resolution, if adopted, would enact the Navajo Nation Nilch' Éí Bee Ííná – Air is Life Act of 2021.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: 18 days
Website Posting Time/Date:
Posting End Date: August 24, 2021
Eligible for Action: August 25, 2021

Health Education & Human Services Committee
Thence
Law & Order Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – THIRD YEAR, 2021

3 INTRODUCED BY

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5
6
7
8 TRACKING NO. 0174-21

9
10 AN ACT

11 RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND
12 ORDER, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES AND THE
13 NAVAJO NATION COUNCIL; ENACTING THE NAVAJO NATION NILCH' ÉÍ BEE
14 ÍÍŃÁ – AIR IS LIFE ACT OF 2021

15
16 BE IT ENACTED:

17
18 **SECTION ONE. AUTHORITIES**

- 19 A. The Health, Education and Human Services Committee of the Navajo Nation Council
20 is empowered to establish Navajo Nation policy, promulgate rules and regulations
21 governing health, social services, education, human services and general government
22 services of the Navajo Nation and its tribal organizations, entities and enterprises,
23 among other duties and responsibilities. 2 N.N.C. §401(B)(1). The Committee further
24 has oversight responsibilities over colleges within the Navajo Nation. 2 N.N.C.
25 §401(C)(3).
- 26 B. The Law and Order Committee of the Navajo Nation Council reviews and makes
27 recommendations to the Navajo Nation Council on proposed amendments to the
28 Navajo Nation Code. 2 N.N.C. §601(B)(14).
- 29 C. The Budget and Finance Committee of the Navajo Nation Council “coordinate[s] and
30 review[s] all fiscal, financial and investment activities of the Navajo Nation and its

1 enterprises, as well as other agencies, federal, state, regional and private, expending or
2 seeking to expend funds within the Navajo Nation or for the benefit of the Navajo
3 People.” 2 N.N.C. § 301(B)(5).

4 D. The Naabik'iyáti' Committee of the Navajo Nation Council reviews proposed resolutions
5 requiring final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).

6 E. The Navajo Nation Council, as governing body of the Navajo Nation, sets policy for
7 the Navajo Nation. 2 N.N.C. § 102(A).

8
9 **SECTION TWO. FINDINGS**

10 A. The Navajo Nation is committed to improving the health and welfare of the people
11 living on the Navajo Nation, to promoting a healthy environment, and has an obligation
12 to enact policies that protect people from harm.

13 B. The use of all commercial tobacco products (e.g., conventional cigarettes and pipes,
14 cigars, chew, hookah, and e-cigarettes) is harmful to the natural and sacred elements of
15 air and earth. The use of all commercial tobacco products is disrespectful to the Diné
16 fundamental traditions and thus harms our environment resulting in disharmony with
17 the mind, body, spirit, and earth. “Air” embodies life. 1 N.N.C, §201. The rights and
18 freedoms of people to use the sacred elements of life will not be impeded and will be
19 protected and preserved for they are the foundation of our spiritual ceremonies and the
20 Diné way of life. 1 N.N.C, §205(F). It is the right and freedom of the people that every
21 person is respected, honored, and protected with a healthy physical and mental
22 environment, free from all abuse. 1 N.N.C, §204(E).

23 D. Secondhand commercial tobacco smoke has been classified by the U.S. Environmental
24 Protection Agency as a Group A carcinogen. This classification is reserved for
25 chemicals or compounds, such as asbestos and benzene, which have been shown to
26 cause cancer in humans.

27 E. There are no safe levels of exposure to secondhand commercial tobacco smoke as
28 reported by the U.S. Surgeon General in 2006. There is no available adequate
29 ventilation technology based upon scientific studies that can ensure the protection and
30 prevention of secondhand commercial tobacco smoke health-related illnesses.

- 1 F. There are many risks associated with e-cigarettes as reported by the U.S Surgeon
2 General. The aerosol from e-cigarettes is not harmless. It can contain harmful and
3 potentially harmful chemicals, including nicotine; ultrafine particles that can be inhaled
4 deep into the lungs; flavoring such as diacetyl, a chemical linked to a serious lung
5 disease; volatile organic compounds such as benzene, which is found in car exhaust;
6 and heavy metals, such as nickel, tin, and lead.
- 7 G. All workers should have a safe workplace so that all workers, as well as nonsmokers
8 including children and elders, can breathe commercial tobacco smoke-free air and be
9 free from the pollution of smokeless commercial tobacco products and dangerous
10 exposure to commercial tobacco thirdhand smoke in public places and workplaces.
- 11 H. Children exposed to secondhand commercial tobacco smoke have an increased risk of
12 asthma, respiratory viral/bacterial infections (e.g., COVID-19), sudden infant death
13 syndrome, developmental abnormalities, and cancer. Secondhand commercial tobacco
14 smoke is particularly hazardous to individuals with chronic diseases (i.e.,
15 cardiovascular disease, diabetes, asthma, and chronic obstructive pulmonary diseases
16 (COPD).
- 17 I. Smoking is linked to an increased risk of developing symptomatic COVID-19.
18 Additionally, current or former smokers are more likely to get severely ill from
19 COVID-19.
- 20 J. According to the 2017 Navajo Youth Risk Behavior Survey, 41% of high school
21 students reported having smoked cigarettes in their lifetime. In addition, 40% of high
22 school students reported having used e-cigarette products in their lifetime.
23 Furthermore, 11% of Navajo high school students reported using smokeless tobacco
24 products compared to the U.S. national high school use at 3.1%.
- 25 K. The cultural, spiritual, and ceremonial use of Dził Nát'oh/ Natural Mountain Smoke is
26 an integral part of Diné life.
- 27 L. Diné cultural teachings about Dził Nát'oh/ Natural Mountain Smoke and its use are of
28 importance to the health, wellness, and welfare of the Diné people.
- 29 M. The ceremonial use of Dził Nát'oh/Natural Mountain Smoke shall not be restricted.
30

1 N. It is in the best interests of the Navajo Nation to amend Title 13 of the Navajo Nation
2 Code for purposes of addressing the health needs of the Navajo people consistent with
3 findings provided herein.

4
5 **SECTION THREE. ENACTING THE NAVAJO NATION NILCH' ÉÍ BEE ÍÍNÁ –**
6 **AIR IS LIFE ACT OF 2021**

7 The Navajo Nation Council hereby enacts, within Title 13 of the Navajo Nation Code,
8 the Navajo Nation Nilch' éí Bee Ííná - Air is Life Act of 2021 as follows:

9
10
11 **TITLE 13. HEALTH AND WELFARE**

12 **CHAPTER 2. COMMERCIAL TOBACCO REGULATION AND LIABILITY**

13
14 **§ 421. Title**

15 This Act shall be known as the “Navajo Nation Nilch' éí Bee Ííná - Air is Life Act of
16 2021.”

17
18 **§ 422. Purpose**

19 A. The purpose of this Act is to promote Navajo fundamental traditional views on health
20 and wellness. Breathing secondhand commercial tobacco smoke in public places and
21 workplaces are harmful.

22 B. This Act prohibits the use of commercial tobacco products (e.g., conventional
23 cigarettes and pipes, cigars, e-cigarettes, and smokeless tobacco products) in enclosed,
24 indoor workplaces and public places and within a distance of 25 feet from any indoor
25 area where commercial tobacco use are prohibited within the Navajo Nation. This Act
26 does not restrict commercial tobacco use in private residences, unless such are used or
27 otherwise operated for childcare, adult day care, health care facility, or home office.
28 This Act does not prohibit the use of ceremonial tobacco. This Act does not prohibit
29 the use of commercial tobacco products for ceremonial use and/or cultural settings and
30 purposes within the Navajo Nation.

1 C. To ensure compliance, this Act provides penalties for violations, including civil
2 penalties.

3 D. The Act applies to all facilities and activities within the interior boundary of the Navajo
4 Nation or areas within the jurisdiction of the Navajo Nation.

5
6 **§ 423. Definitions**

7 The following definitions apply to this Act:

8 A. “Ceremonial tobacco” means Dził Nát’oh/Natural Mountain Smoke, other natural
9 untreated tobacco, natural plant, and fresh plants which are used in ceremonial and/or
10 cultural settings and purposes.

11 B. “Chew tobacco” or “smokeless tobacco” means any commercial tobacco product that
12 consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in
13 the oral or nasal cavity.

14 C. “Childcare” means caring for one or more children when the caregiver is not the parent
15 or legal guardian of such children.

16 D. “Commercial tobacco” means: 1) any product containing, made of, or derived from
17 commercial tobacco or nicotine that is intended for human consumption or is likely to
18 be consumed, whether inhaled, absorbed, or ingested by any other means, including
19 but not limited to, a conventional cigarette, a cigar, commercial pipe tobacco,
20 smokeless tobacco, chewing tobacco, snuff, or snus; 2) any electronic smoking device
21 as defined in this section, and any substances that may be aerosolized or vaporized by
22 such device, whether or not the substance contains nicotine; or 3) any component, part,
23 or accessory of 1) or 2), whether or not any of these contains commercial tobacco or
24 nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps,
25 hookahs, and pipes. “Commercial tobacco product” does not mean drugs, devices, or
26 combination products authorized for sale by the U.S. Food and Drug Administration,
27 as those terms are defined in the Federal Food, Drug, and Cosmetic Act, nor does it
28 mean ceremonial use.

- 1 E. “Electronic smoking device” means any device that may be used to deliver any
2 aerosolized or vaporized substance to the person inhaling from the device, including,
3 but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
- 4 F. “Employee” means any person who performs any service on a full-time, part-time, or
5 contracted basis whether or not the person is denominated an employee, independent
6 contractor or otherwise and whether or not the person is compensated or is a volunteer.
- 7 G. “Employer” means a person, business, partnership, association, limited liability
8 company, corporation, trust, non-profit entities, the Navajo Nation and its enterprises,
9 entities, and political subdivisions that employs the services of one or more individual
10 persons.
- 11 H. “Enclosed area” means all space between a floor and a ceiling that is bounded by walls,
12 doorways, or windows, whether open or closed, covering more than 50 percent of the
13 combined surface area of the vertical planes constituting the perimeter of the area. A
14 wall includes any retractable divider, garage door, or other physical barrier, whether
15 temporary or permanent.
- 16 I. “Navajo Fundamental tradition” means immutable laws that predate regulation of
17 modern commercial tobacco use. Navajo fundamental tradition resonates with Diné
18 Natural Law. It declares and teaches that the four sacred elements of life, light/fire,
19 water and earth/pollen in all their forms must be respected, honored and protected, for
20 they sustain life.
- 21 J. “Private Residence” means a house or other dwelling, which is under the exclusive
22 control of one or more private individuals who own or lease the dwelling. A private
23 residence is not a private place when an area in which work is performed in a private
24 residence is a place of employment during hours of operation if: (1) the homeowner
25 uses the area exclusively and regularly as a principal place of business and has one or
26 more on-site employees; or (2) the homeowner uses the area exclusively and regularly
27 as a place to meet or deal with patients, clients, or customers in the normal course of
28 the homeowner's trade or business.
- 29 K. “Public place” means any enclosed area to which the public is invited or in which the
30 general public is permitted, including, but not limited to airports; auditoriums; banks;

1 bars; any other food or liquor establishment; bingo halls, casinos, and other gaming
2 facilities; common areas of rental apartment buildings or other multifamily housing;
3 educational facilities; entertainment facilities; hospitals; hotels/motels; laundromats;
4 meeting rooms; Navajo Nation offices, buildings, and multi-housing; Navajo Nation
5 enterprises and entities offices and buildings; nursing homes, elderly group homes,
6 and assisted living facilities; public transportation vehicles and facilities; reception
7 areas; restaurants; retail stores and other commercial establishments; sports facilities;
8 theaters; and waiting rooms. "Public place" also includes the following outdoor areas:
9 cultural public gathering places or events such as Pow Wows; Navajo Nation parks and
10 cemeteries; and outdoor sports facilities.

11 L. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar,
12 conventional cigarette or pipe, or any other lighted, heated, or activated commercial
13 tobacco, and nicotine plants intended for inhalation whether natural or synthetic.
14 "Smoking" also means the use of an electronic smoking device. "Smoking" does not
15 include ceremonial use.

16 M. "Secondhand commercial tobacco smoke" means the particulate matter, gases, and
17 other byproducts of combustion emitted from a lighted pipe, the lit end of a cigarette,
18 cigar, e-cigarette, or any other form of commercial tobacco and the exhaled by-products
19 of tobacco combustion previously inhaled during the smoking of a pipe, cigarette, cigar,
20 e-cigarette, or any other form of commercial tobacco.

21 N. "Sports Facilities" means enclosed and open areas of sports pavilions, stadiums, arenas,
22 gymnasiums, health spas, boxing arenas, rodeo arenas, golf courses, amusement parks,
23 swimming pools, roller & ice rinks, billiard halls, bowling alleys, and other similar
24 places where members of the general public assemble to engage in physical exercise,
25 participate in athletic competition or witness sporting events.

26 O. "Workplace" means any enclosed area in its entirety under the control of a public or
27 private employer where workers, regardless of whether they are employees,
28 contractors, or volunteers, perform work or use incidental to their work, including
29 office buildings, work areas, office buildings, work areas, auditoriums, employee
30 lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias,

1 hallways, stairs, elevators, escalators, health care facilities, private offices, break areas,
2 if they are enclosed areas. Vehicles for work shall be considered workplaces.

3
4 **§ 424. Prohibition Against the Use of Commercial Tobacco Products in Public Places**
5 **and Workplaces in the Navajo Nation**

6 The Navajo Nation hereby prohibits the use of all commercial tobacco products (e.g.,
7 conventional cigarettes and pipes, cigars, hookah, electronic-cigarettes, and smokeless
8 tobacco) in all enclosed, indoor workplaces and public places and within a distance of 25
9 feet from any indoor area where commercial tobacco products are prohibited within the
10 Navajo Nation, except as allowed in Section 425.

11
12 **§ 425. Where Commercial Tobacco Use and Smoking are Not Regulated**

13 Notwithstanding any other provision of this Act to the contrary, the following uses shall
14 not be subject to the restrictions of this Act:

- 15 A. Private residences, unless made available to the general public for commercial uses,
16 including but not limited to childcare, health care, or other businesses open to the
17 general public as defined under Section 423 of this Act.
- 18 B. While the Navajo Nation recognizes the fundamental use of Dził Nát'oh / Natural
19 Mountain Smoke and other natural plants for bona fide traditional ceremonial purposes,
20 this Act does not prohibit the use of commercial tobacco products for ceremonial use
21 and/or cultural settings and purposes within the Navajo Nation.

22
23 **§ 426. Posting of Signs**

24 Within the Navajo Nation, in coordination with the Navajo Department of Health,
25 approved signs shall be conspicuously posted in every building and entrance or other area
26 where the use of commercial tobacco products are prohibited by this Act. Any and all
27 entities having control of such buildings or other areas shall publicly post warning signs,
28 including decals of internationally recognized graphic displays. The signs in Diné bizaad
29 (Navajo language) and English shall clearly state or display that commercial tobacco use
30

1 in any form are prohibited, and must designate the established phone number, e-mail
2 address, or postal mailing address to report violations.

3
4 **§ 427. Commercial Tobacco-Free and Smoke-Free Workplace**

5 A. It shall be the responsibility of employers to provide a commercial tobacco free and
6 smoke-free workplace for all employees in accordance with this Act. Within 90 days
7 of the effective date of this Act each employer having a workplace located within the
8 territorial jurisdiction of the Navajo Nation shall adopt, implement, make known, and
9 maintain a written commercial tobacco free policy in accordance with this Act.

10 B. The Nítch' éi Bee Ííńá - Air Is Life Act shall be communicated to all employees within
11 four weeks of the employer's adoption of such required policy and to all newly hired
12 employees in accordance with this Act.

13 C. All employers shall provide a written copy of the Nítch' éi BeeÍíńá—Air Is Life Act
14 to all current employees and newly hired employees on the first day of employment.

15 D. A person or employer that has control of an area in which commercial tobacco use are
16 prohibited by this chapter shall direct anyone who is using commercial tobacco
17 products in violation of this chapter to extinguish the product being used. If they do not
18 stop using the commercial tobacco product, the person or employer shall refuse any
19 service and shall immediately ask them to leave the property. If the ejection is from a
20 public event, it shall be for the duration of the public event.

21 E. There shall be no retaliation against any person exercising their rights as outlined
22 within this Act. No employer may discharge, refuse to hire, penalize, discriminate
23 against, or in any manner retaliate against employee, applicant for employment, or
24 customer because the employee, applicant, or customer exercises any rights because
25 that employee exercises any rights afforded by this law or reports or attempts to
26 prosecute a violation of this law.

27 F. All proprietors, employers, or other person or entity in charge of a public place, public
28 meeting, public transportation, or place of employment must not provide smoking
29 equipment, including ashtrays or matches, in areas where smoking is prohibited.
30

1 G. The Navajo Department of Health shall provide cessation materials developed by the
2 Navajo Department of Health and Indian Health Service to employers and to any citizen
3 who requests them.

4
5 **§ 428. Enforcement**

6 A. The Navajo Department of Health and Navajo Division of Public Safety shall enforce
7 this Act and be responsible for issuance of citations for violation of this Act.

8 B. The Navajo Department of Health and Navajo Division of Public Safety shall establish
9 a designated telephone number, e-mail, and postal mailing address to report violations.
10 Any citizen who desires to register an oral or written complaint under this Act may
11 initiate a complaint through the designated telephone number, e-mail, or postal mailing
12 address.

13 C. Notice of the provisions as set forth in this Act shall be given to business license
14 applicants for business licenses on the Navajo Nation.

15 D. In addition to the remedies provided by the provisions of this Act, any person aggrieved
16 by the failure of the owner, operator, manager, or other person in control of a public
17 place, or workplace may apply for injunctive relief to enforce those provisions in any
18 district court of the Navajo Nation.

19 E. All proprietors, business owners, managers, operators, or organizations of any
20 establishment regulated by this Article may be held civilly liable for failure to enforce
21 the provisions herein unless they have taken reasonable steps toward compliance. A
22 business owner, manager, or employee of a place regulated by this Act shall inform
23 any person who is using commercial tobacco products that is in violation of this law
24 that use of commercial tobacco products are illegal and request that the illegal use of
25 commercial tobacco products stop immediately, if the person does not refrain from
26 using these products after being asked to do so, ask the person to leave. If the person
27 refuses to leave, the proprietor, person, or entity in charge shall handle the situation
28 consistent with lawful methods for handling other persons acting in a disorderly manner
29 or as a trespasser, and in addition, the person using commercial tobacco products
30 illegally may be fined a civil penalty. A proprietor, person, or entity in charge of a

1 public place, public meeting, place of employment, or public transportation must not
2 retaliate or take adverse action against an employee or anyone else who, in good faith,
3 reports a violation of this Act to the proprietor or person in charge of the public place,
4 public meeting, place of employment, or public transportation, or to the commissioner
5 of health or other designee responsible for enforcing.

6 F. If the Navajo Department of Health has reason to believe that a violation of this law
7 exists, the Department may enter upon and into any public place or workplace for
8 purposes of determining compliance with this law. However, the Department may
9 inspect public places where food or alcohol is served at any time to determine
10 compliance with this law.

11 G. The issuance of a citation may be appealed to the Office of Hearings and Appeals
12 within ten calendar days of the issuance of the citation.

13 H. Subject to the approval of the Health, Education and Human Services Committee of
14 the Navajo Nation Council, the Navajo Department of Health shall establish an
15 infraction/penalty schedule and shall be authorized to promulgate rules and regulations
16 for the implementation and enforcement of this law.

17
18 **§ 429. Civil Penalties**

19 A. Any proprietor, person, or entity that owns, leases, manages, operates, or otherwise
20 controls the use of an area in which commercial tobacco use is prohibited under this
21 Act, and that knowingly fails to comply with the Act, is guilty and in violation of this
22 Act and subject to administrative citation. Because commercial tobacco use is an
23 addiction, the encouragement of commercial tobacco cessation services will be
24 recommended to those who violate this Act.

25 B. Each violation of this Act occurs shall be considered a separate and distinct violation.

26 C. Repeated violation of this Act by a person who owns, manages, operates, or otherwise
27 controls a public place or workplace may result in a suspension or revocation of any
28 permit or license issued to the person for the premises on which the violation occurred.
29
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1 D. A suspension or revocation of permit or license shall not be lifted until the violation is
2 brought into compliance in accordance with regulations established by the Navajo
3 Department of Health.

4 E. The Navajo Department of Health shall have the authority to increase the initial civil
5 penalties set forth herein after reasonable notice to the public.

6 F. Any violation of this chapter may be remedied by a civil action brought by the Navajo
7 Nation Department of Justice, including, but not limited to, administrative or judicial
8 nuisance abatement proceedings, civil code enforcement proceedings, and suits for
9 injunctive relief.

10 11 **§ 430. Public Education**

12 The Navajo Department of Health shall provide public health information, education,
13 and awareness regarding the purposes and requirements of this Act. The Department shall
14 conduct any and all prevention, education, and cessation services to address this act shall
15 including publications and disseminations in Diné bizaad (Navajo language) and English
16 of using visual/audio, educational materials, to explaining the provisions of this Act to
17 affected businesses, organizations, entities, and governmental agencies shall be conducted
18 by the program listed above. The Department may establish an internet website to assist in
19 its public education.

20 21 **§ 431. Liberal Construction**

22 This Act shall be liberally construed to further its purposes.

23 24 **§ 432. Amendment**

25 This Act shall not be repealed or amended except by the Navajo Nation Council.

26 27 **SECTION FOUR. EFFECTIVE DATE**

28 The provisions of this Act shall become effective in accord with 2 N.N.C §221(B).

29 30 **SECTION FIVE. CODIFICATION**

1 The provisions of this Act which add or amend sections of the Navajo Nation Code
2 shall be codified by the Office of Legislative Counsel.

3
4 **SECTION SIX. SAVINGS CLAUSE**

5 Should any provision of this Act be determined invalid by the Navajo Nation Supreme
6 Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation
7 Supreme Court, or any other court of competent jurisdiction, those portions of the Act
8 which are not determined invalid shall remain the law of the Navajo Nation.

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