



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #PHX-16-022

### **TITLE: To Urge Repeal of the “Sunset Clause” within the Grandfathering Provision in the National Indian Gaming Commission’s Class II Technical Standards, 25 C.F.R. Part 547**

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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**, Indian Tribes are governments that pre-date the United States and, through the Indian Commerce Clause and the Treaty Clause, the Constitution of the United States recognizes the status of Indian Tribes as sovereigns; and

**WHEREAS**, in treaties, the United States pledged to protect Indian Tribes and guaranteed the right of Tribal self-government; and

**WHEREAS**, in *California v. Cabazon* (1987), the Supreme Court reaffirmed the inherent right of Indian Tribes to conduct Indian gaming as an essential element of Tribal self-government, free from State interference; and

**WHEREAS**, in enacting the Indian Gaming Regulatory Act (the “IGRA”), Congress acknowledged and confirmed the inherent sovereign powers of Indian tribes to be the primary regulators of their gaming operations, and established the National Indian Gaming Commission (the “NIGC”) as an oversight agency charged with monitoring Class II gaming activities conducted under IGRA; and

**WHEREAS**, tribal governments are responsible for providing the day-to-day regulation of their gaming operations and ensuring that all gaming is conducted in accordance with applicable gaming laws and regulations, including the federal minimum internal control standards and technical standards applicable to Class II gaming activities as set forth in 25 C.F.R. Parts 543 and 547; and

**WHEREAS**, under the current NIGC regulations, certain Class II gaming systems manufactured before November 10, 2008, must either become fully compliant or be permanently removed from operation by November 10, 2018, pursuant to the “sunset clause” in the grandfathering provision in 25 C.F.R. Part 547; and

**WHEREAS**, most, if not all, such grandfathered Class II gaming products have been operating without any safety or integrity issues for many years, and there has been no evidence that grandfathered Class II gaming systems pose a potential or actual risk to the public health and safety, nor is there a basis for concluding that a compelling public need exists to remove Class II gaming systems from operation simply because they were manufactured prior to November 10, 2008; and

**WHEREAS**, implementation of the sunset clause would impose a disproportionate hardship on those tribal governments that are predominantly or wholly reliant on Class II gaming systems, in addition to invalidating certain Class II gaming components previously deemed lawful; and

**WHEREAS**, Class II gaming is the backbone of the Indian gaming industry and, for some tribes, represents the totality of their gaming activities; and

**WHEREAS**; the continued success of Class II gaming depends on a regulatory framework that is fair, reasonable, and consistent with IGRA’s goal of promoting tribal economic development, self-sufficiency, and strong tribal government.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress Of American Indians urges the NIGC to repeal the sunset clause and revise the grandfathering provision in the NIGC Class II Technical Standards to defer to tribal gaming regulatory agencies to establish and enforce Class II technical standards and otherwise regulate the use and operation of Class II gaming systems in tribal gaming facilities; and

**BE IT FURTHER RESOLVED**, that the NCAI calls upon the NIGC to immediately engage in full and meaningful consultation to develop the regulatory amendments needed to implement the repeal of the sunset clause from the grandfathering provision in the Class II Technical Standards; 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 Annual Convention of the National Congress of American Indians, held at the Phoenix Convention Center, October 9 to October 14, 2016, with a quorum present.

  
Brian Cladoosby, President

**ATTEST:**

  
Aaron Payment, Recording Secretary