

WAGANAKISING ODAWAK STATUTE NO. 1999008

**LIQUOR CONTROL STATUTE OF THE
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS**

SECTION I: TITLE

This Statute shall be known as the "Liquor Control Statute." This Statute repeals and replaces the Liquor Control Statute enacted on October 26, 1997 (Waganakising Odawak Statute No. 1997021).

SECTION II: AUTHORITY

This statute is enacted pursuant to the Act of August 15, 1953. (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. § 1161) and Article VII, Section 1 (g) and (m) of the Constitution and Bylaws of the Little Traverse Bay Bands of Odawa Indians.

SECTION III: PURPOSE

This statute regulates the consumption, delivery and/or sale of alcoholic beverages within the Indian country lands of the Little Traverse Bay Bands of Odawa Indians, for the purpose of protecting the health, safety and welfare of the Tribe and its members as well as the general public.

SECTION IV: INTERPRETATION

This statute shall be deemed an exercise of the police and regulatory powers of the Little Traverse Bay Bands of Odawa Indians to promote tribal self-determination and to protect the public welfare, and all provisions of this statute shall be liberally construed for the accomplishment of these purposes.

SECTION V: DEFINITIONS

The following definitions apply in this statute, unless the context otherwise requires:

- A. “Alcoholic beverage” means any spirituous, vinous, malt or fermented liquor, liquors and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing one-half of one percent ($\frac{1}{2}$ of 1%) or more alcohol by volume, which are fit for use for beverage purposes.
- B. “Liquor” means any alcoholic drink.
- C. “Person” means a natural person, firm, association, corporation or other legal entity.
- D. “Tribe or Bands” means the Little Traverse Bay Bands of Odawa Indians.
- E. “Tribal Council” means the governing body of the Little Traverse Bay Bands of Odawa Indians, which body is also referred to as the Board of Directors in the Tribe’s Constitution and Bylaws.
- F. “Secretary” means the Secretary of the United States Department of the Interior.
- G. “Indian Country of the Tribe” means, for purposes of this Statute, all lands within Emmet and Charlevoix Counties, Michigan which are now or hereafter owned by the Bands or held in trust for the Bands by the United States
- H. “State” means the State of Michigan.
- I. “Tribal representatives” means the Tribal administrator, a program director or manager of a subsidiary or commercial enterprise of the Tribe.
- J. “Tribal license” means an official action by the Tribal Council which authorizes the sale of alcoholic beverages for consumption either on the premises and/or away from the premises.
- K. “Premises” means specified locations within the Indian Country of the Tribe, as described in a license issued by the Tribal Council.

SECTION VI: GENERAL PROVISIONS

- A. **Policy.** It is the policy of the Tribe that only the Tribe and its subsidiary enterprises may engage in the sale of alcoholic beverages within the Indian Country of the Tribe. Therefore, no person other than the tribal government or its subsidiary enterprises may deliver for profit, sell or

trade for profit any alcoholic beverages within the Indian Country of the Tribe.

B. On-premises consumption. No person shall sell, trade, transport, manufacture, use, or possess any alcoholic beverage, nor any other substance whatsoever capable of producing alcoholic intoxication, intended for consumption on the premises, nor aid nor abet any Indian or non-Indian person in any of the foregoing, except in compliance with the terms and conditions of this Statute as well as applicable federal Indian liquor laws, and applicable provisions of the laws of the State of Michigan and regulations administered by its Liquor Control Commission.

C. Off-premises consumption. No person shall sell, trade, transport, manufacture, use, or possess any alcoholic beverage, nor any other substance whatsoever capable of producing alcoholic intoxication, intended for consumption away from the premises, nor aid nor abet any Indian or non-Indian person in any of the foregoing, except in compliance with the terms of this statute, applicable federal Indian liquor laws, and applicable provisions of the laws of the State of Michigan and regulations administered by its Liquor Control Commission.

D. Application of State law. Unless otherwise contradicted by this Statute or other Tribal law, laws of the State and regulations of its Liquor Control Commission shall pertain to sale, trade, manufacture, use or possession of alcoholic beverages within the Indian Country of the Tribe. Provided that in no event shall any laws of the Tribe pertaining to liquor regulation be construed to be less stringent than the laws and regulations of the State. Nothing in this section or Statute is intended to allow the State to exercise any jurisdiction over the Tribe, its members, or any persons or transactions within the Indian Country of the Tribe that the State would not otherwise have. Nothing in this section or statute is intended to in any way waive or limit the sovereign immunity of the Tribe.

E. Condition of tribal license. Any tribal enterprise having a license for the sale of alcoholic beverages issued by the Tribal Council shall be required to comply, as a condition of retaining such license, with any applicable tribal laws and ordinances and shall further observe the laws of the State regarding times of sale and minimum ages of persons to whom sales may be made.

SECTION VII: TRIBAL LICENSES FOR THE SALE OF ALCOHOLIC BEVERAGES

- A.** Upon application submitted in writing by tribal representatives, the Tribal Council may issue a license authorizing (1) sale of alcoholic beverages (or specific types thereof) solely for consumption on the premises, and/or (2) sale of alcoholic beverages (or specific types thereof) intended for consumption away from the premises.
- B.** All applications for such licenses must be submitted to the Tribal Council in writing, setting forth the purpose for the license together with the description of the premises upon which such sale is proposed to take place.
- C.** The Tribal Council shall have the power and authority to determine, in its sole discretion, the number and type of licenses for the sale of alcoholic beverages that may from time-to-time be issued pursuant to this ordinance.
- D. Fees.** The Tribal Council may set reasonable fees for the issuance of licenses under this Statute.
- E. Duration of License.** Unless sooner canceled, every license issued by the Tribal Council shall expire at midnight on the 31st day of December. Applications for renewal must be submitted to the Tribal Council on or before November 15 of the preceding year. The Tribal Council will act on all renewal applications on or before December 15.

SECTION VIII: VIOLATIONS

- A.** Any Indian person found to be in violation of the provisions of this Statute shall be deemed guilty of a criminal offense and may be prosecuted in Tribal Court in an action brought by the Tribal Prosecutor. Any such criminal proceeding against an Indian person shall comply with all due process and equal protection requirements of the Indian Civil Rights Act, which shall include at a minimum adequate notice, a full and fair hearing, and the right to call and cross examine witnesses. Upon conviction, the Tribal Court may impose a sentence of a fine not greater than \$1,000.00 and/or a jail term not exceeding sixty (60) days.

B. Nothing in this statute shall be construed to require or authorize the criminal trial and punishment by the Tribal Court of any non-Indian except to the extent allowed under Federal law. In general, when any provision of this Statute is violated by a non-Indian, her or she shall be referred to state and/or Federal authorities for prosecution under applicable law. However, violations of this Statute by a non-Indian shall also be deemed a civil offense against the Tribe and a civil action against non-Indian violators may proceed in Tribal Court to the extent allowed under Federal law. In such civil action brought in Tribal Court by the Tribal Prosecutor, the Tribal Court may impose a fine not greater than \$1,000.00 and/or exclusion from the Tribe's reservation, as authorized in Article VII, Section 1 (h) of the Tribe's Constitution. Any such civil proceeding against a non-Indian shall comply with all due process and equal protection requirements of the Indian Civil Rights Act, which shall include at a minimum adequate notice, a full and fair hearing, and the right to call and cross examine witnesses.

C. Revocation of License. The Chairperson of the Tribal Council, or the Tribal Prosecutor may, for alleged violation of this Statute, institute and maintain an action in the Tribal Court in the name of the Tribe to revoke or suspend a license issued under this Statute. Such proceeding against the holder of the license in question shall comply with all due process and equal protection requirements of the Indian Civil Rights Act, which shall include at a minimum adequate notice, a full and fair hearing, and the right to call and cross examine witnesses. Upon final judgment issued against the defendant, the Tribal Court may order the forfeiture of any license issued pursuant to this Statute, and all rights of the licensee to keep or sell alcoholic beverages under this Statute shall be suspended or terminated as the case may be. Pending final judgment the Tribal Court may issue orders for preliminary injunction if the plaintiff can demonstrate a likelihood of success and irreparable injury to the Tribe or its members if such orders are not issued.

SECTION IX: EFFECTIVE DATE

The effective date of this statute shall be the date it is certified by the Secretary or his/her delegate and published in the Federal Register in accordance with Title 18 of the United States Code, Section 1161.

SECTION X: SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians or applicable Federal law, such phrase, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

Certification

As Tribal Chairman and Tribal Secretary, the undersigned certify that this LIQUOR CONTROL STATUTE was duly enacted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on June 27, 1999, at which a quorum was present, by a vote of 7 in favor, 0 opposed, and 0 abstentions as recorded by this roll call.

	In Favor	Opposed	Abstained	Absent
George Anthony	<u>✓</u>	_____	_____	_____
Frank Ettawageshik	<u>✓</u>	_____	_____	_____
Dorothy Gasco	<u>✓</u>	_____	_____	_____
Barry Laughlin	<u>✓</u>	_____	_____	_____
Shirley Oldman	<u>✓</u>	_____	_____	_____
Rita Shananaquet	<u>✓</u>	_____	_____	_____
Alice Yellowbank	<u>✓</u>	_____	_____	_____

Date: 6-27-99

Frank Ettawageshik, Tribal Chairman

Barry Laughlin, Tribal Secretary