WAGANAKISING ODAWAK STATUTE 2013-005
WORKERS' COMPENSATION STATUTE

SECTION I. SHORT TITLE

This Statute shall be entitled "Workers' Compensation" Statute. This statute rescinds and replaces any and all previous Statutes, Resolution, Regulations and/or policies related to this subject matter.

SECTION II. PURPOSE

To authorize such employment benefits for employees of the Tribe and its sub-entities to which the employee would be entitled to for accidental injuries sustained by the worker arising out of and in the course of their employment which require medical services or result in disability or death.

SECTION III. DEFINITIONS

A. "Attending Physician" means the physician, or other medical care provider that is responsible for the planning, provision and oversight of medical treatment to a worker who sustains a covered injury.

B. "Average Weekly Wage" means as follows: For workers hired to regular full or part time, temporary, emergency or special projects position expected to last at least Fourteen (14) weeks, the average weekly wage shall be calculated based on the preceding twelve (12) months of the worker's actual wage earnings from an employer. In the case of a worker who has not worked for an employer within the immediate preceding twelve (12) months, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving. For workers serving as volunteers, the average weekly wage shall be the salary of similarly paid positions for the Employer performing similar work. For purposes of this definition, the work

week shall be as defined by the personnel manual or policy applicable to the worker at the time of injury.

C. "Child" includes dependent natural legitimate children, dependent stepchildren, adopted children and recognized illegitimate children; but does not include married children unless they are shown to be dependents.

D. "Claim" means a claim filed with the administrator by or on behalf of a worker for Benefits provided under this Statute.

E. "Claimant" means the injured worker or, in the event of death of the worker, dependents of the deceased.

F. "Death" is any fatality of the Worker proximately and directly caused by work injury or occupational disease.

G. "Dependents" means the following persons:

1. The widow or widower; if married and living with the deceased at the time of deceased's death and legally entitled to be supported by the deceased as a dependent.

2. A child under eighteen (18) years of age, or incapable of self-support, unmarried and dependent upon the deceased; or a child under twenty-five (25) years of age enrolled as a full-time student in an accredited education institution at the time of the worker's injury;

3. A grandchild, brother or sister, niece or nephew of the worker under eighteen (18) years of age, who were wholly dependent on the earnings of a deceased worker for support at the time of his on-the-job injury.

H. "Disability" means the inability of the worker to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual's ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work-related injury and/or occupational

disease and must be supported by the worker's attending physician and, if requested by the Administrator, the Consulting Physician. "Partial Disability" is distinguished as any incapacity less than 100% inability.

I. "Employer" shall mean the Tribe, and its sub-entities, all departments and agencies of the Tribal Government Administration and commercial entities of the Little Traverse Bay Bands of Odawa Indians, including the Odawa Casino Resort and ancillary enterprises and activities.

J. "Impairment" means any anatomic or functional abnormality or loss existing after Maximum Medical Improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.

K. "Maximum Medical Improvement" (MMI) means: The point after which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability. MMI can be determined without regard to subjective complaints of pain by the worker. Once the date of MMI has been determined (except cases in which a worker is medically unable to continue working) no further determinations of other dates of MMI for that personal injury are permitted. A determination of MMI is not rendered ineffective by the worsening of the worker's medical condition and recovery thereafter.

L. "Parent or Grandparent" shall mean the natural or adoptive father or mother or the natural grandfather or grandmother of the worker.

M. "Reservation" means all lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of the Interior.

N. "Scheduled Weeks" means one-hundred four (104) weeks and is the maximum number of weeks that a worker shall be entitled to functional impairment benefits under this Statute.

O. "Settlement" means full release and waiver of any and all claims and benefits associated with this Statute.

P. "Spouse" means the person married to the worker at the time of the death or injury to the worker.

Q. "Tribe", "Tribal" or "LTBB" means or refer to the Little Traverse Bay Bands of Odawa Indians.

R. "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

S. "Workers Compensation" is insurance, provided at no cost to an employee, which can provide medical, lost-wages for a job-related injury or illness.

T. "Work-related injury or illness" means an injury or illness sustained as a direct result of employment.

SECTION IV. JUDICIAL INTERPRETATION

For the purposes of interpreting and enforcing issues relating to the entitlement to benefits and the nature and extent of benefits provided by this Statute, in accordance with Addendum A, the Tribal Court may look to the substantive provision of the State of Michigan Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL 481.101 et seq.,) or as may be amended, but the Tribal Court shall not be bound by State laws, regulations or case law, but may use same for guidance purposes only. Nothing in this Statute shall be construed as an adoption by the Tribe of the Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL 481.101 et seq.) nor a waiver of sovereign immunity from suit for any claims or process under the Michigan law.

SECTION V. WAIVER OF SOVERIEGN IMMUNITY and EXCLUSIVE JURISDICTION

A. The Tribe waives its sovereign immunity from suit only to the extent of and as provided in this Statute, strictly construed and applied. This waiver shall extend only to Tribal workers and other persons specifically entitled to benefits under this Statute, and shall not be construed to apply or extend to actions by any other party or actions beyond the scope of this Statue including tort liability.

B. The Tribe consents to suit only and solely in Tribal Court, and only to the extent, and upon the terms and conditions, specified in this Statute. By enactment of this Statute the Tribe does not consent to suit in or submit to the jurisdiction of any other court or forum, including without limitation the courts of the State of Michigan or the federal courts.

SECTION VI. WORKER

A. The term "worker" and "employee" are interchangeable as applied within this Statute.

B. A worker means every person who has entered into the employment of or performs work for an employer, works under contract of service, express or implied, or apprenticeship.

C. For application of this Statute the definition of worker also includes every elected or appointed official by the Constitution, Statute, charter, bylaws of a corporation, or any other means of appointed and empowered or standing in a representative capacity of the employer, compensated monetarily or otherwise.

D. Workers shall include all persons employed by the employer regardless of where they work, whether it within the Reservation or outside of the Reservation. Workers shall include volunteers or other persons providing work for an employer who do so without receiving benefits.

E. The term worker shall not include an independent contractor working under contract for an employer, whether that contract is express or implied.

F. Workers shall not include persons serving in the Tribal Police Department Reserve Program or volunteer firefighters working for the Tribal Fire Department or other volunteer positions covered by a tribal accident insurance policy.

SECTION VII. REPORTING and CLAIMING

A. An employee shall report any injury in writing, no matter how slight, to his or her supervisor within ninety-six (96) hours after the injury has occurred. No benefit will be paid to the employee, if the employee does not report the injury within ninety-six (96) hours to their supervisor. . If the injury incapacitates the employee, the time periods shall not begin to run until the incapacity ends. An injury may be reported by another on behalf of the employee.

B. A supervisor receiving a report or notice of an injury from the employee shall promptly report the claim to the Administrator in writing within seventy-two (72) hours of receipt of the report or notice of injury.

C. Employees must make a claim for benefits within six (6) months of the date of the claimed injury. No benefits shall be awarded if the claim is not made within six (6) months.

SECTION VIII. BENEFITS

A. The Tribe shall pay benefits for injuries, as provided by and in accordance with the terms of this Statute. "Benefits" shall mean payments and services, which include medical payments, payment of lost wages due to disability, impairment payments, disfigurement, vocational rehabilitation and death benefits as provided by this Statute.

B. The monetary amount of the benefits that the Tribe shall provide to an employee shall be in accordance with scheduled injuries per Addendum A. It is the intent of this Statute to provide substantially similar benefits as provided in Addendum A, in similar circumstances under the State of Michigan Worker's Disability Compensation Act of 1969, (Michigan Public Act No. 317 of 1969, as amended, being MCL 481.101 et seq.) or as it may be amended in the future.

SECTION IX. ADMINISTATOR DUTIES and AUTHORITY

A. The Administrator shall mean either the Insurance Company providing coverage hereunder, any subcontractor appointed by said Insurance Company.

B. The Administrator shall act on behalf of the Tribe in receiving, processing and paying workers' compensation claims in accordance with this Statute.

C. The Administrator shall be the payer of the worker's benefits and all authorized disbursements therefrom shall be paid by the Administrator with its stated authority, and shall be the custodian of all claim filed and related documents.

D. The Administrator shall administer this Statute in accordance with the terms and conditions described herein, and remit payment for all benefits as provided in this Statute and the Administrator shall have the authority to determine the distribution of benefits checks.

E. The Administrator shall be empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits.

F. In the case of death of a worker, the Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and further the Administrator shall have the right to request any and all reports made from such autopsies. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at any autopsy ordered by the Administrator.

G. The Administrator may retain a Consulting Physician for purposes of assisting the Administrator to carry out the duties and powers. A "Consulting Physician" shall mean the physician, other health care provider or other health care expert that is retained by the administrator to assist the administrator in carrying out the duties and responsibilities under this Statute. Such activities may include, but are not limited to, determination of the validity of a claim; review of an attending physician's diagnosis and treatment plans; determination of

Maximum Medical Improvement (MMI); and determination of impairment rating. At the discretion and expense of the administrator, an injured worker may be required to be seen by the consulting physician to assist in making any required recommendations to the administrator.

H. The Administrator shall maintain complete and accurate administrative records and claim files shall be maintained on all activities relating to the claims. All closed files shall be preserved for not less than six (6) years.

SECTION X. ACCEPTANCE/DENIAL OF CLAIM

Upon receiving a claim for benefits from an injured worker, the Administrator shall promptly investigate the claim and begin payment of benefits within twenty-one (21) days of a valid Claim or the Administrator shall send the claimant written notice within twenty-one (21) days, that further investigation is needed and the reasons for further investigation. The Administrator shall complete its investigation within forty-five (45) days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is denied.

SECTION XI. ENTITLEMENT TO BENEFITS

A. Claimants seeking benefits under this Statute shall be responsible for filing their claim with the Administrator.

B. Coverage exists under this Statute for a worker's injury without regard to fault or negligence if the claim for bodily injury by accident or bodily injury by disease meets the following criteria:

1. The Injury must arise out of and in the course and scope of the injured worker's employment with the employer and;

2. The activity or condition causing the injury must be necessary or incidental to the employer's business.

3. No benefit will be paid to the employee, if the employee does not report the injury within 96 hours to their supervisor.

C. "Course and scope of employment" shall mean an act or action within a worker's job duties or assignments, as set forth in the worker's job description or otherwise, which acts or actions are in the furtherance of the employer's interest.

D. "Going To and Returning From Work" shall mean an accident and/or incident occurring to a worker while on the way to or from work, including lunch break, is not within the course and scope of employment except when such traveling is directly connected with the worker's work and in furtherance of the employer's interest. This exception will not apply if the worker deviates from a reasonable route of travel and/or is not acting in the interest of the employer.

E. "Injury" shall mean any physical or mental impairment, including, without limitation, death and/or occupational disease arising out of and in the course and scope of employment. Injury does not mean any injury resulting primarily from the natural aging process.

F. "Occupational Disease" shall be only those diseases which arise out of and in the course and scope of the worker's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which a worker has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.

G. A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

H. Compensation, for a claim due to cumulative injury or occupational disease, will be reduced if the worker has been employed for a limited time, as follows:

1. Workers are not eligible for compensation when employed full-time for a period up to four (4) months.

2. Workers receive 25% of eligible compensation for a claim made while employed fulltime for a period of four (4) to eight (8) months.

3. Workers receive 50% of eligible compensation for a claim made while employed fulltime for a period of eight (8) to twelve (12) months.

4. Workers receive 75% of eligible compensation for a claim made while employed fulltime for a period of twelve (12) to eighteen (18) months.

5. Workers are eligible for full compensation after being employed full-time more than eighteen (18) months.

I. The time frames, which are provided in subsection G above, should be lengthened appropriately for workers who are employed on a part-time basis.

SECTION XII. RIGHT TO BENEFITS

Every worker who is injured, and in the event of a worker's death, the dependents of every such worker, arising out of and in the course and scope of employment and while acting in the furtherance of the employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of this Statute, shall be entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, such benefits as provided under this Statute.

SECTION XIII. WORKERS' BENEFITS AS EXCLUSIVE REMEDY

A. The rights and remedies provided by this Statute for a worker on account of injury or occupational disease for which benefits under this Statute are recoverable, shall be the exclusive

and only rights and remedies of such worker, the worker's personal or legal representative, dependents, or next of kin, on account of such injury and/or occupational disease against the employer, the employer's representative, insurer, guarantor or surety, for any matter relating to the occurrence of or payment for any injury or death covered under this Statute and including any other benefits that a worker may attempt to obtain from a third party that may be able to seek indemnification from an employer. All civil causes of action against the employer and its employees, arising from said injuries or death, and the jurisdiction of all such causes of action shall be exclusively in Tribal Court, except as specifically provided by this Statute.

B. A worker who pursues and recovers benefits under the workers' compensation laws of another jurisdiction is barred from recovering under this Statute. If a worker files suit or makes formal demands against a third party and compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefore, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability.

C. The employer and/or their representative, insurer, guarantor, or surety shall be subrogated to the rights of the worker to pursue any claims for benefits against any third party that is liable for the Injuries to, said worker arising out of and in the course and scope of employment and while the worker was acting in the furtherance of the employer's interest to the extent of the benefits bestowed upon the said worker. In no event shall Employer be entitled to recover any Benefits resulting from Employees death or as a result of under insured motorist claims.

D. In case of recovery, the Administrator shall enter judgment for distribution of the proceeds thereof as follows:

1. A sum sufficient to repay the employer and/or the Administrator for the amount of Benefits actually paid to the worker under this Statute up to that time;

2. A sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of benefits for which the employer is liable, but the sum is not the final adjudication of the future payments which the worker is entitled to receive and if the sum received by the employer

is in excess of the amount required to pay the benefits, the excess shall be paid to the worker.

3. The balance, if any, shall be paid over to the worker.

E. For subrogation purposes hereunder, any payment made to a worker, his guardian, parent, next of kin, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability, or otherwise.

F. Benefits received under this Statute are not assignable, except that a legal beneficiary may, assign the right to death benefits. Income from death benefits are subject only to the following liens or judgments, to the extent of any income or death benefits that are unpaid on the date the Administrator receives written notice of a lien or judgment, in the following order of priority:

1. Court-ordered child support issued or recognized by the Tribal Court;

2. A subrogation interest established under this Statute; and

3. Debts owed to the Tribe.

SECTION XIV. TERMINATION OF BENEFITS

A. Where a worker is entitled to benefits under this Statute for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the benefits, payments of the unpaid balance for such injury shall cease and all liability for such benefits thereafter shall terminate.

B. Lost wages benefits are not owed and do not accrue while a worker is incarcerated.

SECTION XV. BENEFITS

A. Vocational Rehabilitation

1. Vocational rehabilitation benefits or training are not mandatory under this Statute, but may in the discretion of the Administrator, be ordered pursuant to his authority established herein.

2. An initial waiting period of seven (7) consecutive calendar days is to accrue before the worker shall be entitled to benefits. Benefits shall begin on the 8th day after the injury. On the 15th day of temporary total disability, benefits shall be payable for the first seven days.

SECTION XVI. TOTAL AND PARTIAL DISABILITY INCOME BENEFITS

A. When the worker is disabled from work duty as determined by the Consulting Physician, or in the Administrator's discretion, the Attending Physician, by reason of a compensable injury or occupational disease, benefits shall be payable as follows:

1. If the worker is 100% disabled, benefits are payable at 80% of the worker's pre-injury average weekly wage.

2. If the worker is less than 100% disabled, benefits are payable at 80% of the difference between a worker's pre-injury average weekly wage and the wage the worker is earning or capable of earning in his partially disabled condition.

B. Except as provided herein, such benefits will continue to be paid in accordance with the terms of this Statute until which time the earliest of the following occurs:

1. The expiration of thirty-six (36) months from the date of the occurrence, or in the case of an occupational disease, thirty-six (36) months from the earliest of the first

manifestation of the symptoms or notification from the Attending Physician that the illness is inherent or related to the worker's occupation;

2. The Consulting Physician, or in the discretion of the Administrator, the Attending Physician, declares that the worker has reached maximum medical improvement;

3. The claimant is incarcerated;

4. A full, unrestricted release is provided by the Attending Physician;

5. If the employee is released to modified/light duty work status, they must return to work if work is available. Benefits will not be paid unless this condition is met.

6. A new or intervening incident is the proximate cause of disability;

7. Benefits will cease when the employee has been released to regular duty work status whether the employee is regular, temporary or seasonal.

8. Benefits are refused by the worker;

9. Presumption of MMI or abandonment of medical treatment as defined by this Statute.

10. Suspension of benefits by the Administrator for reasons authorized in this Statute.

11. The worker's earning capacity is reduced for reasons other than the disability from the work-related Injury.

12. The worker dies from any cause not resulting from the injury for which he was entitled to benefits under this section, and the worker's estate is not entitled to any further benefits as defined by this Statute.

13. If the worker is offered a bona fide offer of employment, for equal or higher pay, and the employee refuses the offer, then benefits cease.

SECTION XVII. IMPAIRMENT BENIFITS

A. Upon reaching MMI the Attending or Consulting Physician is to provide an impairment rating in accordance with the most current edition of the American Medical Association (AMA) based on reasonable medical probability. In addition, at this time the Attending or Consulting Physician is required to provide a treatment plan for reasonable and necessary future medical needs. The Attending Physician's impairment rating and treatment may be subject to review and revision by the Consulting Physician at the discretion of the Administrator.

B. A rating may not be issued prior to the declaration of Maximum Medical Improvement. The Administrator may reserve issuance of payment under the following conditions:

1. Contribution for prior impairment ratings;

2. Clarification by the Administrator as to the validity of the date for MMI;

3. Similar rating or Maximum Medical Improvement issues to be resolved by the Consulting Physician.

C. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of Maximum Medical Improvement. Such benefits will become effective the date of the ruling and commence at that time. Benefits will not be withheld beyond a reasonable time period in clarification of the rating and MMI date.

D. Benefits will be payable based on the impairment rating issued to the worker pursuant to the benefits rates for scheduled injuries per Addendum A. Maximum rating is capped at 100% for all injuries combined.

SECTION XVIII. BENEFITS ISSUANCE PERIOD

A. All benefits under this Statute shall be issued bi-weekly.

B. There shall be no acceleration of benefits under this Statute, unless approved by the Administrator.

SECTION XIX. DISABILITY INCOME

In no event shall the worker's disability income or other supplemental income sources exceed 100% of the worker's pre-injury average weekly wage, as may be increased by a Tribally approved cost of living adjustment.

SECTION XX. BENEFIT OFFSETS AND OVERPAYMENTS

A. The Administrator is entitled to reduce benefits payable to workers under this Statute in an amount equal to worker payments paid for by the Employer for any pecuniary wages paid in the form of social security, long-term and short-term disability, Employer elected salary contribution, vacation or sick leave, except for sick or paid administrative leave in the first seven (7) calendar days after an accident or onset of an occupational disease, or any other entitlement of a similar nature paid in whole or in part by the Employer.

B. If any overpayment is made under this Statute to the worker of any disability income benefits, such shall be deducted from any benefits payable under functional impairment benefits as set forth in this Statute; or in the case where no functional impairment benefits are payable, then such overpayment of benefits may be deducted through payroll for reimbursement to the Administrator.

C. Medicare/Medicaid SCHIP Extension Act. The Medicare/Medicaid SCHIP Extension Act (MMSEA) sets forth reporting requirements for insurers where criteria established pursuant to the Act have been met. The "Tribe" recognizes those requirements and nothing herein shall prevent the "Administrator" from protecting Medicare's interests where required to do

so. Where a "Claimant" is entitled to supportive medical care after maximum medical improvement is achieved, such supportive care will only be provided as specified by a medical provider authorized by the "Administrator" and only for the duration specified by that medical provider. Where a claim has been closed due to abandonment, award, or settlement, neither the "Tribe" its insurer nor "Administrator" shall have any further obligation to pay benefits under this Statute, inclusive of any subsequent Medicare liens

SECTION XXI. DEATH BENEFITS

A. When death ensues to the worker by reason of a compensable injury or occupational disease, benefits shall be payable to the dependents who were wholly dependent on the earnings of the worker for support at the time of his or her injury of the worker's average weekly wage, commencing from the date of death. Payment of Benefits will be made as follows:

The maximum average monthly wage is 80%, after taxes, of the worker's pre-death average weekly wage with a cap of benefits at five-hundred (500) weeks.

1. If there are no children entitled to benefits, then all to the surviving spouse for the projected probable life span of the decedent based on current mortality tables as published by the Center for Disease Control/National Center for Health Statistics, not to exceed a cap of benefits at five-hundred (500) weeks, the life of the surviving spouse or until remarriage, whichever comes first, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum. To be an eligible "surviving spouse" under this Statute, the surviving spouse must have been married and living with the decedent at the time of the compensable injury. If there are surviving eligible children, the surviving spouse shall be entitled to one-half of death benefits.

2. If there is a surviving spouse, one-half of death benefits paid to each surviving eligible child in equal shares.

3. If there is no surviving spouse, benefits are to be paid to each surviving eligible child in equal shares until the child shall reach the age of eighteen (18), or until the child dies, whichever comes first.

a. Any child will be eligible for continued benefits beyond the age of eighteen (18) should they become enrolled as a full-time student in an accredited educational institution within six (6) months of graduating from high school. They shall be eligible for continued benefits to the age of twenty-three (23) as long as they continue as a full-time student; and

b. Any child who was physically or mentally incapacitated from earning at the time of the compensable injury causing death for the duration of the incapacity or the incapacitated child's death, whichever earlier.

4. If there is no surviving spouse, or any surviving eligible children, death benefits shall be paid to any surviving minor and dependent grandchildren equally, until such time as the grandchild dies or reaches the age of eighteen (18), whichever first.

a. Any grandchild will be eligible for continued benefits beyond the age of eighteen (18) should they become enrolled as a full-time student in an accredited educational institution within 6 months of graduating from high school. They shall be eligible for continued benefits to the age of twenty-three (23) as long as they continue as a full-time student; and

b. Any grandchild who was physically or mentally incapacitated from earning at the time of the compensable injury causing death for the duration of the incapacity or the incapacitated child's death, whichever earlier.

5. If there is no surviving spouse, child or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, sibling, or grandparent of the deceased and who were wholly dependent on the earnings of the worker for support at the time of the compensable injury. If more than one of these dependents survives the deceased, the death benefits shall be divided among them in equal shares.

6. If the worker is not survived by any legal beneficiaries any duty to pay such benefits, but not including burial benefits, under this Statute shall cease immediately;

a. Any child will be eligible for continued benefits beyond the age of eighteen (18) should they become enrolled as a full-time student in an accredited educational institution within six (6) months of graduating from high school. They shall be eligible for continued benefits to the age of twenty-three (23) as long as they continue as a full-time student; and

b. Any child who was physically or mentally incapacitated from earning at the time of the compensable injury causing death for the duration of the incapacity or the incapacitated child's death, whichever earlier.

4. If there is no surviving spouse, or any surviving eligible children, death benefits shall be paid to any surviving minor and dependent grandchildren equally, until such time as the grandchild dies or reaches the age of eighteen (18), whichever first.

a. Any grandchild will be eligible for continued benefits beyond the age of eighteen (18) should they become enrolled as a full-time student in an accredited educational institution within 6 months of graduating from high school. They shall be eligible for continued benefits to the age of twenty (23) as long as they continue as a full-time student; and

b. Any grandchild who was physically or mentally incapacitated from earning at the time of the compensable injury causing death for the duration of the incapacity or the incapacitated child's death, whichever earlier.

5. If there is no surviving spouse, child or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, sibling, or grandparent of the deceased and who were wholly dependent on the earnings of the worker for support at the time of the compensable injury. If more than one of these dependents survives the deceased, the death benefits shall be divided among them in equal shares.

6. If the worker is not survived by any legal beneficiaries any duty to pay such benefits, but not including burial benefits, under this Statute shall cease immediately;

7. Maximum "death benefits" payable will be an Average Weekly Wage with a cap of benefits at five-hundred (500) weeks, excluding burial benefits.

B. Where a worker is entitled to benefits under this Statute for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to benefits, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

C. If a legal beneficiary as defined in this section dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with this section.

D. If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under this section shall cease immediately.

E. Upon request from the Administrator, all persons claiming to be eligible for death Benefits shall furnish all necessary documentation to support their Claim of eligibility.

F. If death results from a compensable injury, the person and/or entity who incurs liability for the costs of the burial shall be paid $5,000.00 to cover burial expenses. This burial Benefits payment shall not be reduced as a result of any burial benefits paid by any other source.

SECTION XXII. MEDICAL BENEFITS

A. Except in an emergency, all health care must be approved or recommended by the employer or Administrator. Health care treatment must be offered promptly and be reasonably suited to treat the injury. If the worker has reason to be dissatisfied with the care offered, they should communicate the basis of such dissatisfaction to the Administrator, in writing, following which the Administrator may agree to alternate care reasonably suited to treat the injury. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.

B. Chiropractic, osteopathic, naturopathic, acupuncture, or other non-traditional forms of treatment must be pre-approved by the Administrator and approved by the designated treating physician. Duration of treatment and/or number of visits to such non-traditional providers shall be subject to the administrator's approval, which may rely upon the advice of the consulting or designated attending physician.

C. Final authority for closing a Claim will be the Administrator's right and responsibility based upon:

1. the termination of necessity for further medical treatment (achievement of Maximum Medical Improvement); and

2. Claim inactivity for the length of time appropriate to the nature of the Injury/disease. Any Worker entitled to Benefits under this Statute shall be presumed to have reached Maximum Medical Improvement if such Claimant has refused and/or neglected to seek appropriate medical treatment within six (6) months from the date of prior treatment.

D. No Benefits are payable for the following types of charges:

1. Confinement, treatment, or service that is not for medically necessary care of work-related injury or disease; or

2. Any part of a charge for confinement, treatment, or service that exceeds reasonable and customary (prevailing) charges or that exceeds the appropriate fee schedule, whichever is least; or

3. Travel expenses, unless prior written approval is obtained from the administrator; or

4. Comfort or convenience services and supplies; or

5. Any over-the-counter medications unless prescribed by an Attending Physician.

E. Medical appeals concerning reimbursement levels or medical review must be directed to the Administrator in writing.

SECTION XXIII. PROTESTS

A. Any order, decision or award made by the Administrator can be protested. Whenever such an order, decision, or award is made, the worker, beneficiary, the worker's supervisor, and any other person affected by the decision shall be sent a copy of the decision by mail.

B. Any worker, beneficiary, the worker's supervisor or other person aggrieved by an order, decision or award as initially made by the Administrator must file a notice of protest with the Administrator within forty-five (45) days from the receipt of the Administrator's decision. Such notice of protest need be in no particular form but must be in writing If the notice of protest is not filed within the forty-five (45) days, such protest shall be barred from any further action with the administer. If such extenuating circumstances exist that prevents the filing within forty-five (45) days, such denial by the Administrator can be appealed to Tribal Court.

C. The protest shall be considered and a decision rendered by the Administrator within forty-five days of the receipt of the notice of protest and additional evidence. The Administrator shall review the matter on the basis of the files and the records, and then shall consider any supplementary materials submitted by the protestor. A written report of the Administrator's decision shall be mailed to the protestor as soon as it is rendered.

SECTION XXIV. APPEALS TO TRIBAL COURT

A. Appeals from the final decision of the Administrator concerning protests shall be heard by the Tribal court.

B. Any worker, beneficiary, the worker's supervisor or other person aggrieved by the protest decision of the Administrator may appeal that determination to the Tribal Court by filing a notice of appeal within sixty days from the receipt of the notification of the Administrator's decision,

1. The notice of appeal to the Tribal Court shall set forth in full detail the grounds upon which the person appealing considered the decision of the Administrator unjust or unlawful and shall include every issue to be considered by the Tribal Court. It must contain a detailed statement of the facts upon which the appellant relies in support of the appeal.

2. The Administrator shall promptly transmit the Administrator's original records, or legible copies produced by mechanical, photographic or electronic means, in such matter to the Tribal Court and certify their accuracy.

SECTION XXV. HEARINGS

A. The Tribal court shall conduct a *de novo* hearing on the appeal as provided in this section.

B. The appellant and the respondent shall have the right to be represented by an attorney or other spokesperson in all matters presented to the Tribal Court, to cross-examine all witnesses and review all evidence of any nature, as may relate to the matter under consideration.

C. The Tribal Court shall have the right to cross-examine the worker claimant and all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the occurrence and injury.

D. The Tribal Court shall not be bound by the rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner as in his or her judgment is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of this Chapter.

E. A full and complete record shall be kept of all proceedings before the Tribal Court by means of a recording device or by a stenographer.

F. The Tribal Court shall hold a hearing within forty-five (45) days from the date of the filing of respondent's appearance; provided that:

1. The issue to determine is whether the claim is compensable or non-compensable;

2. The worker's condition is stationary for rating and award purposes. That is, the worker is not under treatment, and the necessary factual information has been obtained, making a decision of the Tribal Court possible; and

3. The issue relates to the permanent and stationary condition of the claimant.

G. The Tribal Court may continue the hearing, at the request of any party or on his own motion, after it is first convened for the purpose of further developing evidence.

H. In all proceedings before the Tribal Court, the findings and decisions of the Administrator shall be prima facie correct, and the burden of proof shall be upon the appellant. If the Tribal Court determines that the Administrator has acted within its power and has correctly construed the law and found the facts, the decision of the Administrator shall be affirmed; otherwise, it shall be reversed or modified. In the case of a modification or reversal, the Tribal Court shall remand the matter to the Administrator with an order directing the Administrator to proceed in accordance with the judge's findings.

SECTION XXVI. APPEALS of TRIBAL COURT DECISIONS

The decision of the Tribal Court may be appealed to the Tribal Appellate Court.

SECTION XXVII. ATTORNEY FEES AND COSTS

A. If, upon protest or appeal, additional relief is granted to the worker or beneficiary; or in cases where a party other than the worker or beneficiary is the protesting or appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the Tribal Court as provided in this section.

B. In connection with either a protest or an appeal of permanent disability, any attorney engaged in the representation of a worker or beneficiary shall not charge for services any fee in

excess of a reasonable fee, which in the case of protest or an appeal lodged by the worker or beneficiary shall not be more than 25% of the increase in the award secured by the attorney's services, and in no case shall exceed a total of $1,500.00.

C. In all cases except those involving permanent disability, when a worker or a beneficiary prevails in an appeal by the supervisor or when the worker or beneficiary is the appellant and additional relief is granted, then the Administrator shall pay the worker or beneficiary for reasonable attorney's fees as determined by the Tribal Court, and in no case shall exceed $1,500.00.

SECTION XXVIII. RELEASE OF MEDICAL-RELATED INFORMATION

Any worker, Employer or insurance carrier or its agents making or defending a claim for benefits agrees to the release of all information to which the worker, Employer, carrier, or its agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information.

SECTION XXIX. MEDICAL EXPENSES

Expenses shall be limited to those usual and customary charges as determined by the Administrator, for similar services. Charges believed to be excessive or unnecessary may be denied by the Administrator. Any institution or person rendering treatment to a Worker under this Statute agrees to be bound by such charges as allowed by the Administrator and shall not recover in law or equity any amount in excess of that set by the Administrator.

SECTION XXX. EMPLOYER-SPONSORED PLAN FOR MEDICAL CARE AND TREATMENT

A. On or after the enactment of this Statute, the Employer or any insurer acting on behalf of an Employer, may establish a plan under subsection B of this Section, setting forth the provision

of medical care which the Employer provides for the treatment of any injury or illness under this Statute. Each plan shall contain information including, but not limited to:

1. A listing of all persons who will provide services under the plan, along with appropriate evidence that each person listed has met any licensing, certification or registration requirement necessary for the person to legally provide the required service;

2. A designation of the times, places and manners in which the services will be provided;

3. A description of how the quality and quantity of medical care will be managed and directed as is reasonably necessary to control the Employer's workers' compensation costs, track occupational injuries and diseases, and account for workers' compensation claims; and

B. In furtherance of the effective implementation of this Statute, it is anticipated that the Employer or Administrator also will do the following:

1. Establish, subject to approval by the Employer:

a. An approved list of practicing physicians, surgeons, podiatrists, optometrists and dentists from which an injured employee shall choose for examination and treatment under the provisions of this Chapter, which shall include, but not be limited to, classifications of approved practitioners by specialty, and

b. Standards for the approval and removal of physicians, surgeons, podiatrists, optometrists and dentists from the list outlined above;

2. Establish, subject to approval by the Employer:

a. Standards for approving all fees for services rendered under this Statute by attorneys, physicians, surgeons, podiatrists, optometrists, dentists and other persons, and

b. A fee schedule setting the fees payable by the Employer or its insurance carrier for services rendered under this Statute by an approved physician, surgeon, podiatrist, optometrist or dentist, provided the fee schedule shall not apply to services rendered to a claimant who is participating in an employer's managed care plan. The fee schedule shall limit the annual growth in total medical fees to the annual percentage increase in the consumer price index for all urban workers or a comparable index approved by the chief commissioner. Payment of the established fees by the employer or its insurance carrier shall constitute payment in full to the practitioner, and the practitioner may not recover any additional amount from the claimant to whom services have been rendered, and publish annually thereafter, and

c. Publish annually guidelines for the maximum fees payable by a claimant for any legal services rendered by an attorney in connection with the provisions of this Statute, which fees shall be approved in accordance with the standards established pursuant to this subsection;

SECTION XXXI. SETTLEMENTS

A. The administrator and worker may negotiate settlement of future medical expenses, income loss, impairment, death benefits and other benefits under this Statute that are owed to the worker, or his/her estate. For purposes of settling the future medical expenses, the basis for settlement will be the value of the current and future medical treatment plan. Settlements under this section are not to exceed $100,000.

B. Any settlement issued on behalf of a worker will be properly executed by signed memorandum or release.

SECTION XXXII. PALLIATIVE CARE

A. When a worker's Attending Physician believes that palliative care is appropriate to enable the worker to continue current employment or a current vocational training program, the

Attending Physician must submit to the Administrator a request for palliative care. The request must be submitted within 60 days of initial claim closure. The request shall:

1. Describe any objective findings;

2. Describe the medical condition for which palliative care is requested;

3. Detail a treatment plan which includes the names of the provider who will render care, specific treatment modalities, and frequency and duration of the care not to exceed 60 days;

4. Explain how the requested care is related to the compensable condition;

5. Describe how the requested care will enable the worker to continue current employment or a vocational training program.

B. When received and date stamped, the request will be reviewed by the Administrator. After such review, the Administrator decision on the request will be finalized and mailed to the worker within 30 days of the date of such request.

C. Conservative Treatment may be delineated in accompanying Regulations as approved by Tribal Council.

SECTION XXXIII. DISCLOSURE OF PRE-EXISTING DISABILITIES

A. All Workers shall disclose any pre-existing physical or mental disorder and/or disability that could potentially affect or impair the worker's ability to perform in a reasonable and safe manner the activities involved in the position in which they work. Disclosure shall be made in the employment application or interview before commencing employment or before commencing new job duties after job reclassification, reassignment, promotion, demotion, or other change in job duties. Employers shall ensure that their employment applications and/or job applicant interviews require the disclosure of such pre-existing disabilities. The content of such

disclosure shall be made promptly by the worker after submitting a claim for benefits under this Statute.

B. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Statute shall be declined by the Administrator if the claimant had knowledge of the Pre-Existing Condition and failed to disclose such condition.

C. Worker with a disclosed and/or approved pre-existing condition is not entitled to benefits for a subsequent injury unless information from a physician or chiropractor establishes to the satisfaction of the Administrator that the subsequent injury is the primary cause of the resulting condition. In other words, pre-existing conditions are excluded from coverage.

D. "Pre-existing condition" is defined as an injury, disease, congenital abnormality, personality disorder, or similar condition that contributes or predisposes a worker to disability or need for treatment, and precedes the onset of an initial claim for an injury, or occupational disease or that precedes a claim for a worsened condition resulting from the original injury.

E. Pre-existing conditions are excluded under this Statute. If a worker is suffering from a pre-existing condition at the time an occupational incident, accident and/or condition occurs or arises in the course and scope of employment and the pre-existing condition is aggravated thereby, the aggravation of the pre-existing condition is, subject to provisions herein, compensable under this Statute. The amount of the award for that disability as set forth in this Statute may be reduced or denied in its entirety by the Administrator in consideration of the following:

1. A prior settlement from any source for the same impairment;

2. The difference between the degree of impairment of the worker before the covered accident and/or occupational disease and the degree of impairment after the covered accident or occupational disease; or

3. The benefits to be paid for impairments and/or disabilities would be in excess of 100% of the whole person. For purposes of this subsection, Benefits include those

benefits or payments made under this Statute, benefits from the workers' compensation laws of any other jurisdiction or payments from third parties.

SECTION XXXIV. MENTAL TRAUMA INJURIES

A. Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Statute, except that mental trauma is only recoverable if resulting from accidental injury traceable to a definite time, place, and cause rather than from repetitive mental trauma, or from an unusual traumatic event as established by a licensed psychiatrist or psychologist, and the mental injury was caused by or occurs subsequent to or simultaneous with such accidental injury or unusual traumatic event.

B. Regardless of section A., a mental trauma or emotional Injury that arises principally from a personnel action, including, without limitation, a transfer, promotion, demotion, disciplinary action, work performance evaluation, or termination is not a compensable Injury under this Statute.

C. Treatment for mental injury determined compensable under this Statute shall be limited to no more than six months after the worker's physical injury has healed to maximum medical improvement.

SECTION XXXV. GOING TO AND RETURNING FROM WORK

A. An accident and/or incident occurring to a worker while on the way to or from work, including lunch break, is not within the worker's course and scope of employment except when such travel is directly connected with the worker's job duties and is expressly within the employer's course and scope of employment. This exception will not apply if the worker deviates from a reasonably direct route of travel and/or is not acting in the interests of the employer at the time of the accident or incident that forms the basis for the claim.

B. Injuries which occur within a reasonable time before and after a worker's work hours are not compensable, unless there is a unique or extraordinary ingress/egress hazard that exposes the worker to a greater risk of Injury.

SECTION XXXVI. BENEFITS PRECLUDED BY NEGLECT AND/OR REFUSAL OF WORKER TO SUBMIT TO TREATMENT

A. The injured worker must seek medical treatment no later than thirty (30) days after the date of injury. No benefits will be paid if the injured worker does not seek medical treatment within thirty (30) days of the date of injury.

B. No benefits shall be payable for the death and/or disability of a worker if the worker's death is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal and/or neglect to submit to and/or follow any competent or reasonable surgical or medical treatment, medical aid, or advice. A worker who has refused and/or neglected to submit to medical and/or therapeutic treatment, or to take medications as prescribed, will be deemed to have reached maximum medical improvement as defined herein. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discounted in determining the appropriate incapacity rating as prescribed herein.

C. Any worker entitled to benefits under this Statute shall be presumed to have reached maximum medical improvement if such claimant has refused and/or neglected to seek appropriate medical treatment within six (6) months from the date of prior treatment.

D. If an injured worker undertakes activities on or off the job, which exceed recommendations of the attending physician, as defined in this Statute, and cause the condition to worsen, the worker may not receive benefits for the aggravation.

SECTION XXXVII. INJURY OR DEATH BY CONSUMPTION AND/OR APPLICATION OF DRUGS AND/OR CHEMICALS AND/OR INTOXICATION

A. No benefits of any nature shall be payable for injury and/or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication. However, no benefits under this Statute shall be payable in the event the claimant's injury or death was caused by the intentional abuse of prescribed drugs in excess of the prescribed therapeutic amounts.

B. No benefits of any nature shall be payable for any worker injured or killed while in a state of intoxication regardless of whether or not the intoxicated condition was the proximate or contributing cause of the injury or death. It is only necessary to prove that the worker was intoxicated at the time of the incident or accident to deny benefits under this Statute. All workers accepting employment with an employer and under this Statute, agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable Tribal personnel policies, and agree to waive any privilege associated with the results of said tests.

C. "Intoxication" or "Intoxicated" means blood alcohol content in excess of .05 percent or conviction of the offense of driving while intoxicated or impaired by any jurisdiction, or loss of the normal use of one's mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance (a controlled substance for the purpose of this Statute has the same definition of that term that appears in the Controlled Substances Act); (3) a mind-altering drug and/or hallucinogenic; (4) an abusable glue or aerosol paint; (5) the intentional use of prescribed drugs in excess of the prescribed therapeutic amounts; or (6) any other similar substance.

SECTION XXXVIII. FALSE STATEMENT OR REPRESENTATION TO OBTAIN BENEFITS; PENALTY AND FORFEITURE

If, in order to obtain any benefits under the provisions of this Statute, any person who knowingly makes a false statement or representation in connection with their claim, shall forfeit all rights to benefits under this Statute. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Statute may be declined by the Administrator. The Employer shall be entitled to take any action permitted by law to recover any payment or benefits paid under this Statute to a worker where the payment or benefits was based upon the fraudulent or false statements or misrepresentation by the worker.

SECTION XXXIX. INJURIES RESULTING FROM SELF-INFLICTED INJURIES, WILLFUL MISCONDUCT, OR "HORSEPLAY"

No benefits of any nature shall be payable for any worker's injury or death caused by a worker's willful intention to injure himself or another. An injury sustained during "horseplay" is not incurred in the course and scope of employment and thus such an injury under this Statute is not compensable. In addition, the willful disregard of a safety order from the employer to the worker to wear or use a safety device and/or to perform work in a certain manner may cause such person to forfeit all rights to benefits or payments, upon proof that the offense was committed and that such disregard or performance was the direct and proximate cause of the Injury, death, and/or occupational disease. A worker's willful disabling of safety devices on equipment constitutes a willful intention to injure himself thereby precluding eligibility for benefits under this Statute.

SECTION XXXL. INJURIES RESULTING FROM "ACTS OF GOD"

No benefits of any nature shall be payable for any worker injured or killed when the injury arose out of an act of God, unless the employment exposes the worker to a greater risk of injury from an act of God than ordinarily applies to the general public. Further, injury or death which results from a natural cause, i.e., heart attack, stroke or other natural function failure,

which does not arise out of the course and scope of employment while the worker was acting in the furtherance of the employer's interest, shall not be compensable.

SECTION XLI. RECREATIONAL, SOCIAL OR ATHLETIC ACTIVITIES

A. No benefits of any nature shall be payable for any worker injured or killed if the injury or accident occurred as a result of the worker's voluntary participation in an off-duty, recreational, social, or athletic activity not constituting part of the worker's work-related duties, except where these activities are expressly required by the employer.

B. No Benefits under this Statute shall be payable to any worker if the injury, disease, or death arises from participation in voluntary physical fitness activities during the regular workday, regardless of whether the worker is or is not compensated for the time in which the physical fitness activities take place.

SECTION XLII. INJURIES CAUSED BY THIRD PARTIES

No benefits of any nature shall be payable for any worker injured or killed as the result of an act of a third party, including co-workers, who intended to injure the worker because of reasons personal to that worker and not directed at the worker for reasons related/relevant to his employment.

SECTION XLIII. SECONDHAND SMOKE CLAIMS

A. No benefits under this Statute shall be payable to or on behalf of any worker injured or killed as a result of exposure to or injury by second-hand smoke unless and until the claimant demonstrates by a preponderance of the evidence the following:

B. The worker has worked for the Employer for the ten (10) years prior to the filing of the claim for benefits under this Statute;

C. The worker's workplace during the ten (10) year period referenced in (A) above involved exposure to secondhand smoke;

D. The worker has not smoked cigarettes, cigars, or other tobacco products, in the last ten (10) years; and

E. The worker has not shared a residence or previously worked in an area where family members, in the case of the residence, or fellow workers, in the case of prior employment, smoked in the home or workplace in the last ten (10) years.

SECTION XLIV. IDIOPATHIC CLAIMS

Idiopathic injury and related injuries are not compensable. "Idiopathic Injury" means an injury which is either peculiar to the individual or arising spontaneously from an obscure or unknown cause. This includes epileptic attacks, diabetic seizures, heart disease, cardiovascular or respiratory conditions, heart attack, the failure or occlusion of any coronary blood vessels, stroke, thrombosis, allergic disorders, auto-immune diseases, *etc.*

SECTION XLV. WAR AND MILITARY ACTION EXCLUSION

A. No benefits under this Statute shall be payable for injury caused directly or indirectly by the following events. Such Injury is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

1. War, including undeclared or civil war; or

2. Warlike action by a military force. Including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

4. With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this War and Military Action Exclusion supersedes the Nuclear Hazard Exclusion.

SECTION XLVI. TERRORISM EXCLUSION

A. No benefits under this Statute shall be payable for injury caused directly or indirectly by terrorism, including action in hindering or defending against an actual or expected incident of terrorism. Such loss or damage is excluded regardless of any other cause or even that contributes concurrently or in any sequence to the loss.

B. Terrorism means activities against persons, organizations or property of any nature that involve the following or preparation for the following:

1. Use of threat of force or violence; or

2. Commission or threat of a dangerous act; or

3. Commission or threat of an act that interferes with or disrupts an electronic communication, information, or mechanical system; and

4. When one or both of the following applies:

a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy, or

b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

C. But with respect to any such activity that also comes within the terms of the War and Military Action Exclusion, that exclusion supersedes this Terrorism Exclusion.

SECTION XLVII. COST OF LIVING ADJUSTMENT

A. An injured employee suffering total disability is entitled to an adjustment in the weekly compensation rate, if the following criteria are met. The employee shall be eligible for the adjustment if:

1. They are receiving total disability benefits from workers' compensation as of the third anniversary date of their injury.

2. Have been denied Social Security benefits.

3. Are receiving less than 60% of the current average weekly wage.

SECTION XLVIII. 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 of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted, the entirety of the balance of the statute remain in full and binding force and effect.

SECTION XLIX. IMPLEMENTATION DATE

This Statute shall be implemented no later than ninety (90) days from date of enactment or sooner. Upon approval by the authorized Governing Board of any policy, regulations or handbook related to this Statute will be considered the date of implementation.

SECTION L. EFFECTIVE DATE

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first, or, if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on April 21, 2013 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 2 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Belinda Bardwell				X
Bill A. Denemy	X			
Kevin Gasco	X			
John Keshick	X			
Aaron Otto	X			
Winnay Wemigwase				X
John Bott	X			
Regina Gasco Bentley	X			
Melvin L. Kiogima	X			

Date: 4/21/13 Legislative Leader Melvin L. Kiogima

Date: 4-21-13 Regina Gasco Bentley, Secretary

Received by the Executive Office on 4-22-13 by

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 5-21-13 Dexter McNamara, Tribal Chairperson