

## **Chapter 4. Check, Draft or Order for Payment of Money**

### **9.401 PURPOSE**

The purpose of this Statute is to protect the financial resources for The Little Traverse Bay Bands of Odawa Indians through the imposition of imprisonment and/or fines on any person who issues a check, draft, or order for payment of money to The Little Traverse Bay Bands of Odawa Indians, a department of The Little Traverse Bay Bands of Odawa Indians, or any enterprise that is owned by The Little Traverse Bay Bands of Odawa Indians, that is returned unpaid from the issuer's financial institution.

(Source: WOS 2004-05, September 26, 2004, Section I)

### **9.402 DEFINITIONS**

**A.** The word “**credit**” as used herein, shall mean an arrangement or understanding with the bank or depository, for the payment of such check, draft, or order, in full, upon the presentation thereof for payment.

**B.** “**Imprisonment**” means confinement in a jail or other facility, or community service as may be ordered by the Court.

(Source: WOS 2004-05, September 26, 2004, Section II)

### **9.403 APPLICABILITY**

This Statute applies to all persons that fall under the jurisdiction of The Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2004-05, September 26, 2004, Section III)

### **9.404 CHECK, DRAFT, OR ORDER FOR PAYMENT OF MONEY; MAKING, DRAWING, UTTERING, OR DELIVERING WITHOUT SUFFICIENT FUNDS WITH INTENT TO DEFRAUD; VIOLATION, PENALTIES**

The following provisions shall apply to all checks, drafts, or orders for payment of money within

the jurisdiction of The Little Traverse Bay Bands of Odawa Indians:

**A.** A person shall not make, draw, utter, or deliver any check, draft, or order for the payment of money, to apply on account or otherwise, upon any bank or other depository with intent to defraud and knowing at the time of the making, drawing, uttering, or delivering that the maker or drawer does not have sufficient funds in or credit with the bank or other depository to pay the check, draft, or order in full upon its presentation.

**B.** A person shall not make, draw, utter, or deliver any check, draft, or order for the payment of money, to apply on account or otherwise, upon any bank or other depository with intent to defraud if the person does not have sufficient funds for the payment of the check, draft, or order when presentation for payment is made to the drawee. This subsection does not apply if the lack of funds is due to garnishment, attachment, levy, or other lawful cause and that fact was not known to the person when the person made, drew, uttered, or delivered the check, draft, or order.

**C.** A person who violates this section is guilty of a crime as follows:

**1.** If the amount payable in the check, draft, or order is less than \$100.00, as follows:

**a.** For a first offense, a misdemeanor punishable by imprisonment for not more than thirty (30) days or a fine of not more than \$500.00, or both.

**b.** For an offense following one (1) or more prior convictions under this section or a local ordinance substantially corresponding to this section, a misdemeanor punishable by imprisonment for not more than six (6) months or a fine of not more than \$1,000.00, or both.

**2.** If the amount payable in the check, draft, or order is \$100.00 or more but less than \$500.00, as follows:

**a.** For a first or second offense, a misdemeanor punishable by imprisonment for not more than six (6) months or a fine of not more than \$1,000.00 or three (3) times the amount payable, whichever is greater, or both imprisonment and a fine.

**b.** For an offense following two (2) or more prior convictions under this section, a felony punishable by imprisonment for not more than one (1) year or a

fine of not more than \$2,000.00, or both. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subsection IV(C)(1).

3. If the amount payable in the check, draft, or order is \$500.00 or more, a felony punishable by imprisonment for not more than one (1) year or a fine of not more than \$2,000.00 or three (3) times the amount payable, whichever is greater up to \$5,000.00, or both imprisonment and a fine.

**D.** If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having one (1) or more prior convictions, the prosecuting attorney shall include in the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, one (1) or more of the following:

1. A copy of the judgment of conviction.
2. A transcript of a prior trial, plea-taking, or sentencing.
3. Information contained in a pre-sentence report.
4. The defendant's statement.

**E.** A person shall not, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for payment of money, to apply on an account or otherwise, upon any bank or other depository, if at the time of making, drawing, uttering, or delivering the check, draft, or order he or she does not have an account in or credit with the bank or other depository for the payment of the check, draft, or order upon presentation. A person who violates this section is guilty of a felony, punishable by imprisonment for not more than one (1) year, or by a fine of not more than \$500.00, or both.

**F.** A person shall not, with intent to defraud, make, utter, or deliver, within a period of not more than ten (10) days, three (3) or more checks, drafts, or orders for the payment of money, to apply on account or otherwise, upon any bank or other depository, knowing at the time of

making, drawing, uttering, or delivering each of the checks, drafts, or orders that the maker or drawer does not have sufficient funds or credit with the bank or other depository for the payment of the check, draft, or order in full upon its presentation. A person who violates this section is guilty of a felony, punishable by imprisonment for not more than one (1) year, or by a fine of not more than \$500.00, or both.

**G.** Evidence of intent to defraud, etc. – As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft, or order, payment of which is refused by the drawee, when presented in the usual course of business, shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with all costs and protest fees, within five (5) days after receiving notice that such check, draft or order has not been paid by the drawee.

**H.** Notice of protest as evidence of intent to defraud, etc. – Where such check, draft, or order is protested, on the ground of insufficiency of funds or credit, the notice of protest thereof shall be admissible proof of presentation, non-payment and protest, and shall be prima facie evidence of intent to defraud, and of knowledge of insufficient funds or credit with such bank or other depository.

(Source: WOS 2004-05, September 26, 2004, Section IV)

#### **9.405 SAVINGS CLAUSE**

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

(Source: WOS 2004-05, September 26, 2004, Section V)

#### **9.406 EFFECTIVE DATE**

This Statute shall take effect thirty (30) days after enactment by Tribal Council [September 26, 2004].

(Source: WOS 2004-05, September 26, 2004, Section VI)