

Chapter 9. Liquor and Tobacco License Violations Statute

(As required under 18 U.S.C. § 1161, the Department of the Interior published the Liquor Violations Statute in the Federal Register on April 2, 2015, 80 FR 17779-01)

9.901 SHORT TITLE

This Statute may be cited as the “License Violation Statute.” This Statute repeals and replaces Waganakising Odawak Statute 1999-008 and previous Statute WOS 1997-021, and any and all previous Statutes.

(Source: WOS 2014-006, June 16, 2014, Section I)

9.902 PURPOSE

The purpose of this Statute is to provide for violations of Liquor and Tobacco Licenses issued by the Liquor and Tobacco Licensing Board that may impair the issuance or renewal of a liquor or tobacco licenses or may cause such licenses to be suspended or revoked in order to protect the rights and interest of the Tribe and Tribal Citizens.

(Source: WOS 2014-006, June 16, 2014, Section II)

9.903 AUTHORITY

Tribal Council has the power and authority to regulate the liquor and tobacco sales and violations as set forth in this Statute in accordance with the Constitution, Article VII D(1), D(16), D(19), and D(24).

(Source: WOS 2014-006, June 16, 2014, Section III)

9.904 DEFINITIONS

The following definitions apply in this Statute:

- A.** “Alcoholic Liquor” means the four varieties of liquor (alcohol, spirits, wine and beer) and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed

liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquor or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

- B.** “Board” means the Liquor and Tobacco Licensing Board.
- C.** “Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- D.** “Licensee” means any person or entity, includes any employee or agent of the Licensee, licensed by the Tribe to sell alcohol or tobacco on Tribal trust lands.
- E.** “LTBB” or “Tribe” means the Waganakising Odawak Nation, also known as the Little Traverse Bay Bands of Odawa Indians.
- F.** “Person” or “Entity” means any individual, firm, partnership, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.
- G.** “Tobacco Products” means all forms of tobacco prepared in such a manner at to be suitable for chewing or smoking including cigarettes, cigars, smoking tobacco, snuff, chewing tobacco.
- H.** “Tribal Court” means the Little Traverse Bay Bands of Odawa Tribal Court.

(Source: WOS 2014-006, June 16, 2014, Section IV)

9.905 LIQUOR AND TOBACCO LICENSING BOARD

The Liquor and Tobacco Licensing Board established by WAGANAKISING STATUTE, LIQUOR AND TOBACCO LICENSING BOARD STATUTE, is an Executive Board and is

authorized to implement this statute, as may be amended.

(Source: WOS 2014-006, June 16, 2014, Section V)

9.906 LIQUOR VIOLATIONS

Citations may be issued for the violations of the following:

A. Under the age of Twenty-one (21).

1. A licensee shall not directly, individually, or by a clerk, agent, or servant knowingly sell, furnish, or give alcoholic liquor to a person under the age of twenty-one (21) or fails to make diligent inquiry as to whether the person is of age.
2. A licensee shall not allow any person who is less than eighteen (18) years of age to sell or serve alcoholic liquor.

B. Intoxicated Persons.

1. A licensee shall not directly or indirectly, individually or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a person who is visibly intoxicated.
2. A licensee shall not allow an intoxicated person to consume alcoholic liquor on the licensed premises.

C. Hours of Sales.

1. A licensee shall not sell at retail, give away, or furnish alcoholic liquor between the following hours: 2 a.m. and 7 a.m. of any day
2. Variations:

The except as modified by an intergovernmental agreement that may apply to a specific Tribal enterprise and 4 a.m. and 7 a.m. on January 1 (New Year's Day)

D. Extended Hours.

An extended hour(s) permit is required for an on-premises licensee to allow for the sale or consumption of alcoholic liquor at any time other than the legal hours for the sale and consumption of alcoholic liquor.

E. Sale of Adulterated or Mislabeled Liquor.

1. A licensee by himself or by his agent or employee, shall not sell, offer for sale, or possess any alcoholic liquor that is adulterated or misbranded or any alcoholic liquor in bottles that have been refilled.
2. Alcoholic liquor shall be deemed adulterated if it contains any liquids or other ingredients not placed there by the original manufacturer or bottler. For the purposes of this Section, alcoholic liquor shall be deemed misbranded when not plainly labeled, marked or otherwise designated.
3. Alcoholic liquor bottles shall be deemed to be refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer.

F. Premises.

1. A Licensee shall not allow alcoholic liquor sold for on-premises consumption to be removed from premises.
2. A Licensee that sells wine on the premises may allow an individual who has purchased a meal and who has purchased and partially consumed a bottle of wine with the meal, to remove the partially consumed bottle from the premises upon departure, provided that the licensee or the licensee's clerk, agent, or employee shall reinsert a cork so that the top of the cork is level with the lip of the bottle.
3. This section does not allow for the removal of any additional unopened bottles of wine unless the licensee is licensed off premises sales.
4. This section does not prevent a hotel from allowing its invitees or guests to possess or consume, or both, on or about its premises, alcoholic liquor purchased by the invitee or guest from an off-premises retailer, and does not prevent a guest or invitee from entering

and exiting the licensed premises with alcoholic liquor purchased from an off-premises retailer.

5. An off-premise licensee who is not licensed as an on-premise licensee shall not have open containers of alcoholic liquor on the premises.

6. An off-premise licensee who is not licensed as an on-premise licensee shall not allow the consumption of alcoholic liquor on the licensed premises, except as allowed in G(2).

7. An off-premise licensee shall not give bottle or can openers to purchasers and shall not open bottles or cans of alcoholic liquor for purchasers on the licensed premises.

8. An off-premise licensee shall not knowingly allow a person to consume alcoholic liquor on property owned, leased, or possessed by the licensee adjacent to the licensed premises.

G. Giving away alcoholic liquor

1. A Licensee shall not give away any alcoholic liquor of any kind or description at any time in connection with his or her business, except manufacturers for consumption on the premises only.

2. Exceptions:

a. If the licensee is a hotel, the licensee may give away alcoholic liquor to an invitee or guest in connection with a business event or as a part of a room special or promotion for overnight accommodations.

b. Licensee may allow samplings or tastings of any alcoholic liquor for which monetary gain or other remuneration could reasonably be expected.

c. Tasting of alcoholic liquor as part of a bona fide market research organization that is conducted for a product before it is approved for sale.

d. Licensee may allow giving a sampling or tasting of alcoholic liquor to an employee of the licensee during the legal hours for consumption for the purpose of

educating the employee regarding 1 or more types of alcoholic liquor so long as the employee is at least 21 years of age.

H. Quantity of Alcohol.

1. An on-premise licensee shall not sell, offer to sell, or advertise the sale of, an unlimited quantity of alcoholic liquor at a specific price.

2. No licensee shall sell, offer to sell, or advertise the sale of, 2 or more identical drinks containing alcoholic liquor to a person for their consumption for 1 price. When 2 or more identical drinks containing alcoholic liquor are served to a person at 1 time, the price charged for the second drink shall be the same price as for the first drink.

I. Prizes, alcohol use.

A licensee shall not participate in or sponsor any contest that requires the use or consumption of alcoholic liquor or features alcoholic liquor as a prize in connection with a contest. Sponsored events that involve the purchase of alcoholic liquor for eligibility are exempt.

J. Controlled substances / drug paraphernalia.

A licensee shall not allow the sale, possession, or consumption on the licensed premises of any controlled substances which are prohibited by Tribal, State of Michigan or Federal Law.

K. Fights and Weapons.

1. A licensee shall not allow fights on or in the licensed premises, other than promotional events such as boxing, cage fights, etc. Nor shall a licensee, or the clerk, servant, agent, or employee of the licensee, allow, on the licensed premises, the annoying or molesting of customers or employees by other customers or employees.

2. A licensee shall not allow for the unlawful possession or use of firearms, knives, or other weapons on the premises.

L. Improper or no display of liquor license/permits

Licenses issued by the commission shall be signed by the licensee, shall be framed under transparent material, and shall be prominently displayed in the licensed premises.

M. Suspension of License.

1. A licensee shall not sell, offer for sale, furnish, consume, or allow the consumption of, alcoholic liquor on the licensed premises during the period that the license is suspended by the Board.

2. During the time of suspension of a license by the Board, the notice of the suspension shall be continuously posted in a conspicuous place on the licensed premises in full view of the public.

N. Cooperation with officers.

A licensee, or clerk, servant, agent or employee of the licensee, shall not hinder or obstruct a law enforcement officer or commission inspector or investigator in the course of investigating or inspecting the premises and shall not refuse, fail or neglect to cooperate with a law enforcement officer, commission inspector or investigator in the performance of his or her duties to enforce the act or commission rules.

(Source: WOS 2014-006, June 16, 2014, Section VI)

9.907 TOBACCO VIOLATIONS

A. Prohibited Places. Smoking or carrying lighted tobacco in any form is prohibited in the following areas:

1. Public areas designated as “non-smoking”;
2. Passenger elevators;
3. Tribal Governmental Buildings;
4. School Buildings;

5. Child Care Centers; smoking is permitted on these premises during the time these facilities are not in operation, but the operator of the facility must inform parents or guardians that smoking on the premises may occur during these times.

6. Health Facilities; smoking is prohibited in the common and treatment areas of health facilities, including hospitals, health clinics, and doctors' offices. Patients may be permitted to smoke if the medical staff determines that this prohibition would be detrimental to treatment. Smoking areas provided in these cases must be separately ventilated to ensure that there is a smoke-free environment in other patient care and common areas.

7. Licensed nursing homes and licensed homes for the aged must adopt a policy that regulates smoking to provide patients with the option of no-smoking rooms, and restrict patient smoking to private or semiprivate rooms or designated smoking areas. Visitors and staff are permitted to smoke in designated smoking areas only. Tobacco sales are prohibited in nursing homes, except as provided for by owners. Notices must be posted for smoking and non-smoking areas.

8. Restaurants; food service establishments seating fifty (50) or more persons must reserve a seating area for a nonsmoking. All food service establishments seating fewer than fifty (50) people are not required to provide for a non-smoking section. Public areas in restaurants must be smoke-free. These areas include, but are not limited to, restrooms, coatrooms, and entrances. Public areas do not include lobbies, waiting rooms, hallways, or lounges.

B. Under the Age of Eighteen (18).

1. A person shall not sell or furnish any tobacco product to a person less than eighteen (18) years of age.

2. It is an affirmative defense that the defendant had, and continues to have in force, a written policy to prevent the sale of tobacco products to minors and enforces said policy.

3. This does not apply to the handling or transportation of a tobacco product by a person under the age of eighteen (18) under the terms of employment.

4. This does not interfere with the right of a parent or legal guardian in the rearing and management of their minor children within the bounds of their private premises.

C. Sign Posting. A person who sells tobacco products at retail shall post, in a place close to the point of sale, conspicuous to both employees and customers, a sign produced by the Department of Community Health that states: *"THE PURCHASE OF TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE AND PROVISION OF TOBACCO PRODUCTS TO A MINOR ARE PROHIBITED BY LAW. A MINOR UNLAWFULLY PURCHASING OR USING TOBACCO PRODUCTS IS SUBJECT TO PENALTIES."*

D. Internet Sales. All sales conducted through the Internet, by telephone, or in a mail-order transaction shall prohibited.

E. Single Cigarettes. A person who sells tobacco products at retail shall not sell a cigarette separately from its package. This does not apply to tobacco specialty stores or other retail stores that deal exclusively in the sale of tobacco products and smoking paraphernalia.

F. Vending Machines Placement. Vending machines are restricted to areas that are not easily accessible to persons under the age of eighteen (18) and are within the direct visual supervision of an adult.

G. Improper or no display of license/permits

Licenses issued by the commission shall be signed by the licensee, shall be framed under transparent material, and shall be prominently displayed in the licensed premises.

H. Suspension of License.

1. A licensee shall not sell, offer for sale, and furnish, tobacco on the licensed premises during the period that the license is suspended by the Board.

2. During the time of suspension of a license by the Board, the notice of the suspension shall be continuously posted in a conspicuous place on the licensed premises in full view of the public.

I. Cooperation with officers.

A licensee, or clerk, servant, agent or employee of the licensee, shall not hinder or obstruct a law enforcement officer or commission inspector or investigator in the course of investigating or inspecting the premises and shall not refuse, fail or neglect to cooperate with a law enforcement officer, commission inspector or investigator in the performance of his or her duties to enforce the act or commission rules.

(Source: WOS 2014-006, June 16, 2014, Section VII)

9.908 RELIGIOUS FREEDOM

Nothing in this Statute shall prohibit American Indians from practicing any recognized religious ceremony, ritual or activity in accordance with their Religious Freedom.

(Source: WOS 2014-006, June 16, 2014, Section VIII)

9.909 MARKETING

A licensee shall not intentionally market for profit tobacco or tobacco productions to persons under the age of eighteen (18).

(Source: WOS 2014-006, June 16, 2014, Section IX)

9.910 APPLICATION OF STATE LAW

Per the United States Code (USC), 18 U.S.C. 1161, all acts or transactions regarding liquor control shall conform to this Statute or the laws of Michigan, whichever is more stringent. Nothing in this section or Statute is intended to allow the State of Michigan to exercise any jurisdiction over the Tribe, its members, or any persons or transactions within jurisdiction of the Tribe. Nothing in this section or statute is intended to in any way waive or limit the sovereign immunity of the Tribe.

(Source: WOS 2014-006, June 16, 2014, Section X)

9.911 ENFORCEMENT

- A. The Tribal Law Enforcement Department is authorized to issue citations for violations of this Statute.

B. Any inspectors and/or investigators hired by the Board are authorized to issue citations of violations of this Statute.

(Source: WOS 2014-006, June 16, 2014, Section XI)

9.912 SAVINGS CLAUSE

In the event that any section, subsection or phrase 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 part 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 so long as the overall intent of the Statute remains intact.

(Source: WOS 2014-006, June 16, 2014, Section XII)

9.913 EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2014-006, June 16, 2014, Section XIII)