

WAGANAKISING ODAWA



TRIBAL CODE of LAW

TITLE XI. HEALTH, WELLNESS AND EDUCATION

2023 – Version 10.2

WAGANAKISING ODAWA TRIBAL CODE of LAW

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TITLE XI. HEALTH, WELLNESS, AND EDUCATION

Chapter 1. Health Commission

11.101 FINDING

The Duties of the original Commission are no longer applicable as those duties are now the responsibility of the Little Traverse Bay Bands of Odawa Indians Health Department funded by I.H.S. General Funds and Third Party billing. The department's rules, policies, and regulations are provided by the I.H.S. funding source.

(Source: WOS 2009-003, January 25, 2009, Section I)

11.102 REPEALED

WAGANAKISING ODAWA STATUTE 1997-004 is hereby repealed in its entirety.

(Source: WOS 2009-003, January 25, 2009, Section II)

11.103 EFFECTIVE DATE

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

(Source: WOS 2009-003, January 25, 2009, Section III)

Chapter 2. Education Appeals Board

11.201 SHORT TITLE, PURPOSE AND DEFINITIONS

A. Short Title

This statute shall be entitled “The Education Appeals Board Statute”. This Statute repeals and replaces WAGANAKISING ODAWAK STATUTE (WOS) 2007-012.

B. Purpose

The purpose of this Statute is to create a Board to hear appeals on educational programs administered by the Department of Education.

C. Definitions

As used in this Statute:

1. “Board” shall mean “The Education Appeals Board”.
2. “Education Programs” means the Education Department.
3. “Emergency” means an unexpected situation that requires immediate action.
4. “LTBB” mean the Little Traverse Bay Bands of Odawa Indians or the Waganakising Odawa.

(Source: WOS 2009-011, May 3, 2009, Section I)

11.202 CREATION OF THE BOARD

The Education Commission is hereby renamed the Education Appeals Board, which shall consist of three (3) Members. Education Commission Members currently serving shall take the position

as Education Appeal Board Members until their current terms expire. Upon expiration of their term, a member may reapply for a position on the Board.

(Source: WOS 2009-011, May 3, 2009, Section II)

11.203 DUTIES AND AUTHORITY OF THE BOARD

Conduct hearings for appeals of programs administered by the Education Department such as Higher Education Scholarship Program, Adult Vocational Training Scholarship Program and Direct Employment Program.

(Source: WOS 2009-011, May 3, 2009, Section III)

11.204 MEETINGS AND EMERGENCY MEETINGS/HEARINGS

- A.** Regularly scheduled meetings shall be held to conduct business and hearings of the Board as deemed necessary.

- B.** An emergency meeting shall be held only for matters involving the needs of a student.

(Source: WOS 2009-011, May 3, 2009, Section IV)

11.205 REGULATIONS

The Executive may develop Regulations as it deems necessary for the implementation of the intent of this Statute and shall forward such Regulations to the Tribal Council for approval.

(Source: WOS 2009-011, May 3, 2009, Section V)

11.206 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or

statutes 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 from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2009-011, May 3, 2009, Section VI)

11.207 EFFECTIVE DATE

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

(Source: WOS 2009-011, May 3, 2009, Section VII)

Chapter 3. Michelle Chingwa Education Honorarium Act

11.301 PURPOSE

This Michelle Chingwa Education Honorarium Act is hereby enacted to provide a gift to honor Tribal Citizens that are obtaining post-secondary educational opportunities and repeals and replaces the original and amended Michelle Chingwa Education Assistance Act including WOS 2007-005, WOS 2014-010 and WOS 2018-010.

(Source: WOS 2020-003, January 28, 2020, Section I)

11.302 GENERAL WELFARE EXCLUSION

As stated by the requirements of the United States Internal Revenue Section 139E, the Michelle Chingwa Education Honorarium meets the criteria of the United States Public Law 113-168, Tribal General Welfare Exclusion Act of 2014 and WOS 2017-002 General Welfare Statute.

(Source: WOS 2020-003, January 28, 2020, Section II)

11.303 DEFINITIONS

- A.** “**Accredited**” shall apply to those post-secondary institutions of higher education, including vocational schools, that are accredited by an agency or organization recognized by either a domestic or foreign government or another accrediting agency that processes validations for colleges, universities, and other institutions of higher learning.

- B.** “**Citizen**” shall mean an enrolled member of the Little Traverse Bay Bands of Odawa Indians.

- C. **“Department”** shall mean the Niigandiwin Education Department that is overseen by the Executive Branch.
- D. **“Executive”** shall means the Tribal Chairperson or his/her designee.
- E. **“Executive Directive”** in accordance with the WOS 2015-19, means a directive issued by the Tribal Chairperson that establishes basic internal rules of procedure, or guidelines for the Executive Department and employees and does not impact Tribal Citizens or entities outside of the Executive Branch.
- F. **“GPA”** shall mean a student’s Grade Point Average reported by an institution on a student’s transcript for the academic term.
- G. **“LTBB”** shall mean The Little Traverse Bay Bands of Odawa Indians.
- H. **“MCEH”** shall mean the Michelle Chingwa Education Honorarium Program.
- I. **“Release of the Information Form”** shall mean a form completed by the student and provided by the LTBB Education Department that gives permission to the department for 3rd party communication with the institution.
- J. **“Student Success Plan”** shall mean a plan that is designed for the student by the Education Department that addresses financial and/or academic goals of the student ensure student success.
- K. **“Student Success Planning Session”** shall mean a meeting facilitated by the Higher Education Specialist, the Academic Services Coordinator, and/or the Education Director with the student which is intended to develop a plan which addresses financial and/or academic goals and connect them to the appropriate supports and resources that are available.

L. “Tribe” or “LTBB” shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2020-003, January 28, 2020, Section II)

11.303 APPLICATION

- A.** The program shall be administered by the Education Department.
- B.** Honorariums shall be paid directly to the student.
- C.** The program shall fund Honorariums to Tribal Citizens attending:
 - 1.** Accredited post-secondary institutions of higher education located within a Tribal Reservation, the United States or a foreign country;
 - 2.** Tribally controlled colleges that are seeking accreditation;
 - 3.** Other colleges or programs approved by Tribal Resolution.
- D.** Honorariums shall be administered in the following manner:
 - 1.** Deadlines are established as follows:
 - a.** Fall, October 15th
 - b.** Winter/Spring, February 15th
 - c.** Summer, June 15th
 - d.** Deadlines for trimesters, quarters or non-standard terms shall be thirty (30) days after the beginning of the session. “Non-standard Term” shall

mean a course term that is not considered to be a semester, trimester or quarter as defined by the United States Department of Education.

- e. Deadlines for accelerated courses that fall within a standard term but begin after the term begins shall be thirty (30) days after the beginning of the session.
-
- 2. The Honorariums shall be granted up to the deadline for each semester, trimester, quarter, non-standard term, or accelerated course.
 - 3. Honorarium applications submitted after the deadlines shall be classified as late. Late applications shall not be funded, but such late applications may be petitioned to the Education Department for further review.
 - 4. The Honorariums shall be calculated on a per credit hour basis with five (5) classifications: (Credits at foreign accredited post-secondary institutions of higher education, colleges and universities shall be calculated using the appropriate United States credit equivalency rate).
 - a. Classifications:
 - i. Class one (1) are prior learning credit courses or courses that are sponsored by Little Traverse Bay Bands of Odawa Indians and provided nearly free or minimal cost to the student.
 - ii. Class two (2) are Junior or community college classes.
 - iii. Class three (3) are Four-year colleges or four-year degree program classes.
 - iv. Class four (4) are Graduate level courses.
 - v. Class five (5) are free courses such as the free online courses.

- b.** The limit and level of each Honorarium classification shall be:
 - i. Set by the Executive Directive.
 - ii. Credit limits should not exceed eighteen (18) credits per semester for undergraduate courses (1,2,3, 5) or twelve (12) credits per semester for graduate courses (class 4).
 - iii. Honorarium levels for Class 1 shall assist with the cost of program expenses plus smaller amount to cover other student expenses (i.e. \$25 per credit hour to cover travel, meals, etc.).
 - iv. Honorarium levels for Class 2, 3, 4 respectively shall follow a general ratio of 2/3/4 (i.e. Class 2, \$150, Class 3, \$250, Class 4, \$350) and should be raised or lowered to accommodate the budget but an attempt should be made to keep the levels as consistent as possible to help students plan from semester to semester.
 - v. Honorarium levels for Class 5 shall be limited to a small per credit hour amount to cover miscellaneous expense (i.e. \$15 per credit to cover books, material, etc.).
 - vi. Students enrolled in multiple level of classes, the Honorarium shall be awarded at the appropriate level for each course or class.

E. To be eligible for an Honorarium the student must:

- 1.** Be an enrolled Citizen of the Tribe;
- 2.** Be enrolled in an educational institution or program as delineated in Section III, (C).

3. Maintain a 2.0 GPA during the course of an academic term (subject to petition).

(Source: WOS 2020-003, January 28, 2020, Section III)

11.304 RESTRICTIONS

- A. If a student withdraws from a course, their next Honorarium shall be reduced by that equivalent amount, unless otherwise petitioned.
- B. Students will not be funded for a course more than twice unless the student can prove they need to take the class over to complete a degree requirement but shall be limited to three (3) times.

(Source: WOS 2020-003, January 28, 2020, Section IV)

11.305 REGULATIONS REQUIRED

- A. The Department shall develop regulations for this statute for Tribal Council approval; however, the implementation of the statute shall not be delayed by approval of regulations.
- B. The regulations shall define any petition process. Petitions authorized by this statute shall be heard by the Education Department.
- C. The regulations shall require the following minimum reports to Tribal Council, and upon request to other Tribal sub-entity:
 1. Three (3) summary reports for each semester's Honorariums in March, July, and October and a year-end summary each January for all the previous year's Honorariums.

2. Each report shall contain at a minimum:

- a. A list of names of Honorarium recipients, the type of degree sought or earned and most recent contact information.
- b. Number of students in each class of Honorariums
- c. Number of semester credits in each class of Honorariums
- d. Total dollar amount of Honorariums for each period and the year
- e. Present Honorarium rates and predicted rates needed to meet budget for the next cycle

D. Publication required. The Department shall publish the award levels for the next Honorarium cycle in November, April, and June of each year.

(Source: WOS 2020-003, January 28, 2020, Section V)

11.306 APPROPRIATIONS AUTHORIZED

This Education Honorarium Act shall be included in the Executive budget and funded annually with a minimum budget of one million (\$1,000,000.00) dollars per fiscal year.

(Source: WOS 2020-003, January 28, 2020, Section VI)

11.307 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall

be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2020-003, January 28, 2020, Section VII)

11.308 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.

(Source: WOS 2020-003, January 28, 2020, Section VIII)

Chapter 4. Reserved

Codification Note: This chapter previously located here was repealed and replaced with WOS 2022-005 Vulnerable Elder and Adult or Incapacitated Adult Protection, Guardianship and Conservatorship Statute. (See Chapter 9 of this Title)

Chapter 5. Reserved

Codification Note: 11.501 Burial Program has been relocated to Title XV @ 15.2601

Chapter 6. Food Safety Act

11.601 PURPOSE

This Statute is hereby enacted to establish a satisfactory level of food service safety within the Tribe's jurisdiction with the intent of promoting Tribal entrepreneurs.

(Source: WOS 2006-010, June 28, 2006, Section I)

11.602 DEFINITIONS

- A. **“Tribe”** shall mean the Little Traverse Bay Bands of Odawa Indians.
- B. **“Enterprise”** shall mean any legal form of business recognized by the Tribe or established by Tribal law.
- C. **“Food Service Facility”** an establishment where food is served or sold for immediate consumption such as a deli, takeout, or restaurant.
- D. **“Food Preparation Facility”** shall mean an establishment where food is prepared for off site sales such as a cannery or fish packing plant.
- E. **“Food Sales Facility”** shall mean an establishment where food is sold for consumption off site such as a grocery store, fish store, or vegetable stand.

(Source: WOS 2006-010, June 28, 2006, Section II)

11.603 APPLICATION

- A. The Tribe shall have the authority to regulate food service, food sales, and food preparation facilities owned or operated by the Tribe or the Tribe's enterprises.
- B. The Tribe shall have the authority to regulate food service, food sales, and food

preparation facilities owned or operated by Tribal Member enterprises that are legal business enterprises under the Tribe’s business codes and that are within the Tribe’s jurisdiction.

C. The Tribe shall have the authority to regulate food service, food sales, and food preparation facilities of temporary nature at community activities such as jiingtamak and feasts.

D. The Tribe shall have the authority to establish fees that do not exceed \$100 per annum for permanent or \$25 per temporary permits. Fees for Head Start, schools, and non profit corporations shall not exceed \$25 per annum or \$10 per temporary permit.

E. The Tribe shall have the authority to inspect facilities that are licensed by this statute and facilities that are with in Tribal jurisdiction and licensed by other jurisdictions such as portable kitchens at jiingtamak. Inspections of facilities that are licensed under the other laws shall be in accordance with those laws or the Tribe’s which ever best serve the Tribe. Facilities that are open to the public shall be inspected during open hours while all other inspections shall require reasonable notice.

(Source: WOS 2006-010, June 28, 2006, Section III)

11.604 RESTRICTIONS

A. All inspection violations shall require reasonable suggested solutions on the same form as inspection violations are written.

B. Regulation of entrepreneurial businesses in Tribal homes shall not exceed the requirements necessary to prevent significant health risks.

C. Potlucks and traditional feasts shall not be regulated.

(Source: WOS 2006-010, June 28, 2006, Section IV)

11.605 REGULATIONS REQUIRED

- A. The Tribal Executive shall adopt regulations to implement this statute.

- B. The regulations concerning home businesses and temporary permits shall be those minimally required for food safety and shall ensure those regulations are available in pamphlet format to promote a food safety environment in these entrepreneurial facilities. The pamphlets should include temperatures and time requirements and warnings or reasons for the regulations.

- C. All fines and penalties other than license revocation shall not exceed \$50 and should only be used after warnings are issued.

(Source: WOS 2006-010, June 28, 2006, Section V)

11.606 PROCEDURES REQUIRED

- A. None.

(Source: WOS 2006-010, June 28, 2006, Section VI)

11.607 APPROPRIATIONS AUTHORIZED

- A. The Executive shall present Tribal Council with modifications to the present and future annual Budgets to include appropriations necessary to implement this statute.

(Source: WOS 2006-010, June 28, 2006, Section VII)

11.608 EXECUTIVE AUTHORITY

- A. The Tribal Executive is hereby mandated to implement this Act and to enforce all approved Tribal Codes of Regulation.

(Source: WOS 2006-010, June 28, 2006, Section VIII)

11.609 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2006-010, June 28, 2006, Section IX)

11.610 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 2006-010, June 28, 2006, Section X)

Chapter 7. Shirley Naganashe Oldman Secondary Education Completion Honorarium

11.701 PURPOSE

The Shirley Naganashe Oldman Graduate Honorarium Statute is hereby enacted to provide a gift to honor Tribal Citizens to encourage them to continue to obtain and complete a secondary education; and repeals and replaces WOS 2011-016 Shirley Naganashe Oldman Secondary Education Completion Award Statute. This Statute is named in the honor of Shirley Naganashe Oldman in recognition of her dedication in assisting Tribal Citizens to obtain their highest level of educational goals.

(Source: WOS 2018-020, December 5, 2018, Section I)

11.702 GENERAL WELFARE EXCLUSION

As stated by the requirements of the United States Internal Revenue Section 139E, the Shirley Naganashe Oldman Graduate Honorarium meets the criteria of the United States *Public Law* 113-168, Tribal General Welfare Exclusion Act of 2014 and WOS 2017-002 General Welfare Statute.

(Source: WOS 2018-020, December 5, 2018, Section II)

11.703 DEFINITIONS

- A. “Citizen”** means an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- B. “Department”** means the Education Department located within the Executive Branch of the Tribe.
- C. “Executive Directive”** in accordance with the WOS 2015-019, means a directive issued by the Tribal Chairperson that establishes basic internal rules of procedure, or guidelines for Executive departments and employees and does not impact Tribal Citizens or entities out-side of

the Executive Branch.

D. “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2018-020, December 5, 2018, Section III)

11.704 APPLICATION

A. The program shall be administered by the Department and the Department shall ensure that students receive only one (1) honorarium from the Tribe for Secondary Education completion.

B. The program shall provide honorarium to Tribal Citizens who have obtained a high school diploma, General Equivalence Diploma (GED) or a certificate of completion for students in Special Education programs, during the current fiscal year.

C. Through regulation as approved by Tribal Council, levels shall be an equal amount for high school diploma, GED or a certificate of completion for students in Special Education programs.

(Source: WOS 2018-020, December 5, 2018, Section IV)

11.705 REGULATIONS REQUIRED

A. The Department shall develop regulations for this Statute within one-hundred and eighty (180) days of enactment of this Statute; however, the implementation of the Statute shall not be delayed by approval of regulations.

B. The regulations shall define an appeal process. Appeals authorized by this Statute shall be heard by the Education Appeals Board until another body is appointed by Statute, regulation, or appropriate resolution.

C. The regulations shall require the following minimum reports to Tribal Council that contains the following information:

1. Number of students that received the honorarium.
2. Total dollar amount of honorarium for each year.
3. Present honorarium rates and predicted rates needed to meet budget for the next cycle.

D. Publication required: The Executive shall set the honorarium levels for the next honorarium cycle each academic year or more often as needed by the Executive Directive.

(Source: WOS 2018-020, December 5, 2018, Section V)

11.706 APPROPRIATIONS AUTHORIZED

This Award Statute shall be funded by the General Funds, or other funds as available and appropriate, with a minimum budget of \$5,000 per LTBBOI fiscal year.

(Source: WOS 2018-020, December 5, 2018, Section VI)

11.707 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2018-020, December 5, 2018, Section VII)

11.708 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2018-020, December 5, 2018, Section VIII)

Chapter 8. Right to Breastfeed and Civil Offense for Discrimination

11.801 PURPOSE

Little Traverse Bay Bands of Odawa Indians (LTBB) recognizes the importance of increasing the breastfeeding practice. The Tribe supports and promotes breastfeeding of children to ensure that children achieve an optimal healthy condition. Breast milk provides a better nutrition and higher immunity against diseases, is better to digest, and may increase the children's IQ.

(Source: WOS 2012-013, August 19, 2012, Section I)

11.802 RIGHT TO BREASTFEED

- A. A mother may breastfeed her child on any Tribal property.
- B. *Breastfeeding, prohibition of discriminatory practices.* Any direct or indirect act of exclusion, alienation, restriction, segregation, limitation, rejection, or any other act or practice of differentiation, including denying a person the total enjoyment of goods, services, facilities, privileges, advantages, and accommodations in any public or private place on Tribal Property which she attends, whether it is visited by the public or used for recreation, based on the fact that a mother is breastfeeding her child, shall constitute a discriminatory practice prohibited by this Statute and may result in a civil infraction.
- C. Breastfeeding Discrimination shall be prohibited on any Tribal property and shall be deemed a civil offense.
- D. A law officer has the authority to issue a notice of violation citation when:
 - a. When the violation is committed in the officer's presence;
 - b. If an officer investigating the violation has reasonable cause to believe that the alleged violation has occurred.
- E. *Breastfeeding is not a violation of the law.* A mother breastfeeding her child in any place,

whether public or private, on Tribal property shall not be deemed as indecent exposure, obscene act or other punishable action established in the Tribe's Criminal Code or Sex Offense Statute, or as may be amended.

11.803 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2012-013, August 19, 2012, Section III)

11.804 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 2012-013, August 19, 2012, Section IV)

Chapter 9. Vulnerable Elder and Adult or Incapacitated Adult Protection, Guardianship and Conservatorship Statute

11.901 PURPOSE

The purpose of this Statute is to protect Vulnerable Elders and Adults, or Incapacitated Adults from abuse, neglect, or exploitation as defined by this Statute; and provide for services and court action for Vulnerable Elders and Adults, or Incapacitated Adults; and appoint guardianship and/or conservatorship for Incapacitated Adults, if necessary. This Statute repeals and replaces any previous Adult Welfare Code, including WOS 2015-012, WOS 2005-07, repeals and replaces WOS 2015-017 Elder and Adult Conservatorship and Guardian Statute, and repeals and replaces WOS 2022- XXX Vulnerable Elder and Adult, or Incapacitated Adult, Protection Statute.

(Source: WOS 2022-005, June 10, 2022, Section I, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.902 DEFINITIONS

- A.** “Accounting” means a detailed written summary of all financial actions done by the guardian and/or conservator on behalf of the Incapacitated Adult.
- B.** "Abuse" means
- 1.** An intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional abuse or cruel punishment of a Vulnerable Elder and Adult, or Incapacitated Adult which result in physical pain or mental anguish; or
 - 2.** Sexual abuse is physical contact without consent of a Vulnerable Elder and Adult, or Incapacitated Adult with the intent to derive sexual gratification by the person making contact. Consent may not be obtained by threat, coercion, intimidation or fraud.

- C.** “Bond” means an insurance policy or similar instrument that is intended to protect the Incapacitated Adult’s property should the conservator mismanage the person’s estate.
- D.** "Caretaker" means a person who is required by court of competent jurisdiction to provide services or resources to a Vulnerable Elder and Adult, or Incapacitated Adult.
- E.** “Conservator” means a person appointed by a court of competent jurisdiction who is responsible for the collection, management, preservation, and investment of an Incapacitated Adult's property.
- F.** “Department” means the Little Traverse Bay Bands of Odawa Indians Department of Human Services.
- G.** “Emergency” means a situation in which a Vulnerable Elder and Adult, or Incapacitated Adult is immediately at risk of death or injury and is unable to consent to services to remove the risk.
- H.** “Exploitation” means the improper or unauthorized use of a Vulnerable Elder and Adult, or Incapacitated Adult’s funds, property or other resources or failure to use a Vulnerable Elder and Adult, or Incapacitated Adult’s funds, property or resources as a Vulnerable Elder and Adult, or Incapacitated Adult’s desire or for their benefit.
- I.** “Family” means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, or significant other person or relative with whom a Vulnerable Elder and Adult, or Incapacitated Adult which has a familial relationship, or who resides with a Vulnerable Elder and Adult, or Incapacitated Adult.
- J.** “Guardian” means a person appointed by a court of competent jurisdiction to exercise the duty and authority to provide care and control of an Incapacitated Adult’s personal health, safety, and welfare, under the Tribal Court’s jurisdiction.
- K.** "Good Faith" means an honest and reasonable belief or purpose, and the lack of intent to defraud.

L. “Incapacitated Adult” means a Vulnerable Elder or Adult, because of physical or psychological infirmities, lacks the understanding or capacity to make or communicate informed decisions or is unable to manage property and business affairs effectively and needs a guardianship and/or conservatorship.

M. "Least restrictive alternative" means whenever it is necessary to protect a Vulnerable Elder and Adult, or Incapacitated Adult, the least restrictive method of intervention shall be used to protect the freedom and independence of a Vulnerable Elder and Adult, or Incapacitated Adult; the least restrictive alternative is that environment which is the most like a Vulnerable Elder and Adult, or Incapacitated Adult’s home setting and which is most capable of supporting the protected person's physical and mental health; and emotional well-being.

N. “LTBB” or “Tribe” or “Tribal” means the Little Traverse Bay Bands of Odawa Indians.

O. "Neglect" means the failure of someone with fiduciary or legal responsibility to provide necessary services or resources to maintain the health or safety of a Vulnerable Elder and Adult, on Incapacitated Adult, or self-neglect caused by the inability of the adult to provide themselves with basic food, clothing, shelter and medical care due to mental incompetency or physical disability.

P. "Party" or "interested party" means the family, caretaker, and any other person that has an interest in the welfare of a Vulnerable Elder or Adult, or Incapacitated Adult. The Court shall have the power to determine who is or is not a party or interested party in any court proceeding.

Q. “Prosecutor” means the Little Traverse Bay Bands of Odawa Indians Prosecutor.

R. “Protective placement" means the placement of a Vulnerable Elder and Adult, or Incapacitated Adult, in a hospital, nursing home, residential care facility, other suitable placement, or transfer from one facility to another with consent of that person or with appropriate legal authority.

S. "Protective services" means services provided to a Vulnerable Elder and Adult, or Incapacitated Adult, with consent or by order of appropriate legal authority which includes but is not limited to: social services, mental and physical health examinations, home and day care, legal assistance, guardianship, case management and any other services consistent with this Statute.

T. "Substantiated Report" means when there is probable cause of abuse after an investigation conducted by the Department. The report is sent to the Tribal Prosecutor for further steps to be taken.

U. "Tribe" or "Tribal" means the Little Traverse Bay Bands of Odawa Indians.

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

W. "Vulnerable Elder and Adult" means an Elder who is fifty-five (55) years old or older or an Adult who is eighteen (18) years old or older and is unable to protect themselves from abuse, neglect or exploitation due to mental incompetency or physical disability.

X. "Unsubstantiated Report" means when no probable cause exists after an investigation. These reports are filed within the Department for reference as needed.

(Source: WOS 2022-005, June 10, 2022, Section II, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.903 AUTHORITY

A. Pursuant to provisions of the Tribal Constitution, including Article I, B, 2. *"Promote with special care the health, educational and economic interests of all the people, especially our children and Elders, and shall protect them from social injustice and all forms of exploitation;* and 4. *"Establish and maintain within the limits of their economic capacity and development, effect provision for securing the right to work, to education and assistance, in cases of unemployment, old age, sickness and disablement, and in other cases of need".*

B. Pursuant to provisions of the Tribal Constitution, including Article VI., C. "... the Executive Branch to administer such funds, enforce this Constitution and laws passed thereunder, and implement policies and procedures enacted by the Tribal Council in accordance with Article VIII", Article VII of the Tribal Constitution allows the Legislative Branch to *approve the creation or dissolution of Executive divisions or departments to promote and protect the peace, health, safety, education and general welfare of Little Traverse Bay Bands of Odawa Indians and its members.*

(Source: WOS 2022-005, June 10, 2022, Section III, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.905 JURISDICTION

A. The Little Traverse Bay Bands of Odawa Indians shall have jurisdiction over the following:

- 1.** A Vulnerable Elder and Adult, or Incapacitated Adult who is unable to protect themselves from suspected abuse, neglect or exploitation due to mental incapacity or physical disability and resides within Tribal Trust Lands;
- 2.** An Incapacitated Adult, because of physical or psychological infirmities, lacks the understanding or capacity to make or communicate informed decisions or is unable to manage property and business affairs effectively and needs a guardianship and/or conservatorship and resides within Tribal Trust Lands;
- 3.** A person who is required by a court of competent jurisdiction to or has a guardianship, conservatorship, fiduciary or legal responsibility to provide services or resources and is suspected of abuse, neglect or exploitation under this Statute to a Tribal Vulnerable Elder and Adult, or Incapacitated Adult who resides within Tribal Trust Lands.
- 4.** A person appointed by Tribal Court as a Conservator and/or Guardian.

(Source: WOS 2022-005, June 10, 2022, Section IV, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.905 DUTY TO REPORT

A. Every person has the duty to report to the Department if they suspect that a Vulnerable Elder and Adult, or Incapacitated Adult is abused or neglected.

B. It is mandated by this Statute for the following to report to the Department any suspected abuse, neglect or exploitation of a Vulnerable Elder and Adult, or Incapacitated Adult immediately or no later than twenty-four (24) hours of obtaining the information:

1. Persons who either have been court appointed or have a legal responsibility to a Vulnerable Elder and Adult, or Incapacitated Adult;

2. Law Enforcement;

3. Tribal employee(s) who provide services to Vulnerable Elder and Adult, or Incapacitated Adult, of the following departments:

- a.** Education
- b.** Elders
- c.** Health
- d.** Housing
- e.** Human Services
- f.** Language

4. Elected or appointed official of the Tribe;

C. Reports should include a detailed summary of the actions, inactions and/or allegations of the suspected abuse or neglect.

D. Reports of suspected Vulnerable Elder and Adult, or Incapacitated Adult’s abuse are presumed to be made in good faith.

(Source: WOS 2022-005, June 10, 2022, Section V, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.906 IMMUNITY FOR REPORTING

A person who in good faith reports suspected abuse, neglect or exploitation as defined in this Statute is immune from any civil or criminal statute, even if the report is unsubstantiated.

(Source: WOS 2022-005, June 10, 2022, Section VI, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.907 CONFIDENTIALITY OF REPORTER and RECORDS

A. The identity of the reporter of suspected Vulnerable Elder and Adult, or Incapacitated Adult’s abuse, neglect or exploitation, under this Statute, is confidential.

B. Records of investigations concerning suspected Vulnerable Elder and Adult, or Incapacitated Adult’s abuse, neglect or exploitation shall be confidential.

(Source: WOS 2022-005, June 10, 2022, Section VII, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.908 FAILURE TO REPORT; CIVIL PENALTY

If found responsible, after a fair hearing of the Court, that a person mandated by this Statute to report, and that person fails to report suspected Vulnerable Elder and Adult, or Incapacitated Adult’s abuse, neglect, or exploitation, may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars.

(Source: WOS 2022-005, June 10, 2022, Section VIII, Repeals and Replaces 2005-07, 2015-012

and 2015-017)

11.909 RETALIATION; CIVIL PENALTY

If a person is found to have retaliated against a reporter, they may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars. For the purposes of this Statute, "Retaliation" shall include the following: intimidating or threatening to cause bodily harm, or causing bodily harm, or causing bodily harm to a reporter or family of a person reporting abuse; causing the reporter or reporter's family to be terminated, suspended or reprimanded by an employer; causing property damage to real or personal property belonging to a reporter's family.

(Source: WOS 2022-005, June 10, 2022, Section IX, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.910 FALSE REPORT

If found responsible, after a fair hearing of the Court, any person who makes a report of suspected Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect or exploitation as defined by this Statute knowing it to be false may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars.

(Source: WOS 2022-005, June 10, 2022, Section X, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.911 HUMAN SERVICES DEPARTMENT DUTIES, RESPONSIBILITIES and AUTHORITY

A. The Department shall be responsible to initiate an investigation, upon receiving a report of:

- 1.** a Vulnerable Elder and Adult's abuse, or Incapacitated Adult neglect or exploitation, or
- 2.** an Incapacitated Adult in need of a Guardian and/or Conservator.

B. The Department shall investigate all reports.

C. Abuse, Neglect or Exploitation. The Department shall initiate an investigate upon receipt of the report of abuse, neglect or exploitation within twenty-four (24) hours, meet face to face with the alleged victim within seventy-two (72) hours and complete the investigation with a written report within thirty (30) consecutive days based upon:

1. Personal interviews with the alleged abused, neglected or exploited Vulnerable Elder and Adult, or Incapacitated Adult, the immediate family and caretaker, suspected abuser, employees of agencies (if involved), and any other person who may have pertinent information;
2. Medical records and other evidence of abuse;
3. Assessments of a Vulnerable Elder and Adult, or Incapacitated Adult's living conditions;
4. Any other observations, assessments or documents that may aid in completing an accurate report.

D. Based on the investigation, if the Department believes that there is evidence of Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect or exploitation, the Department will submit the report to the Prosecutor.

E. Based on the investigation, if the Department believes that there an Incapacitated Adult in need of a Guardian and/or Conservator, the Department may request the Prosecutor file a petition with Tribal Court.

F. The Department shall have the authority to obtain from all Tribal Governmental Departments, Agencies and Programs information and assistance with the Department's investigations of suspected Vulnerable Elder and Adult, or Incapacitated Adult, abuse, neglect or exploitation; or Incapacitated Adult in need of a Guardian and/or Conservator. This shall include

information sharing without the need of signed releases, if it is part of an ongoing investigation for alleged abuse or neglect.

(Source: WOS 2022-005, June 10, 2022, Section XI, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.912 LAW ENFORCEMENT DUTIES AND RESPONSIBILITIES

A. Upon the request of the Department, Law Enforcement shall assist the Department in conduct of an investigation within twenty-four (24) hours, if one or more of the following conditions exist:

- 1.** Abuse or neglect is the suspected cause of death of a Vulnerable Elder and Adult, or Incapacitated Adult;
- 2.** A Vulnerable Elder and Adult, or Incapacitated Adult, is the victim of suspected sexual abuse or sexual exploitation;
- 3.** Abuse or neglect resulting in severe physical injury to a Vulnerable Elder and Adult, or Incapacitated Adult, that requires medical treatment or hospitalization. For the purpose of this subsection, “severe physical injury” means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprain, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a vulnerable Tribal Elder or Vulnerable Tribal Adult, or Incapacitated Adult.
- 4.** Law Enforcement intervention is necessary for the protection of a Vulnerable Elder and Adult, or Incapacitated Adult, Department staff, or another person involved in the investigation; or
- 5.** The alleged perpetrator of abuse, neglect or exploitation of a Vulnerable Elder and Adult, or Incapacitated Adult, is not a person responsible for the health or welfare of the Vulnerable Elder and Adult, or Incapacitated Adult.

B. Law Enforcement shall be responsible to determine and investigate if any other criminal acts are alleged and shall forward this information to the Prosecutor.

(Source: WOS 2022-005, June 10, 2022, Section XII, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.913 PROSECUTOR'S DUTIES AND RESPONSIBILITIES

The Prosecutor is authorized by this Statute to petition the Court for Emergency Protection Orders and Non-Emergency Protection Orders for the protection of Vulnerable Elders and Adults, or Incapacitated Adult from abuse, neglect or exploitation, upon receipt of a substantiated report of investigation from the Department.

(Source: WOS 2022-005, June 10, 2022, Section XIII, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.914 PETITIONS AND EMERGENCY ORDERS

A. The Department or any concerned or interested party may file a Petition for an Emergency Protection Order (EPO) directly with the Court of suspected Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect or exploitation.

B. Upon filing of a Petition, the Court may issue an EPO authorizing emergency services or protective placement either ex parte or after a hearing, if there is a showing, upon clear and convincing evidence that:

1. A person is a Vulnerable Elder and Adult, or Incapacitated Adult; and
2. The Vulnerable Elder and Adult, or Incapacitated Adult, is at risk of immediate abuse, neglect or exploitation.

C. The EPO, using the least restrictive alternative, may include:

1. Specific emergency services to be provided to remediate the emergency;
2. Protective placement only if the evidence indicates that it is absolutely necessary;
3. Designation of a person or agency required to implement the order; and
4. A warrant for forcible entry by Tribal Law Enforcement, if requested and documented attempts to gain voluntary access have failed.

D. EPO's shall not exceed a maximum of seventy-two (72) hours excluding weekends and holidays, and may only be renewed for an additional seventy-two (72) hours, if there is evidence of continuing emergency.

E. The Court shall hold a hearing upon the filing of a Petition for an EPO or if an EPO was issued ex parte, within seventy-two (72) hours. At the hearing, if the Vulnerable Elder or Adult, or Incapacitated Adult, is not represented, a Guardian ad Litem shall be appointed at this time, if it has not already been done so at the time of the filing of the Petition for an EPO.

F. All parties, including attorneys, are permitted to attend the hearing for an EPO. The hearing may be done ex parte if the need arises. The sufficiency of the petition will be determined on a totality of circumstances and goes into effect upon the immediate granting of the order by the Court.

(Source: WOS 2022-005, June 10, 2022, Section XIV, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.915 EMERGENCY PLACEMENT

A. If there is good cause to believe that an emergency exists and a Vulnerable Elder and Adult, or Incapacitated Adult is at risk of immediate or irreparable harm upon personal observation or by the Department's investigation, the Department or Tribal Law Enforcement shall immediately take steps to protect the Vulnerable Elder and Adult, or Incapacitated Adult,

including emergency services or protective placement. A Court Order must be obtained within twenty-four (24) hours to continue the authorization of emergency services or protective placement.

B. Anyone who acts, based on reasonably good faith, pursuant to this section shall be immune from civil and criminal suit if the suspected abuse or neglect results in an unsubstantiated report.

(Source: WOS 2022-005, June 10, 2022, Section XV, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.916 PETITIONS AND NON-EMERGENCY PROTECTION ORDER

A. The Department or any concerned or interested party may file a Petition for a Non-Emergency Protection Order (NEPO) directly with the Court of suspected Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect or exploitation.

B. Upon the filing of a Non-Emergency Protection Order (NEPO) petition, the Court may issue an NEPO, after a hearing that shall be held within fourteen (14) consecutive days if there is a showing, upon clear and convincing evidence

1. A person is a Vulnerable Elder and Adult, or Incapacitated Adult; and

2. The Vulnerable Elder and Adult, or Incapacitated Adult, is at risk of abuse, neglect or exploitation.

C. All parties are entitled to Notice and an opportunity to be heard on the record. All proceedings shall be open to the public, unless the Court, on its own motion or by motion of a party, determines that by the nature of the proceedings, the proceedings are to be closed.

D. Judgments. The Court shall make a written determination or decision within forty-eight (48) hours of a hearing and use the least restrictive alternative, which may include the following:

1. Appointing Guardian ad Litem for the Vulnerable Elder and Adult, or Incapacitated Adult to enter other orders for the protection of the Vulnerable Elder and Adult, or Incapacitated Adults.
2. Order the Department to prepare petitions for Guardianship and/or Conservatorship if the Vulnerable Elder or Adult is believed to be an Incapacitated Adult; or order the Department file a request for a termination of the current Guardian and/or Conservator for an Incapacitated Adult, and prepare petitions for a new appointment;
3. Removal from the place where the abuse or neglect occur(ed) including the Vulnerable Elder and Adult, or Incapacitated Adult's home;
4. Remove the abuser from the residence to prohibit further abusive acts;
5. Requiring any party having a fiduciary duty to the Vulnerable Elder and Adult, or Incapacitated Adult, to account for the Vulnerable Elder and Adult, or Incapacitated Adult's funds and/or property.

E. Protective orders authority shall not exceed 180 days; Guardianship and/or conservatorship may be temporary or permanent.

(Source: WOS 2022-005, June 10, 2022, Section XVI, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.917 PETITION FOR FINDING OF VULNERABILITY ELDER OR ADULT as INCAPACITATED and APPOINTMENT OF GUARDIAN OR CONSERVATOR

A. The Department via the Prosecutor, or any concerned or interested party may file a petition for Finding of a Vulnerable Elder or Adult as an Incapacitated Adult and request an Order for Appointment of Guardian or an Order for Appointment of a Conservator, or both.

B. The Petition will include, but not limited to, the name, age, date of birth, gender and address of the alleged Incapacitated Adult, reasons why the need exists, petitioner's relationship

with the alleged Incapacitated Adult, names and addresses of immediate family of the alleged Incapacitated Adult, the extent of the alleged Incapacitated Adult's estate, and the names and addresses of those who can provide testimony that the person needs a guardian or conservator.

C. The petitioner or Court will mail copies of the petition and notice of the hearing to all interested persons who include the following people:

1. The alleged Incapacitated Adult's spouse;
2. *If known*, a person named as the alleged Incapacitated Adult's agent in a Durable Power of Attorney or *Patient Advocate Designation*, or other medical or legal representatives;
3. The alleged Incapacitated Adult's children (or, if the Incapacitated Adult has no children, the Incapacitated Adult's parents); and
4. If there is one, the alleged Incapacitated Adult's Guardian or Conservator appointed by a Court in another jurisdiction.

D. The Court shall appoint Guardian ad Litem to represent the alleged Incapacitated Adult, unless the alleged Incapacitated Adult has his or her own attorney. The alleged Incapacitated Adult and these interested persons are entitled to object to the appointment of a Guardian or Conservator.

E. The Court may issue an Order for Appointment of Guardian or Appointment of a Conservator, or both, after a hearing which shall be held, and there is a showing, upon clear and convincing evidence based a detailed description of the alleged Incapacitated Adult's physical or psychological infirmities by a physician or mental health professional and an explanation of how and to what extent each infirmity interferes with the alleged Incapacitated Adult's ability make decisions, on the following:

1. The person lacks the understanding or capacity to make or communicate informed decisions, and the appointment of a guardian is necessary to provide for the Incapacitated Adult's continuing care and supervision;

2. The person is an adult who is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, or disappearance, and the person has property that will be wasted or dissipated unless the Appointment of a Conservator is provided, or money is needed for the Incapacitated Adult's support, care, and welfare or for those entitled to the Incapacitated Adult's support, and that the Appointment of a Conservator is needed to obtain or provide money;

3. Or both, and an Appointment of a Guardian and Conservator is necessary.

F. If a medical evaluation is not voluntarily provided to the Court, the Court on its own Motion may Order a medical evaluation by a physician or mental health professional. The examination and evaluation report should contain a description of the alleged Incapacitated Adult's physical and mental condition, cognitive and functional abilities and limitations, adaptive behaviors, social skills, educational and developmental potential, prognosis for improvement and recommendation for treatment or rehabilitation as appropriate. The professional completing the report must also state his or her opinion as to whether the alleged Incapacitated Adult is impaired and in need of a guardian or conservator, or both, and whether the person could meaningfully participate in the proceedings.

G. The Court may also weigh any of the following as evidence:

1. Testimony from family or friends familiar with the alleged Incapacitated Adult;

2. Medical and financial records relevant to the alleged Incapacitated Adult or their ability to care for themselves;

3. Any other evidence the Court determines to be relevant.

4. Refusal to submit to a Court Order medical evaluation can be used by the Court as evidence of mental incapacity.

H. All parties are entitled to Notice and an opportunity to be heard on the record. All proceedings shall be open to the public, unless the Court, on its own motion or by motion of a party, determines that by the nature of the proceedings, the proceedings are to be closed. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure.

I. For the Court to Order for Appointment of Guardian or Appointment of a Conservator, or both, the Court shall make a written determination based on sufficient proof as presented to the Court.

J. The Court should consider appointing the alleged Incapacitated Adult's agent in a Durable Power of Attorney or *Patient Advocate Designation, or other medical or legal representatives of the alleged Incapacitated Adult.*

K. Before the Judge signs an Order of Appointment and issues letters of guardianship or conservatorship, or both, the Court shall require a written oath reflecting that the Guardian and/or Conservator will faithfully discharge all duties assigned by the Court. The Guardian and/or Conservator shall also sign an Acceptance of Appointment.

L. Appointment of a Guardian. The Court shall grant a Guardian only those powers and only for that period of time as is necessary to provide for the demonstrated need of the Incapacitated Adult. The Court shall design the guardianship to encourage the development of maximum self-reliance and independence in the Incapacitated Adult. A Court Order establishing a guardianship shall specify any limitations on the Guardian's powers and any time limits on the guardianship. At any time, the Court may require the guardian to develop and file with the Court a plan of care of the Incapacitated Adult.

M. Powers and Duties of a Guardian.

1. A Full Guardian is responsible for the Incapacitated Adult's care, custody, and supervision, including ensuring that the Incapacitated Adult has proper food and clothing, the Incapacitated Adult lives in a place that is appropriate for him or her, the Incapacitated Adult's medical needs are met, and the Incapacitated Adult's property is safe. A Limited Guardian is responsible for only those duties stated in the Court Order.

2. In the absence of a valid Patient Advocate Designation, the Guardian will make the medical decisions.

3. The Guardian must visit the Incapacitated Adult at least quarterly or as directed by the Court Order, but no less than once a year, the Guardian must prepare a report on the condition of the Incapacitated Adult and file the report with the Court. The Guardian must give copies of the report to the Incapacitated Adult and all interested persons as defined by the Statute. The Court will review any guardianship plan, prior orders in the case, and any accountings and previous reports or accountings, including all costs and fees charged by the guardian.

4. If a Conservator is not appointed, the Guardian may take control of and manage the Incapacitated Adult 's funds and property for the benefit of the Incapacitated Adult. The funds or property are used for the Incapacitated Adult's support, care, and education. Any amount not used is saved for the Incapacitated Adult's needs.

N. Appointment of a Conservator. The Court shall grant a Conservator only those powers and only for that period of time as is necessary to provide for the demonstrated need of the Incapacitated Adult. The Court shall design the conservatorship to encourage the development of maximum self-reliance and independence in the Incapacitated Adult. A Court Order establishing a conservatorship shall specify any limitations on the conservator's powers and any time limits on the conservatorship.

O. Powers and Duties of a Conservator.

1. A Conservator may expend or distribute estate income or principal without court authorization or confirmation for the support, education, care, or benefit of the Incapacitated Adult or the Incapacitated Adult 's dependents in accordance with the following principles:

a. the action taken be in the best interest of the Incapacitated Adult, exercising sound judgment and avoiding conflicts of interest;

b. the action is reasonably necessary for the support, education, care, or benefit of the protected Incapacitated Adult or a dependent.

2. A Conservator shall not sell or otherwise dispose of the protected Incapacitated Adult's principal dwelling, real property, or interest in real property or mortgage, pledge, or cause a lien to be placed on any such property without approval of the Court. The Court shall only approve the sale, disposal, mortgage, or pledge of or lien against the principal dwelling, real property, or interest in real property if the Court considers evidence of the value of the property and otherwise determines that the sale, disposal, mortgage, pledge, or lien is in the protected Incapacitated Adult's best interest.

3. The Court shall require the Conservator promptly file a fiduciary bond and provide an inventory of the Incapacitated Adult's property to the Court and deliver copies to the Incapacitated Adult and other parties as required by the Court.

4. Conservators shall file at a minimum an annual report to the Court that provides an update on the condition of the protected Incapacitated Adult and an accounting of funds collected and funds expended on behalf of the Incapacitated Adult. The reports shall be available for review by interested parties. The Court will review any conservatorship plan, prior orders in the case, and any accountings and previous reports or accountings, including all costs and fees charged by the Conservator.

5. Conservators shall schedule annual review hearings in conjunction with the filing of annual reports. Any interested party may request additional hearings.

6. Conservators do not have power to consent to medical treatment, to choose where an Incapacitated Adult lives, or to control day-to-day activities.

(Source: WOS 2022-005, June 10, 2022, Section XVII, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.918 COURT COSTS AND FEES

A. The Court may require payment of costs and fees for filing a petition with the Court. Costs and fees may be waived if a person is unable to pay by reason of indigence. Any costs for filing of a petition by the Department shall be waived.

B. Costs and fees may be allowed for the following:

1. Any professional services ordered performed by the Court.
2. Counsel for the Incapacitated Adult when counsel is appointed by the Court.
3. Counsel for the petitioner and any respondent.
4. Other costs and fees may be allowed and paid as are allowed by law for similar services in other cases.

C. The costs shall be taxed to the estate of the Incapacitated Adult, to those bound by law to support the Incapacitated Adult, to other parties whenever it would be just and equitable to do so.

(Source: WOS 2022-005, June 10, 2022, Section XVIII, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.919 ADDITIONAL REPORTING REQUIRMENTS OF GUARDIAN AND/OR CONSERVATOR

A. The Court may determine whether or not a report or accounting shows reasonable administration of the guardianship or conservatorship, or both, whether the fiduciary is performing his or her duties and responsibilities, and whether the fiduciary's powers should be expanded or limited or any other modifications made.

B. The Court may then set a hearing on the matter.

C. In addition to the usual annual reports and accountings, the Court may order additional filing of a special report or accounting if specific circumstances require it.

- D.** The Court will require a reporting of any of the following:
- 1.** Change of address of the guardian or conservator.
 - 2.** Change of residence or placement of the Incapacitated Adult.
 - 3.** Significant change in the health or impairment of the Incapacitated Adult.
 - 4.** The acquisition, receipt or accumulation of property or income by the Incapacitated Adult which would cause the value of the Incapacitated Adult 's estate to equal or exceed \$10,000.
 - 5.** The death of the Incapacitated Adult.
 - 6.** A change in the circumstances of the guardian, or conservator, Incapacitated Adult that may constitute a conflict of interest.

(Source: WOS 2022-005, June 10, 2022, Section XIX, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.920 RIGHTS OF VULNERABLE ELDER AND ADULT, OR INCAPACITATED ADULT

- A.** The alleged Vulnerable Elder and Adult, or Incapacitated Adult shall be informed of any investigation as it begins, unless an emergency exists and shall have the ability to receive any investigation reports.
- B.** Elders or Adults are presumed to possess capacity until a court of competent jurisdiction determines otherwise.
- C.** The alleged Vulnerable Elder and Adult, or Incapacitated Adult may refuse to allow investigators into their home without a warrant for entry.

D. The alleged Vulnerable Elder and Adult, or Incapacitated Adult has the right to attend all proceedings pertaining to the suspected abuse, neglect or exploitation, or guardians or conservatorship unless the Court determines the Elders or adult's health is at risk in attending such proceedings based on medical reports and records.

E. The alleged Vulnerable Elder and Adult, or Incapacitated Adult has the right to receive any documents presented to the Court at any or all court proceedings pertaining to the suspected abuse, neglect or exploitation, or guardian or conservatorship.

F. The alleged Vulnerable Elder and Adult, or Incapacitated Adult has the right to independent medical, psychological or psychiatric evaluations at their own expense.

(Source: WOS 2022-005, June 10, 2022, Section XX, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.921 RESTORATION TO CAPACITY PROCEDURES

A. An adult in need of a guardian or a conservator, or both, may be restored to capacity.

B. Upon a petition being filed, the Court must review to determine whether probable cause exists to warrant further proceedings. If probable cause is found, the Court shall set the petition for hearing and may appoint an attorney for the alleged Incapacitated Adult. If probable cause does not exist, the Court may dismiss the petition.

C. At the conclusion of the hearing, if the Court does not find by clear and convincing evidence, that the alleged Incapacitated Adult is an Adult with an impairment in need of a guardian or a conservator, or both, the Court shall order that the Adult is restored to capacity and shall proceed to terminate the guardianship or conservatorship, or both.

(Source: WOS 2022-005, June 10, 2022, Section XXI, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.922 TERMINATION OF GUARDIANSHIP AND CONSERVATORSHIP

A. The Court at any time may enter an order summarily terminating a guardianship or a conservatorship in any of the following circumstances:

1. The Incapacitated Adult is deceased.
2. No further need for the guardianship or conservatorship exists.

(Source: WOS 2022-005, June 10, 2022, Section XXII, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.923 SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes 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 from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

(Source: WOS 2022-005, June 10, 2022, Section XXIII, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

11.924 EFFECTIVE DATE

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

(Source: WOS 2022-005, June 10, 2022, Section XXIV, Repeals and Replaces 2005-07, 2015-012 and 2015-017)

Chapter 10. Fair Treatment for Benefits and Services

11.1001 PURPOSE

The Little Traverse Bay Bands of Odawa Indians, based on traditional cultural values, creates this Statute to ensure fair treatment and protection against discrimination in the receipt of benefits or services offered by the Tribe and the exercise of the enforcement for violations of this Statute.

(Source: WOS 2013-009, August 4, 2013 by Override, Section I)

11.1002 DEFINITIONS

- A.** “Benefits or Services” means participation in, the benefits of, or any service, program, activity or public accommodation provided by the Tribe.
- B.** “Employee” means an individual employed by the Little Traverse Bay Bands of Odawa Indians including Tribal Government Administration, commercial entities, sub-entities and the Odawa Casino Resort and ancillary enterprises and activities beginning on the first day of work and after the employment process and issuance of a temporary gaming license.
- C.** “Malice” means the intent, without just cause or reason, to commit a wrongful act that will result in harm to another.
- D.** “Official” means any person holding an elective or appointed office in any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau, committee, legislative body, agency and any establishment within the Executive, Legislative or Judiciary branch of the Tribe including Members of the Election Board and Prosecutors.
- E.** “Reckless indifference” means conscious or reckless disregard of the consequences of one's acts or omissions.

F. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

G. "Tribal Council" The Tribal Council of the Little Traverse Bay Bands of Odawa Indians.

H. “Tribe” means the Little Traverse Bay Bands of Odawa Indians and includes any Tribal entity or sub-entity of the Tribe.

(Source: WOS 2013-009, August 4, 2013 by Override, Section II)

11.1003 FAIR TREATMENT and DISCRIMINATION

A. Recognizing the traditional Odawak value of equality, mutual respect and respect for differences, the Tribe determines fair treatment to mean not to discriminate against a person on the ground of religion, race, color, national origin, ethnicity, age, sex, height, weight, familial status, marital status, disability, perceived disability, sexual orientation, arrest or detention records, or other disposition in which a conviction did not result.

B. Discriminate means to exclude a person from participation in, be denied the benefits of, or be subjected to discrimination under any service, program, activity or accommodation provided by the Tribe, unless such benefit or service is limited by the following:

1. Tribal Constitution
2. Tribal law
3. Funding
4. Limited to Tribal Citizens
5. *Indian Preference in Tribal Employment Statute*, WOS 2002-04, and any successor law

(Source: WOS 2013-009, August 4, 2013 by Override, Section III)

11.1004 TRIBAL COURT

The Tribal Court shall have the jurisdiction to hear charges of violations of this Statute based on fair treatment and discrimination.

(Source: WOS 2013-009, August 4, 2013 by Override, Section IV)

11.1005 LIMITED WAIVER OF SOVEREIGN IMMUNITY

A. The Tribe clearly and expressly waives its sovereign immunity to the Equitable Remedies as set forth in this Statute and clearly and expressly waives its sovereign immunity to Damages as set forth within this Statute for the Tribe, officials and its employers and limits such waiver to remedies as set forth within this Statute wherein the Tribe, officials or employees who act beyond the scope of their duties and authority in which the actions include either acting with malice or with reckless indifference discriminates against a person under this Statute and limits such waiver to remedies as set forth within this Statute.

B. The Tribe asserts no sovereign immunity for third-parties; and limits the remedies as set forth by this Statute.

(Source: WOS 2013-009, August 4, 2013 by Override, Section V)

11.1006 REMEDIES AND DAMAGES

A. Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.

B. In any action filed under this Statute, the Tribal Court may grant the remedies set forth:

- 1.** *Equitable Remedies.* If the Tribal Court finds that violation of discrimination occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:

- a. An order to cease and desist from the unlawful practices specified in the order;
 - b. Community services or similar penalty.
2. *Damages.* If the Tribal Court finds a blatant violation of discrimination, the Tribal Court may additionally award compensatory, punitive damages or fines as provided in this subparagraph.
 - a. A complainant may recover compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.
 - b. A complainant may recover punitive damages if the complainant demonstrates that the violation of discrimination was done with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.
3. The total sum of compensatory, punitive damages and/or fines may not exceed \$10,000.00.
4. When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded if demonstrated that good faith efforts were made or the accommodation would create an undue hardship on the operation of the Tribe.
5. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.
6. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

(Source: WOS 2013-009, August 4, 2013 by Override, Section VI)

11.1007 SAVINGS CLAUSE

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

(Source: WOS 2013-009, August 4, 2013 by Override, Section VII)

11.1008 EFFECTIVE DATE

Effective upon signature of the Executive or shall be deemed enacted if not expressly vetoed by the Executive within thirty (30) days of submission. The Tribal Council may, by an affirmative vote of seven (7) members of the Tribal Council, override a veto by the Executive.

(Source: WOS 2013-009, August 4, 2013 by Override, Section VIII)

Chapter 12. Naawchigedaa Tort Claims

11.1101 SHORT TITLE

This Statute may be referred to as the “Torts Statute.”

(Source: WOS 2014-012, October 15, 2014, Section I)

11.1102 PURPOSE

To provide civil remedies to private persons within the jurisdiction of the Little Traverse Bay Bands of Odawa Indians who are injured by the wrongful acts of others.

(Source: WOS 2014-012, October 15, 2014, Section II)

11.1103 JURISDICTION

The Tribe’s jurisdiction extends to persons who are Indians, tribal citizens, or who live or work within the territorial jurisdiction of LTBB and who commit a tort or are injured by the tortious acts of another within the territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians, unless such claims fall within the Federal Tort Claims Act. The federal government currently provides for the resolution of tort, malpractice and injury claims against federally funded tribal activities under the Federal Tort Claims Act. Any such claim should be pursued and subject to the provisions and procedures of the Federal Tort Claims Act and are not within the jurisdiction of the Tribal Court.

(Source: WOS 2014-012, October 15, 2014, Section III)

11.1104 DEFINITIONS

A. “Actual damages” means the ascertainable loss of money or property sustained as the result of a tortious act.

B. “Award” means money damages that the Tribal Court determines are payable to compensate for an injury under this Statute.

C. “Claim” means a petition for an award under this Statute. A claim may be filed with respect to any injury under this Statute.

D. “Dangerous condition” means a physical aspect of a facility or the use thereof constituting an unreasonable risk to human health or safety that is known or should be known to exist upon the exercise of reasonable care.

1. For purposes of this subsection, a dangerous condition should be known to exist if it is established that the condition existed for a period of time and was of a nature that in the exercises of reasonable care, the condition and its dangerous character should have been discovered.

2. A dangerous condition does not exist solely because the design of a facility is inadequate or because of the mere existence of natural physical conditions such as wind, water, ice, or temperature.

E. “Employee” means any person employed by another when acting within the course and scope of their employment.

F. “Indian” means any person who is an enrolled member of a federally recognized Indian tribe.

G. “Injury” means death, physical or emotional harm to a person, or damage or destruction of property.

H. “LTBB” means the Little Traverse Bay Bands of Odawa Indians.

I. “Malice” means the intent to commit a wrongful act that will result in harm to another without just cause.

J. “Offensive” means an act by another that a person of ordinary sensitivity would find inappropriate.

K. “Person” means any individual, firm, partnership, corporation, or other legally recognized entity.

L. “Reckless indifference” means conscious or reckless disregard of the consequences of one’s acts or omissions.

M. “Territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of *the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat. 621.*” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

N. “Tribal Court” means the court of the Little Traverse Bay Bands of Odawa Indians.

O. “Naawchigedaa” means “to set things straight” in Anishinaabemowin.

(Source: WOS 2014-012, October 15, 2014, Section IV)

11.1105 STATUTE OF LIMITATIONS

A plaintiff seeking relief under this Statute must file his or her claim with the Tribal Court within three years of the date that the injury occurred or becomes known.

(Source: WOS 2014-012, October 15, 2014, Section V)

11.1106 CAUSES OF ACTION

In order to file a tort claim, the plaintiff must meet all requirements of one or more of the causes of action as set out below. Plaintiffs may file multiple claims and claims with alternative theories based on more than one cause of action.

A. Intentional Torts.

1. Assault. An assault occurs when the defendant places the plaintiff in reasonable apprehension of an immediate battery.

a. Words alone or threats of physical harm are insufficient for an assault, unless those words or threats are accompanied by physical conduct or gestures.

b. In this subsection, apprehension refers to the plaintiff's knowledge of the defendant's apparent ability to commit an immediate battery. It does not mean fear.

2. Battery. A battery occurs when the defendant makes a harmful or offensive contact with the plaintiff's person.

3. False Imprisonment. False imprisonment occurs when the defendant commits an act of restraint that confines the plaintiff in a bounded area.

a. An act of restraint can be any action, verbal or physical, that causes the plaintiff to be confined.

b. A bounded area is one where the plaintiff has no reasonable means of escape.

4. Intentional Infliction of Emotional Distress (IIED). IIED occurs when the defendant engages in extreme and outrageous conduct that causes the plaintiff to suffer severe emotional distress.

a. IIED can be caused intentionally by the defendant or by the defendant's reckless conduct.

b. Outrageous conduct is conduct without just cause or excuse and exceeds all bounds of decency. Such conduct can be proven by a showing of continuous and

repetitive conduct, conduct by a superior or someone in a supervisory position, conduct directed at young children, the elderly, or a person who has a medical condition that causes him or her to be particularly sensitive to such conduct, or any other conduct that a reasonable person would consider to be outrageous.

5. Trespass to Land. A trespass to land occurs when the defendant intentionally and physically invades the land of the plaintiff.

6. Trespass to Chattels and Conversion.

a. A trespass to chattels occurs when the defendant interferes with the personal property of the plaintiff.

b. A conversion occurs when there is a trespass to chattels that results in complete destruction or loss of the personal property.

B. Defamation. Defamation is an act of communication that causes someone to be shamed, ridiculed, held in contempt, lowered in the estimation of the community, or to lose employment status or earnings or otherwise suffer a damaged reputation. The Plaintiff must prove that there was (1) a defamatory statement of fact; (2) concerning the plaintiff; (3) which was false; (4) which was communicated to a person or persons other than the plaintiff; (5) with actual knowledge that the statement was false or with reckless disregard of the statement's truth or falsity or with negligence in failing to ascertain the truth or falsity; and (6) which caused damage.

1. Libel. Libel occurs where the defendant makes a defamatory statement identifying the plaintiff and that statement is published in *writing*, or otherwise recorded, that causes harm to the plaintiff's reputation. A plaintiff's damages are presumed in successful libel actions.

2. Slander. Slander occurs where the defendant makes a defamatory statement identifying the plaintiff, that statement is *orally* made to at least one other person than the plaintiff, and causes harm to the plaintiff's reputation.

a. Damages are presumed only when the plaintiff is successful in proving slander per se.

b. Slander per se occurs when the defendant makes a defamatory statement: regarding the plaintiff's business; that the plaintiff has committed a serious crime; that the plaintiff displays occupational or professional incapacity; that the plaintiff suffers from a loathsome disease; that has an immoral character.

c. In regular slander actions, the plaintiff must offer evidence of economic harm suffered or harm to the health . Social harm alone is insufficient evidence of damages.

3. Public Officials and Matters of Public Concern. If the plaintiff is a public official and the statement is one of public concern, he or she must prove that the defendant made the statement knowing it to be false or with a reckless disregard for its accuracy in addition to the requirements under Section XI(B)(1) or (2), whichever is applicable.

C. Privacy Torts.

1. Appropriation. An appropriation occurs when the defendant uses the plaintiff's name or image for a commercial purpose.

2. Intrusion. An intrusion occurs when the defendant invades the plaintiff's physical seclusion in a way that would be highly offensive to an average person and the plaintiff is in a place where the plaintiff reasonably expects to be a private place.

3. False Light. The tort of false light occurs when the defendant's conduct results in the widespread dissemination of a major falsehood about the plaintiff that would be offensive to an average person.

4. Disclosure. A disclosure occurs when the defendant's conduct results in the widespread dissemination of confidential information about the plaintiff that would be

offensive to an average person.

D. Business Torts.

1. **Fraud.** Fraud occurs when the defendant makes a misrepresentation of a material fact that the defendant knows or believes to be false with the intent to induce the plaintiff to act or refrain from acting in reliance on the misrepresentation, the plaintiff justifiably and actually relies on the misrepresentation, and the plaintiff suffers damages because of it.

2. **Negligent Misrepresentation.** Negligent misrepresentation occurs when the defendant makes a misrepresentation in a business or professional capacity that breaches a duty owed to a particular plaintiff that causes the plaintiff's justifiable reliance and results in damage to the plaintiff.

3. **Interference with a Business Relationship.** Interference with a business relationship occurs when the plaintiff has a valid contractual relationship with a third party that the defendant has knowledge of and the defendant intentionally interferes with that relationship by inducing the third party to breach or terminate the relationship and such breach or termination causes harm to the plaintiff.

E. Litigation Torts.

1. **Malicious Prosecution.** Malicious Prosecution occurs when the defendant initiates criminal proceedings against the plaintiff that terminate in favor of the plaintiff and where the defendant had an improper purpose for initiating criminal proceedings and lacked any reasonable probable cause.

2. **Abuse of Process.** An abuse of process occurs when the defendant maliciously or deliberately misuses a regularly issued civil court process that is not justified by the underlying legal action or the abuser of process is interested only in accomplishing some improper purpose.

F. Negligence.

1. In General. In all negligence actions, the plaintiff must prove that the defendant owed the plaintiff a duty, the defendant breached that duty, and that the defendant's breach was the actual and proximate cause of the plaintiff's injury.

2. Ordinary Negligence. Negligence occurs when the defendant fails to exercise the type of care toward the plaintiff that a reasonably prudent person would exercise under similar circumstances.

3. Malpractice. Malpractice occurs when a defendant-professional acts or continues a course of conduct that does not meet the standard of professional competence in that particular profession and causes provable damages to the plaintiff.

4. Premises Liability. Owners and occupiers of land may be liable when his or her own negligence causes another person to be injured on the occupier's premises. An occupier's liability for another's injury depends on the type of person entering the land.

a. Trespassers. Owners and occupiers of land are only liable to known or anticipated trespassers that are injured because of a highly dangerous and artificial condition that the owner or occupier knew existed.

b. Licensees. Owners and occupiers of land are liable to licensees that are injured because of a hidden condition on the land that the occupier knew existed.

c. Invitees. Owners and occupiers of land are liable to invitees that are injured because of a hidden condition on the land that the occupier either knew existed or could have discovered with reasonable inspection.

d. Attractive Nuisance Doctrine. Owners and occupiers of land are subject to liability for physical harm to children caused by an artificial condition on the land if the following are met:

- i. the place where the condition exists is one that the owner or occupier knows or has reason to know that children are likely to trespass;
- ii. the condition is one that the owner or occupier knows or has reason to know of and realizes or should realize will involve an unreasonable risk of death or serious bodily harm to children;
- iii. the children, because of their youth, do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it;
- iv. the owner's or occupier's utility of maintaining the condition and the burden of eliminating the danger are slight compared with the risk involved; and
- v. the owner or occupier fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

G. Strict Liability Torts.

1. Abnormally Dangerous Activities. A defendant is strictly liable when he or she is engaged in an abnormally dangerous activity that causes harm to another person. An activity is considered to be abnormally dangerous when it creates a foreseeable risk of serious harm even where reasonable care is exercised and that activity is uncommon in the place where it is conducted.

2. Wild Animals. A defendant is strictly liable when he or she is the owner of a wild (undomesticated) animal and that animal causes harm to another person.

H. Products Liability.

1. A defendant is liable for an injury caused to another person when:

- a. the defendant is a merchant who regularly deals in products of the kind involved;
 - b. the product in question is defective;
 - c. the defect in the product existed when the product left the defendant's place of business; and
 - d. the plaintiff was using the product in a foreseeable manner.
2. A product is deemed defective when any one of the following defects exist:
 - a. Manufacturing defects exist when the product differs from all the others that were produced at the same time in a way that makes it more dangerous than consumers would expect.
 - b. Design defects exist when there is a safer, yet feasible, way that the product could have been built.
 - c. Information defects exist when the product has residual risks that cannot be designed out and consumers would not be aware of those risks without an adequate warning.
3. It is not a defense that the plaintiff misused the product. Such misuse by the plaintiff is irrelevant if it is foreseeable that consumers may use that product in that way.

I. Nuisance. A nuisance occurs when the plaintiff's ability to use and enjoy his or her real property has been disrupted to an unreasonable degree.

(Source: WOS 2014-012, October 15, 2014, Section VI)

11.1107 DEFENSES

A. Affirmative Defenses to Intentional Torts.

1. Consent. It is a complete defense to all intentional torts when the plaintiff consents expressly or impliedly.

a. Express consent occurs when the plaintiff makes a declaration of permission for the defendant to act. However, express consent is not a defense if the consent was obtained through fraud or duress.

b. Implied consent occurs based on custom or based on the defendant's reasonable interpretation of the plaintiff's objective conduct that the plaintiff consents to such action.

c. Any consent given by a plaintiff is limited to the scope of the consent given. Where a defendant exceeds the scope of the plaintiff's consent, consent is not a valid defense.

2. Self-Defense. This defense applies when the defendant is faced with an imminent threat of force or injury. The defendant may only use an amount of force that is necessary under the circumstances.

3. Defense of Others. This defense applies when the defendant witnesses another person faced with an imminent threat of force or injury. The defendant may only use an amount of force that is necessary under the circumstances.

4. Defense of Property. This defense applies when the defendant is faced with an imminent threat of damage to or loss of property. The defendant may only use an amount of force that is necessary under the circumstances.

5. Necessity. The defense of necessity only applies to torts involving property.

a. A defense based on public necessity applies when the defendant commits a

property tort in an emergency to protect the community as a whole or to protect a significant group of people. This is an absolute defense to tort liability.

b. A defense based on private necessity applies when the defendant commits a property tort to protect his own interest. This is not an absolute defense, therefore, the defendant may be liable to the plaintiff for any actual damage done to plaintiff's property.

B. Affirmative Defenses to Defamation.

1. Consent. It is an affirmative defense to defamation if the plaintiff consents to the defendant's making and publishing the statement. See Section VII(A)(1).

2. Truth. A defendant is not liable for a defamatory statement if the statement made is true.

3. Absolute Privileges. A defendant is not liable for a defamatory statement if the defamatory statement is made to the defendant's spouse or made by an official in the course of official functions.

a. Definition. "Official" means any person who is elected or appointed that acts on behalf of the Tribe.

b. Definition. "Official functions" mean any acts taken by an official within the scope of that official's position.

4. Qualified Privileges. A defendant may not be liable for a defamatory statement if the defendant made the statement in good faith and the statement made was confined to relevant matters.

a. This privilege only applies in situations where there is a public interest in encouraging candor (e.g., employment references).

b. Definition. “Good faith” in this subsection means that the defendant had a reasonable belief that the statement made was accurate.

C. Affirmative Defenses to Privacy Torts.

1. Consent. It is an affirmative defense if the plaintiff consents to the invasion. See Section VII(A)(1).

2. Defamation Privileges. A defendant is not liable for the torts of false light or disclosure if either an absolute or qualified privilege applies. See Section VII(B)(3) and (4).

D. Affirmative Defense to Negligence Torts – Comparative Negligence. A defendant can lower his or her liability by proving that the plaintiff failed to exercise proper care for his or her own safety.

1. The judge or the jury must allocate a percentage of fault to each party. The plaintiff’s recovery must be reduced by his or her own percentage of fault.

2. When the percentage of fault allocated to the plaintiff is more than 50%, and that fault is due to the plaintiff’s intoxication, the plaintiff may not recover.

E. Affirmative Defense to Products Liability. A defendant can lower his or liability by proving that the plaintiff failed to take proper precautions. The rules of comparative negligence apply; see SECTION VII(D).

F. Sovereign Immunity.

1. Tribal Immunity from Suit. LTBB, including all subordinate entities, officials and employees are immune from suit except to the extent that the Tribal Council clearly and expressly waives its sovereign immunity, provided that the Tribe, subordinate entity, official or employee of the Tribe acting within the scope of their duties or authority. If the Tribe, including any subordinate entity, official or employee of the Tribe, who acts beyond the scope of their duties

and authority in which the tortious actions include either acting with malice or with reckless indifference, or both, then the tortious action is not within the sovereign immunity of the Tribe.

(Source: WOS 2014-012, October 15, 2014, Section VII)

11.1108 REMEDIES

A. Damages. Damages are available in any tort claim where the plaintiff can prove with reasonable certainty monetary loss or harm suffered because of the tortious acts of the defendant. Damages may include the following:

1. loss of wages;
2. loss of profits;
3. medical expenses;
4. pain and suffering;
5. loss of consortium;
6. loss of future earnings; and
7. market or rental value of destroyed property.

B. Restitution. Restitution is available where the plaintiff can be restored by putting the plaintiff in a similar position as he or she was prior to the tortious act. Restitution may include the following:

1. restitution damages calculated by the defendant's gain;
2. return of the plaintiff's property;

3. ejection of a trespasser from the plaintiff's property; and
4. any other action or remedy as deemed appropriate to make the plaintiff whole.

C. Injunctions. Where monetary or restitutionary remedies will not make the plaintiff whole again, the judge may order an injunction to prevent the defendant from continuing or repeating the tortious behavior in the future.

(Source: WOS 2014-012, October 15, 2014, Section VIII)

11.1109 SAVINGS CLAUSE

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

(Source: WOS 2014-012, October 15, 2014, Section IX)

11.1110 EFFECTIVE DATE

Effective upon signature of the Executive or shall be deemed enacted if not expressly vetoed by the Executive within thirty (30) days of submission. The Tribal Council may, by an affirmative vote of seven (7) members of the Tribal Council, override a veto by the Executive.

(Source: WOS 2014-012, October 15, 2014, Section X)

Chapter 12. General Welfare

11.1201 SHORT STATUTE

This Statute may be cited as the “General Welfare Statute,” and it repeals and replaces any prior Statute or Regulation in conflict with this Statute.

(Source: WOS 2017-002, June 2, 2017, Section I)

11.1202 PURPOSE

A. The Tribe provides Assistance to Applicants and desires to affirm its sovereign right to do so on a non-taxable basis, pursuant to the General Welfare Doctrine. Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of Indian tribal governments to provide financial assistance to its citizens under certain circumstances on a non-taxable basis.

B. The purpose of this Statute is to set forth the guidelines for programs that are used by the Tribe to determine what services or programs are needed to promote public health, safety and other basic need services for the promotion of the general welfare of the Tribe, such as food, utilities, housing, education assistance and other such functions that support the long historical and cultural general welfare of the Tribe.

C. The purpose of this Statute is to establish basic guidelines and procedures for programs to follow in ensuring compliance with the general welfare doctrine and Internal Revenue Code Section 139E for 1) Applicants applying for Assistance and 2) Tribal staff making eligibility determinations for Assistance. Further, it is the intent of the Tribal Council that all Assistance provided under this Statute:

1. Is made under an Approved Program;

2. Is available to any Applicants who satisfy the program policies, subject to budgetary restraints;
3. Is made under an Approved Program that does not discriminate in favor of members of the Tribal Council;
4. Is not provided as compensation for goods and/or services; and
5. Is not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council.

(Source: WOS 2017-002, June 2, 2017, Section II)

11.1203 DEFINITIONS

- A.** “Administrative Entity(s)” means a department or program of the Tribal government that is authorized and funded, through a Tribal Council approved budget, to administer and provide Assistance under an Approved Program under this Statute.
- B.** “Applicant(s)” means an enrolled Tribal citizen or qualified non-citizen who has applied for Assistance under this Statute. It also includes an Identified Group, as defined in subsection M, below;
- C.** “Approved Program(s)” means any program or programs approved by the Tribal Council to provide general welfare assistance to Applicants that is intended to qualify for treatment under the General Welfare Doctrine, as defined herein. It includes, for example, the payment of benefits related to housing, education, elder or disabled status, cultural and religious programs or for other qualifying assistance, such as transportation costs, etc.
- D.** “Assistance” means any Program benefits or payments that qualify for tax free treatment under the General Welfare Exclusion.
- E.** “Beneficiary” means any person or persons entitled to receive Assistance in accordance

with specific Program policies and are exempted under Internal Revenue Code, Section 139E and may benefit, including: Tribal Citizens, spouses of a Tribal Citizen, and/or dependents of a Tribal Citizen.

F. “Citizen” or “Tribal citizen” means an enrolled member of Little Traverse Bay Bands of Odawa Indians.

G. “Code” means the Internal Revenue Code of 1986, as amended.

H. “Compensation” for services should reflect that qualifying Programs are not disguised employment. However, this shall not prevent the Tribe from structuring Programs with community service ties so long as such ties are consistent with the General Welfare Exclusion.

I. “Constitution” means the Constitution of the Little Traverse Bay Bands of Odawa Indians.

J. “Executive” means the Executive Branch of government under Article VIII of the Constitution the power of which is vested in the Tribal Chairperson and the Vice-Chairperson.

K. “General Welfare Exclusion” means any assistance shall be treated as non- taxable so long as it satisfies the requirements for exclusion under Code Section 139E, it is provided under a Safe Harbor Program, or it meets the General Test.

L. “General Test” means any assistance will be treated as meeting the General Test under the General Welfare Exclusion if the benefits are:

1. Paid by or on behalf of an Indian tribe;
2. Under a social benefit program;
3. Based on either needs of the Indian community itself or upon individual needs of the recipient (which need not be financial in nature);
4. Are not Compensation for services;
5. Are not gaming per capita payments as referenced in the Indian Gaming

Regulatory Act.

M. “Identified Group” means Tribal citizens and qualified non-citizens who are members of an identified group, such as Elders.

N. "Lavish" or "Extravagant" shall have the meaning determined by the Tribal Council in its sole discretion based on all facts and circumstances, taking into account needs unique to the Tribe as well as the social purpose being served by the particular Assistance at hand, except as otherwise may be required for compliance with final guidance issued under IRS Code Section 139E following consultation between the Tribe and the IRS;

O. “Indian Gaming Regulatory Act”, “IGRA” means the United States federal law that establishes the jurisdictional framework that governs Indian gaming, Federal Act (Pub.L. 100–497, 25 U.S.C. § 2701 et seq.

P. “Reservation” in accordance with Little Traverse Bay Bands of Odawa Indians Constitution, Article III, Section H, *means the lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Art 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 Interior.*

Q. "Safe Harbor Program" shall refer to a Program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended. Need shall be presumed for Assistance provided under a Safe Harbor Program.

R. "Tribal Council" or "Council" means the Council Members of the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2017-002, June 2, 2017, Section III)

11.1204 RATIFICATION OF PRIOR ACTS; INTENT OF LEGISLATION

A. This Statute does not establish a new program or programs. This Statute is intended to set forth and confirm existing procedures used in the administration of general welfare assistance programs and services and is not to be construed as the creation of new general welfare assistance rights that previously did not exist.

B. Assistance provided prior to the enactment of this Statute is hereby ratified and confirmed as general welfare assistance pursuant to the authority of the Tribal Constitution. It is intended to establish a framework to improve the coordination of general welfare doctrine compliance. Programs and services, referred to herein, are authorized by the enactment of this statute in conjunction with other applicable laws.

(Source: WOS 2017-002, June 2, 2017, Section IV)

11.1205 GENERAL WELFARE DOCTRINE AND IRS REVENUE PROCEDURE 2014-35/TRIBAL GENERAL WELFARE EXCLUSION OF 2014

A. The Internal Revenue Service recognizes that Assistance to Applicants under a legislatively provided Approved Program for the promotion of the general welfare of the Tribe is excludable from the gross income of those Applicants.

B. In addition, the Service, in IRS Revenue Procedure 2014-35, provided for safe harbor programs under which, if approved and in writing, need would be presumed and qualifying benefits would be excluded.

C. The Assistance authorized by this Statute is intended to qualify for such favorable tax treatment under the General Welfare Doctrine to the fullest extent permitted at law. All amounts budgeted by the Tribe for Assistance shall remain general assets of the Tribe until such payments are disbursed.

D. Assistance authorized by this Statute shall be an unfunded arrangement and shall be limited to funds appropriated, at the discretion of the Council.

E. Assistance is not subject to information reporting by the Tribe to the Internal Revenue Service.

F. Without limitation, the following benefits shall be treated as non-taxable hereunder:

- 1.** Benefits that satisfy the requirements for the exemption under Code Section 139E;
- 2.** Benefits that qualify for exclusion under an IRS Safe Harbor Program;
- 3.** Benefits that qualify for exclusion under the IRS General Test of General Welfare exclusion; or
- 4.** Benefits that meet another express exemption under the Internal Revenues Code, such as the exemption provided for tribal medical expenses under Internal Revenue Code Section 139D, or that meet other recognized exemptions including, for example, resource or land-based exemptions under 25 USC Sections 117a-b, 1407 and 1408.

(Source: WOS 2017-002, June 2, 2017, Section V)

11.1206 NON-RESOURCE DESIGNATION

A. Assistance to Applicants shall be made from the assets of the Tribal government and all payments are subject to the availability of budgeted Tribal government funds.

B. The Tribe does not guarantee Assistance under this Statute. Assistance shall not be treated as a resource of an Applicant for any purpose.

(Source: WOS 2017-002, June 2, 2017, Section VI)

11.1207 GOVERNING LAW; SOVEREIGNTY

A. All the rights and liabilities associated with the enactment of this Statute, or the Assistance made hereunder, shall be construed and enforced according to the laws of the Tribe and applicable federal law.

B. Nothing in this Statute or the related policies or procedures adopted for its implementation, if any, shall be construed to make applicable to the Tribe any laws or regulations 1) which are otherwise inapplicable to the Tribe, or 2) from which the Tribe is entitled to exemption because of its sovereign status.

(Source: WOS 2017-002, June 2, 2017, Section VII)

11.1208 FEDERAL TRUST OBLIGATIONS

A. The Tribe reserves the right to provide Assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit Applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations.

B. The Tribe's adoption of its Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Tribe's right to seek funding shortfalls or to enforce the trust rights of the Tribe and its citizens. The Tribe shall be entitled to government-to-government consultation and coordination rights in regard to this Statute with the federal government.

(Source: WOS 2017-002, June 2, 2017, Section VIII)

11.1209 TRIBAL COUNCIL APPROVED PROGRAMS

A. The Tribal Council shall designate Approved Programs for which funds will be budgeted each fiscal year, consistent with the purposes of this Statute. Each Approved Program shall be consistent with the General Welfare Doctrine as to purpose, eligibility, and funding.

B. Tribal Council reserves the right to cancel, adjust, modify or revoke any Assistance provided by the Tribe in accordance with the Budget Formulation Statute, including *Allocation*

of General Fund Balance, Supplemental Funding Process, Budget Modifications, Emergency budgets/Recessions, and Systematic Reductions of Budgets.

(Source: WOS 2017-002, June 2, 2017, Section IX)

11.1210 PURPOSE OF APPROVED PROGRAMS

Each Approved Program shall be limited to purposes consistent with treatment under the General Welfare Doctrine. An Approved Program must be established and operated to promote the general welfare of the Tribe, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, Tribal character and the maintenance of culture and tradition, entrepreneurship, and employment.

(Source: WOS 2017-002, June 2, 2017, Section X)

11.1211 ELIGIBILITY AND APPLICATION PROCEDURES

Assistance intended to qualify for General Welfare Doctrine treatment shall be limited to enrolled citizens of the Tribe and qualified non-citizens. Each Approved Program shall set forth the specific eligibility rules and limitations applied to that program. The Executive shall present program descriptions and policies, which include eligibility rules and limitations, to the Tribal Council for approval in accordance with this Statute. Only those descriptions and policies that are so approved by the Council shall be considered to be in force and effect.

(Source: WOS 2017-002, June 2, 2017, Section XI)

11.1212 LIMITED USE OF ASSISTANCE PAYMENTS

All Assistance must be used for the purpose stated in the Approved Program description and policy. In the event that Assistance is used or pledged for a purpose inconsistent with the purpose set forth in an Approved Program or the Applicant's application, the payment will be deemed forfeited. The Administrative Entity responsible for the Approved Program under which the misused Assistance was made shall secure repayment from the Applicant. The Administrative

Entity is also authorized to offset any other payments owed to such an Applicant, if an offset is necessary to secure repayment of Assistance under this Statute.

(Source: WOS 2017-002, June 2, 2017, Section XII)

11.1213 PROGRAMS NOT LIMITED TO MEANS TESTING

Programs that qualify under Code Section 139E or the IRS Safe Harbor shall not require a showing of individual need or means testing in order to achieve non-taxable treatment under the General Welfare exclusion. The Tribe also reserves the right to provide community-based Programs and programs based on non-financial needs under the General test so that no individual means testing is needed. The Tribe recognizes that means testing can distort certain tribal cultural and community values. However, the Tribe can have some programs which are financial need based in order to help those most in need of the assistance.

(Source: WOS 2017-002, June 2, 2017, Section XIII)

11.1215 ANNUAL BUDGETING: UNFUNDED PROGRAM

When applicable per program requirements, the Council shall annually designate those funding sources that are available for Approved Programs as part of the annual budgeting process. Notwithstanding anything to the contrary, the Assistance authorized hereunder shall be “unfunded” for tax purposes and no Applicant shall have an interest in or right to any funds budgeted for or set aside for Approved Programs until paid. Assistance funds shall remain assets of the Tribe until distributed and the Approved Programs shall be administered at all times to avoid triggering of the doctrines of “constructive receipt” and/or “economic benefit.”

(Source: WOS 2017-002, June 2, 2017, Section XV)

11.1216 FORFEITURE

Notwithstanding anything herein to the contrary, the Executive, acting on behalf of the Council, may forfeit Assistance to any Applicant who is found to have violated the terms of this Statute, or

the policies and procedures for any Approved Program. The Executive may also forfeit Assistance should said Assistance be treated as a resource detrimental to the Tribe or an Applicant. In the event of any such forfeiture, all Assistance provided to the Applicant pursuant to this Statute shall be deemed a loan and shall be enforceable as such. Such loans may be subject to taxation, including any amount for the forgiveness of a loan.

(Source: WOS 2017-002, June 2, 2017, Section XVI)

11.1217 ANTI-ALIENATION

An Applicant's right to apply for Assistance is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Applicant.

(Source: WOS 2017-002, June 2, 2017, Section XVII)

11.1218 GENERAL

Each Approved Program shall be administered by the Administrative Entity. All the powers and duties conferred on each respective Administrative Entity shall be exercised or performed by it in the exercise of its discretion regardless of whether the provision conferring such power or imposing such duty specifically refers to its discretion. All decisions of a given Administrative Entity regarding an Approved Program, within the scope of its authority, shall be binding and conclusive upon all Applicants under the Approved Program.

(Source: WOS 2017-002, June 2, 2017, Section XVIII)

11.1219 PROGRAM POLICIES

A. Policies for Approved Programs shall be developed by the respective Department staff responsible for a given Assistance Program, coordinated through the Executive, if applicable, and approved by the Tribal Council. At a minimum, such policies shall satisfy the requirements of this Statute including the following:

B. Indian General Welfare Benefits (Code Section 139E) Programs that meet the following criteria for exemption under Code Section 139E shall be treated as non-taxable Assistance under the General Welfare exclusion without the applicant having to demonstrate individual need:

1. The program is administered under specified policies and does not discriminate in favor of the members of the Tribal Council;
2. Program benefits are available to any Tribal citizen who meets such policy requirements;
3. Program benefits are for the promotion of the general welfare;
4. Program benefits are not lavish or extravagant; and
5. Program benefits are not compensation for services.

C. Ceremonial Activities: Any items of cultural significance, reimbursement of costs or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services.

D. Safe Harbor programs: Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need:

1. General Criteria for Safe Harbor Treatment:
 - a. The benefit is provided under a specific approved program of the Tribe;
 - b. The program has written policies specifying how individuals may qualify for the benefit;

- c. The benefit is available to any Tribal citizen, identified group of Tribal citizens, or qualified non-citizen who satisfy the program policies, subject to budgetary restraints;
- d. The distribution of benefits from the program does not discriminate in favor of the governing body of the Tribe;
- e. The benefit is not compensation for goods or services; and
- f. The benefit is not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council.

2. Specific Safe Harbors: The following benefits may be provided under a Safe Harbor program. The benefits listed in the parenthetical language herein are illustrative only, rather than an exhaustive list. Thus, a benefit may qualify for exclusion from gross income as a Safe Harbor Program even though the benefit is not expressly described in the parenthetical language herein, provided that it meets all other requirements of the Internal Revenue Service, and Revenue Procedure 2014-35 (as may be amended):

- a. Housing programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that—
 - i. Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
 - ii. Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including, but not limited to, mold remediation), or heating or cooling issues;
 - iii. Provide basic housing repairs or rehabilitation (including, but not limited to, roof repair and replacement);

- iv. Pay utility bills and charges (including, but not limited to, water, electricity, gas, and basic communications services such as phone, internet, and cable); or
- v. Pay property taxes or make payments in lieu of taxes (PILOTs).

b. Educational programs. Programs to –

- i. Provide students (including, but not limited to, post-secondary students) transportation to and from school, tutors, and supplies (including, but not limited to, clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;
- ii. Provide tuition payments for students (including, but not limited to, allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education;
- iii. Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and
- iv. Provide job counseling and programs for which the primary objective is job placement or training, including, but not limited to, allowances for expenses for interviewing or training away from home (including, but not limited to, travel, auto expenses, lodging, and food); tutoring; and appropriate clothing for a job interview or training (including, but not limited to, an interview suit or a uniform required during a period of training).

c. Elder and disabled programs. Programs for individuals who have reached age 55 or are mentally or physically disabled (as defined under applicable law, including, but not limited to, tribal government disability codes or laws) that provide –

- i. Meals through home-delivered meal programs or at a community center or similar facility;
- ii. Home care such as assistance with preparing meals or doing chores, or day care outside the home;
- iii. Local transportation assistance; and
- iv. Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

d. Cultural and religious programs. Programs to –

- i. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to attend or participate in an Indian tribe’s cultural, social, religious, or community activities such as pow-wows, ceremonies, and traditional dances;
- ii. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribe, including, but not limited to, those on other Indian reservations;
- iii. Pay the costs of receiving instruction about an Indian tribe’s culture, history, and traditions (including, but not limited to, traditional language, music, and dances);
- iv. Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
- v. Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another tribe.

e. Other qualifying assistance programs. Programs to –

- i. Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian

- reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);
- ii. Pay for the cost of transportation, temporary meals, and lodging of a Tribal citizen or Qualified Non-citizen while the individual is receiving medical care away from home;
 - iii. Provide assistance to individuals in exigent circumstances (including, but not limited to, victims of abuse), including, but not limited to, the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;
 - iv. Pay costs for temporary relocation and shelter for individuals displaced from their homes (including, but not limited to, situations in which a home is destroyed by a fire or natural disaster);
 - v. Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and
 - vi. Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

3. Compensation Safe Harbor: For Safe Harbor Programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Tribe will presume that individual need is met for religious leaders or spiritual officials or leaders (including but not limited to Pipe-carriers, Firekeepers, Traditional Healers, the Drum and Singers, Flag-carriers, and other cultural or spiritual and religious officiants.)) receiving the following benefits, and that the benefits do not represent Compensation for services: benefits provided under an Indian tribal governmental Program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council, or nominal cash honoraria provided to religious or spiritual officials or leaders (including, but not limited to, Pipe-carriers, Firekeepers, Traditional Healers, the Drum and Singers, Flag-carriers, and other cultural or spiritual and religious officiants.) to recognize their participation in cultural, religious, and social

events (including, but not limited to, pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).

In accordance with 26 U.S. Code § 139E - Indian General Welfare Benefits, “deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community.”

Non-Safe Harbor Programs: Nothing in this Statute or the IRS safe harbor guidance shall limit the Tribe's right to provide Assistance outside of the safe harbor rules.

Any changes to the Safe Harbor programs as a result of the Indian General Welfare Exclusion Act of 2014 will be immediately incorporated, by reference, into this Statute.

(Source: WOS 2017-002, June 2, 2017, Section XIX)

11.1220 FEDERAL GOVERNMENT TRIBAL ADVISORY COMMITTEE

The Tribe may utilize the Treasury Tribal Advisory Committee (TTAC) to assist in making determinations of criteria for general welfare exclusion. In accordance with the Federal Law, Tribal General Welfare Exclusion Act of 2014, TTAC members will advise the United States Department of Treasury Secretary on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers.

(Source: WOS 2017-002, June 2, 2017, Section XX)

11.1221 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2017-002, June 2, 2017, Section XXI)

11.1222 EFFECTIVE DATE

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

(Source: WOS 2017-002, June 2, 2017, Section XXII)

11.1223 OTHER RELATED STATUTES

See WOS 2015-016 Tribal Government Budget Formulation and Modification Statute, WOS #2015-019 Administrative Procedures Statute, or as may be amended.

(Source: WOS 2017-002, June 2, 2017, Section XXIII)

Chapter 13. Waiver of Fees for Military Veterans Statute

11.1301 PURPOSE

The Waiver of Fees for Military Veterans Statute is hereby enacted to honor our Little Traverse Bay Bands of Odawa Indians Military Veterans in accordance with the Constitution, Article I, B. Directive Principles: “Promote with special care the health, educational and economic interests of all the people, especially our children and elders . . .”.

(Source: WOS 2021-009, July 7, 2021, Section I)

11.1302 GENERAL WELFARE EXCLUSION

As stated by the requirements of the United States Internal Revenue Section 139E, the Waiver of Fees for Military Veterans meets the criteria of the United States Public Law 113-168, Tribal General Welfare Exclusion Act of 2014 and WOS 2017-002 General Welfare Statute.

(Source: WOS 2021-009, July 7, 2021, Section II)

11.1303 DEFINITIONS

- A. **“Citizen”** shall mean an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- B. **“Executive”** shall mean the Tribal Chairperson or his/her designee
- C. **“LTBB”** means The Little Traverse Bay Bands of Odawa Indians.
- D. **“Military Veteran”** means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable this includes United States Army, Navy, Marine Corps, Air Force, Coast Guard service, and members of the Reserves, Air or Army National Guard.

E. “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2021-009, July 7, 2021, Section III)

11.1304 WAIVER OF FEES

A. The Executive has the authority to waive fees collected by the Executive Branch for Military Veterans.

B. These fees may include, by not limited to the following:

- 1.** Hunting and fishing licenses
- 2.** Enrollment cards
- 3.** Notarial acts

C. When the Executive approves a fee to be waived, the Executive shall post a notice to the tribal website; and publish a list of fees waived annually in the tribal newspaper, or similar means of communication.

(Source: WOS 2021-009, July 7, 2021, Section IV)

11.1305 REPORTING REQUIRED

A. The Executive shall report to annually to Tribal Council:

- 1.** The number of Military Veterans that received a waiver of fees.
- 2.** The total dollar amount of fees waived.

B. Tribal Council may request the Executive provide additional information, if necessary.

(Source: WOS 2021-009, July 7, 2021, Section V)

11.1306 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2021-009, July 7, 2021, Section VI)

11.1307 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.

(Source: WOS 2021-009, July 7, 2021, Section VII)

Chapter 14. Medicare Reimbursement Honorarium Act

11.1401 PURPOSE

The Medicare Reimbursement Honorarium Act is hereby enacted to provide a gift to honor our Little Traverse Bay Bands of Odawa Indians Elders in accordance with the Constitution, Article I, B. Directive Principles: “Promote with special care the health, educational and economic interests of all the people, especially our children and elders . . .”

(Source: WOS 2021-012, July 7, 2021, Section I)

11.1402 GENERAL WELFARE EXCLUSION

As stated by the requirements of the United States Internal Revenue Section 139E, the Medicare Reimbursement Honorarium meets the criteria of the United States Public Law 113-168, Tribal General Welfare Exclusion Act of 2014 and WOS 2017-002 General Welfare Statute.

(Source: WOS 2021-012, July 7, 2021, Section II)

11.1403 DEFINITIONS

- A. **“Citizen”** shall mean an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- B. **“Department”** shall mean the Health Department that is overseen by the Executive Branch.
- C. **“Executive”** shall mean the Tribal Chairperson or his/her designee
- D. **“LTBB”** mean The Little Traverse Bay Bands of Odawa Indians.
- E. **“Program”** means the Medicare Reimbursement Honorarium Program.

F. “**Third-Party Billing Funds**” means funds that the Department is authorized to collect from Federal, State, local or private entities as reimbursements for healthcare services rendered.

G. “**Tribe**” or “**LTBB**” mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2021-012, July 7, 2021, Section III)

11.1404 MEDICARE REIMBURSEMENT HONORARIUM PROGRAM

A. The program will be administered by the Health Department within the Executive Branch.

B. To be eligible for an Honorarium an Elder must:

- 1.** Be an enrolled Citizen of the Tribe;
- 2.** Be enrolled in Medicare;
- 3.** Show proof of Medicare Part B and Part D premium expenses.

C. The Department may establish deadlines for submission of applications, if necessary.

D. Honorariums shall be paid directly to an Elder.

E. Each Fiscal Year, the Department may set funding caps, percentages or coverage rates for reimbursement depending on available funding and shall be posted to the tribal website.

(Source: WOS 2021-012, July 7, 2021, Section IV)

11.1405 REGULATIONS REQUIRED

A. The Department shall develop regulations for this statute for Tribal Council approval; however, the implementation of the statute shall not be delayed by approval of regulations.

- B.** The regulations shall set forth the application process, provide an appeals process, applicable deadlines, and other criteria for eligibility of the program.
- C.** The regulations shall require the following minimum reports to Tribal Council:
- 1.** The number of Elders that received a reimbursement under the program.
 - 2.** The total dollar amount of Honorariums the Fiscal Year.
 - 3.** Present Honorarium funding caps, percentages or coverage rates.
- D.** The Department shall publish the application; funding caps, percentages or coverage rates; and any deadlines at least once a year on the tribe's website.

(Source: WOS 2021-012, July 7, 2021, Section V)

11.1406 APPROPRIATIONS AUTHORIZED

The Medicare Reimbursement Honorarium Program shall be included in the Executive budget and funded annually. Funding for the Program shall come from Third-Party Billing funds and/or other revenue sources.

(Source: WOS 2021-012, July 7, 2021, Section VI)

11.1407 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2021-012, July 7, 2021, Section VII)

11.1408 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.

(Source: WOS 2021-012, July 7, 2021, Section VIII)