

Chapter 10. Act Prohibiting the Patenting of Organisms

4.1001 PREAMBLE AND GENERAL DEFINITIONS

The purpose of this Act Prohibiting the Patenting of Organisms is the protection of the health, welfare and economic security of the Tribe through the control of the patenting of natural organisms within the Tribe's jurisdiction.

The Tribe recognizes that the biodiversity of its territory encompasses the full range of genes, species and ecosystems within its jurisdiction. This biodiversity constitutes an essential resource for the Tribe because it produces the varied plants, animals and organisms that together provide the Tribe with food, medicinal plants, energy, fibers, materials for shelter and warmth, materials for the creation of art and materials for ceremonial use.

The Tribe also recognizes that the biodiversity of its territory creates several finely-balanced ecosystems, and that these ecosystems purify the air and water, stabilize and moderate the climate, and decrease flooding, drought and other environmental disasters.

Furthermore, the Tribe recognizes that the biodiversity of its territory creates harmony between the Tribe and nature and fosters the ethical and peaceful co-existence of the Tribe with the living species surrounding it.

The Tribe finds that by providing food for sustenance, medication, energy and protection from the elements, the Tribe's biodiversity sustains the health of all Tribal members. In addition, the Tribe finds that by providing materials that sustain health and materials that are essential to the Tribe's traditional knowledge, artforms, and ceremonies, the Tribe's biodiversity sustains the welfare of all Tribal members. Finally, the Tribe finds that by providing food and other goods that can be exchanged for sale, and by stabilizing the climate and preventing natural disasters, the Tribe's biodiversity creates an environment conducive for economic activity and security. Thus, in light of the fundamental resource that the biodiversity of its territory constitutes, the Tribe finds that conservation of its biodiversity is essential to protect the health, welfare and economic security of all present and future generations of the Tribe.

The Tribe recognizes that scientists from firms and research facilities are mining indigenous communities for unique organisms that may be used for the creation of new agricultural and pharmaceutical products. Such firms and research facilities frequently attempt to acquire

samples of organisms and obtain an exclusive property right in the organisms by patenting them. The Tribe finds that although the intent of the patenting is frequently to prevent competition by other firms and research facilities, the effects can be much more far-reaching. The Tribe recognizes that the patenting of organisms threatens the loss of biodiversity by limiting access to genetic variants through the enforcement of proprietary rights and by encouraging the spread of a single variant of an organism in place of other natural variations. For these reasons, the patenting of organisms threatens the Tribe's health, welfare and economic security.

(WOS 2004-03, July 25, 2004, Section I)

4.1002 DEFINITIONS

The following definitions apply to this Statute:

- A.** “**Jurisdiction**” means the jurisdiction of the Tribe as defined in the Tribe's Constitution.
- B.** “**Organism**” means a whole, living, viable entity; a genetic structure, whether that structure comprises all or only a portion of an entity or a total genetic structure of an entity; and a reproductive cell or developmental stage of an organism.
- C.** “**Person**” means an individual person and any corporation, partnership, limited liability company, or any other form of legal entity.
- D.** “**Tribe**” means the Waganakising Odawak, also known as the Little Traverse Bay Bands of Odawa Indians.

(WOS 2004-03, July 25, 2004, Section II)

4.1003 PROHIBITION AGAINST PATENTING OF ORGANISMS

Within the jurisdiction of the Tribe, no person may patent or claim any exclusive property interest in the makeup of any organism.

(WOS 2004-03, July 25, 2004, Section III)

4.1004 PENALTY

Within the jurisdiction of the Tribe, any person who attempts to or successfully patents or claims any property interest in any organism will have their equipment and research materials confiscated by the Tribe and to the extent allowed under the Tribe's Constitution and applicable law, may be banished from the Tribe's territory and denied permission and access for any research activities related to such organism.

(WOS 2004-03, July 25, 2004, Section IV)

4.1005 ENFORCEMENT

The Tribal Prosecutor shall have the authority to enforce this statute by bringing an action against any person accused of violating this statute in Tribal Court and obtaining a Tribal Court order providing for relief in the form of the penalties described in Section IV [WOTC 4.1004] above.

(WOS 2004-03, July 25, 2004, Section V)

4.1006 SAVINGS CLAUSE

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

(WOS 2004-03, July 25, 2004, Section VI)

4.1007 EFFECTIVE DATE

This Statute takes effect thirty (30) days from the date of its enactment [July 25, 2004].

(WOS 2004-03, July 25, 2004, Section VII)