

# PAWNEE NATION OF OKLAHOMA

## Liquor Control Act

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***PAWNEE NATION OF OKLAHOMA LIQUOR CONTROL ACT***

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**PAWNEE NATION OF OKLAHOMA LIQUOR CONTROL ACT  
PROVIDING FOR THE REGULATION OF BEER AND ALCOHOL**

***ARTICLE I. DECLARATION OF PUBLIC POLICY AND PURPOSE***

Pursuant to Article IV, Section 1 of the Constitution of the Pawnee Nation, the Council is the supreme governing body of the Pawnee Nation.

Pursuant to Article IV, Section 2 of the Constitution of the Pawnee Nation, the Council shall exercise all the inherent, statutory, and treaty powers of the Pawnee Nation by the enactment of legislation, the transaction of business, and by otherwise speaking or acting on behalf of the Pawnee Nation on all matters which the Pawnee Nation is empowered to act.

This document shall be known as the Pawnee Nation of Oklahoma Liquor Control Act and referred to as Act. These laws are enacted to regulate the sale and distribution of liquor and beer products on All Properties under the jurisdiction of the Pawnee Nation, and to generate revenue to fund needed tribal programs and services.

Revenue received by the Pawnee Nation under this Act, from whatever source, shall be expended for administrative costs incurred in the enforcement of this Act. Excess funds shall be subject to appropriation by the Council for essential governmental and social services, including the use of revenues to combat alcohol abuse and its debilitating effects among individuals and family members of the Pawnee Nation.

The Council finds that tribal control and regulation of liquor is necessary to protect the health and welfare of tribal members, to address specific concerns relating to alcohol use on Pawnee Nation Properties and to achieve maximum economic benefit to the Pawnee Nation.

The introduction, possession and sale of liquor in the Jurisdiction of the Pawnee Nation is a matter of special concern to the Council.

The Council finds that a complete ban on liquor across the Pawnee Nation is ineffective and unrealistic; however, it recognizes the need for strict regulation and control over liquor transactions within the Jurisdiction of the Pawnee Nation because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution and consumption of liquor.

Federal law forbids the introduction, possession, and sale of liquor in Indian Country except when the same is in conformity both with the laws of the State and the Pawnee Nation 18 U.S.C. 1161. As such, compliance with this Act shall be in addition to, and not substitute for, compliance with the laws of the State of Oklahoma. It is in the best interests of the Pawnee Nation to enact a tribal Act governing liquor sales in the Jurisdiction of the Pawnee Nation which provides for exclusive purchase, distribution, and sale of liquor within the exterior boundaries of the Pawnee Nation.

## **ARTICLE II. DEFINITIONS**

As used in this title, the following words shall have the following meanings unless the context clearly require otherwise:

- (a) **Act.** Refers to the Pawnee Nation of Oklahoma Liquor Control Act.
- (b) **Alcohol.** That substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.
- (c) **Alcoholic Beverage.** This term is synonymous with the term liquor as defined in paragraph (1)(g) of this Article.
- (d) **Bar.** Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.
- (e) **Beer.** Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.
- (f) **Constitution.** Refers to the Constitution of the Pawnee Nation of Oklahoma.
- (g) **Council.** Refers to the governing body of the Pawnee Nation, Pawnee Business Council, as constituted by the Constitution of the Pawnee Nation of Oklahoma.
- (h) **Jurisdiction.** Refers to the full extent of the Pawnee Nation of Oklahoma's Jurisdiction as a sovereign nation, including all Pawnee Nation Properties outside of Indian Country, unless otherwise limited by Congressional Act.
- (i) **Liquor.** All fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one half of one percent of alcohol.
- (j) **Commission.** Refers to the Pawnee Nation Liquor Control Commission as established by Article III of this Act.

- (k) **Liquor Store.** Any store at which liquor is sold and, for the purpose of this Act, includes stores where only a portion of which are devoted to sale of liquor or beer.
- (l) **Malt Liquor.** Beer, strong beer, ale, stout or porter.
- (m) **Package.** Any container or receptacle used for holding liquor.
- (n) **Pawnee Nation.** Refers to the Pawnee Nation of Oklahoma.
- (o) **Pawnee Nation Properties.** Means any property or lands in which the Pawnee Nation of Oklahoma possesses an ownership, trust, leasehold, or other legal or equitable interest, including properties defined as “Indian Country” under 18 U.S.C. § 1151, and any other land or property over which the Pawnee Nation holds authority to manage, regulate, or control activities.
- (p) **Public Place.** Federal, state, county, or tribal highways and roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and gas stations which are open to and/or generally used by the public and to which the public is permitted to have generally unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.
- (q) **Sale and Sell.** The exchange, barter and traffic, including the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.
- (r) **Spirits.** Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.
- (s) **Tribal Court.** Refers to the Pawnee Nation of Oklahoma Tribal Court or the Court of Indian Offenses.
- (t) **Wine.** Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelia, not exceeding seventeen percent of alcohol by weight.

***ARTICLE III. PAWNEE NATION OF OKLAHOMA LIQUOR CONTROL COMMISSION***

- (1) There is hereby established a Commission, composed of a five person committee.
  - a) The Commission shall be composed of five positions such as Chairperson, Vice-Chairperson, Secretary, Treasurer and one commission member.
- (2) The Commission shall be appointed by the Council.

(3) The Commission shall meet on call, but not less than once each calendar quarter, provided 48 hours, two (2) days public notice of its meetings are given.

(4) The Commission and their designated staff representative shall receive a stipend in lieu of expenses in an amount set by resolution of the Council.

(5) The Commission shall be able to call Emergency Meetings by the Commission Chairperson, provided that 48 hours or two (2) days public notice of its emergency are given.

(6) Three (3) members of the Commission shall constitute the quorum required to conduct any business.

#### ***ARTICLE IV. POWERS AND DUTIES OF THE LIQUOR CONTROL COMMISSION***

(1) *Powers and Duties.* In furtherance of this Act, the Commission shall have the following powers and duties:

(a) ) Publish and enforce rules and regulations adopted by the Council governing the sale, manufacture, distribution, and possession of alcoholic beverages within the Jurisdiction of the Pawnee Nation.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Commission to perform its functions.

(c) Issue licenses permitting the sale or manufacture or distribution of liquor.

(d) Hold hearings on violations of this Act or for the issuance of revocation of licenses hereunder.

(e) ) Bring suit in the Tribal Court or other appropriate court to enforce this Act as necessary.

(f) ) Determine and seek damages for violation of this Act.

(g) Make such reports as may be required by the Council.

(h) Collect taxes and fees levied or set by the Council and keep accurate records, books and accounts.

(i) Adopt procedures which supplement these regulations and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

(2) *Limitation on Powers.* In the exercise of its powers and duties under this Act, the Commission and its individual members shall not:



(a) ) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor or from any licensee.

(b) Waive the immunity of the Pawnee Nation from suit without the express written consent and resolution of the Council.

(3) *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Commission and/or its staff at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Council and this Act are being complied with.

#### ***ARTICLE V. SALES OF LIQUOR***

(1) *License Required.* A person or entity licensed by the Pawnee Nation may make retail sales of liquor in their facility and the patrons of the facility may consume said liquor within the facility. The introduction and possession of liquor consistent with this Article shall also be allowed. All other purchases and sales of liquor within this Jurisdiction shall be prohibited. Sales of liquor and alcoholic beverages within the Jurisdiction of the Pawnee Nation may only be made at businesses that hold a Pawnee Nation Liquor License.

(2) *Sales for Cash.* All liquor sales within this Jurisdiction shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, Master Card, American Express, etc.

(3) *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverages within the Pawnee Nation is prohibited, such that any person who is not licensed pursuant to this Act who purchases an alcoholic beverage and sells it, whether in the original container or not, shall be guilty of a violation of this Act and shall be subjected to paying damages to the Pawnee Nation as set forth herein.

#### ***ARTICLE VI. LICENSING AND APPLICATION***

(1) *Procedure.* In order to control the proliferation of establishments within Pawnee Nation that sell or serve liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within Pawnee Nation must apply to the Commission for a license to sell or serve liquor.

(2) *Application.* Any enrolled member of the Pawnee Nation eighteen (18) years of age and older, or an enrolled member of a federally-recognized tribe eighteen (18) years of age and older, or other person eighteen (18) years of age and older, may apply to the Commission for a license to sell or serve liquor. Any person or entity applying for a license to sell or serve liquor within this Jurisdiction must fill in the application provided for this purpose by the Pawnee Nation and pay such application fee as may be set from time to time by the Council. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor.

(3) *Licensing Requirements.* The person applying for such license must make a showing once a year, and must satisfy the Commission that he/she is a person of good moral character, that he/she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors; that he or she has never been convicted of violating any of the gambling laws of this State, or any other state, or of this or any other Indian Tribe; that he or she has not had preceding the date of his application for a license, a felony conviction of any of the Laws commonly called “prohibition laws”; and that he or she has not had any permit or license to sell any intoxicating liquors revoked in any county of this State, or any other State, or of any Indian Tribe.

(4) *Processing of Application.* The Commission shall receive and process applications and related matters. All actions by the Commission shall be by majority vote. A quorum of the Commission is that number of members set forth in Article III, paragraph (6) of this Act. The Commission may, by resolution, authorize a staff representative to issue licenses for the sale of liquor and beer products.

(5) *Issuance of License.* The Commission may issue a license if it believes that such issuance is in the best interests of the Pawnee Nation. The purpose of this Act is to permit liquor sales and consumption at Pawnee Nation Properties or at other properties within the Pawnee Nation’s Jurisdiction. Issuance of a license for any other purposes will not be considered to be in the best interests of the Pawnee Nation.

- (a.) The Commission may issue a special event license renewable per event for sporting events, i.e. mixed martial arts, boxing, kickboxing, wrestling, weddings, family and/or organizational events, upon review and formal approval by the Commission based upon the activities. The Commission reserves the right to not issue a special event license if it is determined that it may not be in the best interest of the Pawnee Nation.
- (b.) The Pawnee Nation Liquor Control Commission may grant a temporary license for sale of liquor for a period not to exceed forty-five (45) days to any person(s) applying for the same in connection with a facility provided that the application requirements under this Ordinance have been satisfied. Each temporary permit issued shall specify the licensee number, award date and expiration date.

(6) *Period of License.* Each license shall be issued for a period not to exceed one (1) year from the date of issuance. Each license shall be renewed and due to the Commission for review/approval the fifteenth (15<sup>th</sup>) of the month prior to expiration.

(7) *Renewal of License.* A licensee may renew its license if the licensee has complied in full with this Act; provided however, that the Commission may refuse to renew a license if it finds that doing so would not be in the best interests of health and safety of the Pawnee Nation. The set processing fee will apply to all renewals. This section (7) shall not apply to temporary licenses issued under (5) subpart (b) which shall not be subject to renewal.

(8) *Revocation of License.* The Commission may suspend or revoke a license due to one or more

violations of this Act upon notice and hearing at which the licensee is given an opportunity to

respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

(9) *Hearings.* Within fifteen (15) days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Commission under this Act, the licensee may deliver to the Commission a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Commission and a written decision will be issued. Such decisions will be considered final unless an appeal is filed with the Tribal Court within fifteen (15) calendar days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under all sections of this Act shall be in accordance with due process of law.

(10) *Non-transferability of Licenses.* Licenses issued by the Commission shall not be transferable and may only be utilized by the person or entity in whose name it is issued.

(11) *Licensure:* All individuals serving alcohol shall be required to be licensed to work in businesses or organizations that fall within the jurisdiction of the Pawnee Nation. The business that is seeking licensure shall pay the background check fee and all applicable licensing fees, and/or documents that must be reviewed by the Commission in making determination as to their ability to be licensed. With all licenses issued, they all consent to Pawnee Nation Jurisdiction and all matters shall be properly adjudicated in the Pawnee Nation boundaries. The application will include their consent to be within the Pawnee Nations adjudication process only or by accepting employment in this licensed facility shall also facilitate this consent to Pawnee Nation Jurisdiction for all employees.

## ***ARTICLE VII. ASSESSMENT FEES***

(1) *Assessment Fees.* The Commission shall have the authority, as may subsequently be specified under tribal law, to collect fees levied or set by the Council, for person or entity licensed by the Pawnee Nation or tribally owned business, on each retail sale of alcoholic beverages based upon a percent of the retail sale price. All fees from the sale of alcoholic beverages shall be deposited in the General Treasury of the Pawnee Nation.

(2) *Fees Due.* All fees for the sale of liquor and alcoholic beverages are due on or before the 15th day of the month following the end of the calendar quarter for which the fees are due.

(3) *Delinquent Fees.* Past due fees shall accrue interest at 2% per month.

(4) *Reports.* Along with payment of the fees imposed herein, the feepayers shall submit, in the form specified by the Commission, a quarterly accounting of all income from the sale or distribution of liquor, as well as for the fees collected.

(5) *Audit.* As a condition of obtaining a license, an applicant must agree to the review or audit of its books and records relating to the sale of liquor and alcoholic beverages. Said review or audit may be done periodically or when deemed necessary by the Tribe, to verify the accuracy of reports.

#### ***ARTICLE VIII. RULES, REGULATIONS AND ENFORCEMENT***

(1) In any proceeding under this Act, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this Act.

(2) Any person who shall in any manner sell or offer for sale or distribution or transport liquor in violation of this Act shall be subject to civil damages assessed by the Commission, and their consent to Pawnee Nation Jurisdiction/Court/Regulatory body's action shall be given by their acceptance of employment under their license, under the Commission.

(3) Any person within the Pawnee Nation's Jurisdiction who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this Act.

(4) Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this Article, shall be guilty of a violation of this Act.

(5) Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this Act.

(6) Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Act.

(7) No person under the age of twenty-one (21) years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of twenty-one (21) years to consume liquor on his premises or any premises under his control. Any person violating this prohibition shall be guilty of a separate violation of this Act for each and every drink so consumed.

(8) Any person who shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Act for each sale or drink provided.

(9) Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Act.

(10) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Act.

(11) Any person guilty of violation of this Act shall be liable to pay the Pawnee Nation the amount of \$500 per violation as civil damages to defray the Pawnee Nations cost of enforcement of this Act.

(12) When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

- (a) ) Driver's license or identification card issued by any state department of motor vehicles;
- (b) United States Active Duty Military identification card; or
- (c) ) Passport.

(13) The consumption or possession of liquor on premises where such consumption or possession is contrary to the terms of this Act will result in a declaration that such liquor is contraband. Any tribal agent, employee or officer who is authorized by the Commission to enforce this Act shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property. Upon being found in violation of the Act, the party owning or in control of the premises where contraband is found shall forfeit all right, title and interest in the items seized which shall become the property of the Pawnee Nation.

#### ***ARTICLE IX. ABATEMENT***

(1) Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Act or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared a nuisance.

(2) The Chairperson of the Commission or, if the Chairperson fails or refuses to do so, by a majority vote, the Commission shall institute and maintain an action in the Tribal Court in the name of the Pawnee Nation to abate and perpetually enjoin any nuisance declared under this Article. In addition to the other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond or sufficient sum from \$1,000 to \$15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Pawnee Nation and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Act or of any other applicable tribal laws. If any conditions of the bond be violated, the bond may be applied to satisfy any amounts due to the Pawnee Nation under this Act.

(3) In all cases where any person has been found in violation of this Act relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the Act and violation of this Act shall be prima facie evidence that the room, house, vehicle, building, structure, or place against which such action is brought is a public nuisance.

#### ***ARTICLE X. REVENUE***

Revenue provided for under this Act, from whatever source, shall be expended for administrative costs incurred in the enforcement of this Act. Funds will be made available for operations of the Commission. Excess funds shall be subject to appropriation by the Council with no less than twenty-five percent (25%) of such funds prioritized to Pawnee Nation Behavioral Health treatment services and programs that support the wellness and healing of the Pawnee people. Additional appropriations may support other essential services, including Education and Culture."

#### ***ARTICLE XI. SEVERABILITY AND EFFECTIVE DATE***

- (1) If any provision under this Act is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Act or to render such provisions inapplicable to other persons or circumstances.
- (2) Any and all previous liquor control enactments of the Council which are inconsistent with this Act are hereby rescinded.

#### ***ARTICLE XII. CONFORMANCE WITH TRIBAL, STATE AND FEDERAL LAW***

This act conforms with all Tribal law and governing documents. All provisions and transactions under this Act shall be in conformity with Oklahoma State law regarding the sale of Alcoholic Beverages and to the extent required by 18. U.S.C. §1161, provided that §1161 shall not be deemed to waive Tribal sovereign immunity in any respect, and will all Federal laws regarding alcohol in Pawnee Nation.

#### ***ARTICLE XIII. AMENDMENT AND CONSTRUCTION***

- (1) This Act may only be amended by vote of the Council.
- (2) Nothing in this Act shall be construed to diminish or impair in any way the rights or sovereign powers of the Pawnee Nation or its Tribal government other than the due process provision at Article VI (8), which provides that licensees have been revoked or suspended may seek review of that decision in Tribal Court.