

TRIBAL CODE

CHAPTER 84:

CIVIL REMEDIAL FORFEITURE CODE

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HISTORY NOTE

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TRIBAL CODE

CHAPTER 84:

CIVIL REMEDIAL FORFEITURE CODE

SUBCHAPTER I: GENERAL PROVISIONS

84.101 Purpose and Authority.

This Chapter is enacted under the authority of the Tribal Constitution, Article VII, Section 1 (d), (g) and (k), in order to provide for the civil remedial forfeitures of money penalties and property for violation of tribal civil regulatory or criminal Tribal Code provisions. The remedial measures of this Chapter are designed and intended to encourage compliance with tribal law and to compensate the Tribe for damage to the peace, security, welfare, or resources of the Reservation.

84.102 Definitions.

As used in this Chapter:

(1) "Crime" (or "criminal") means (or refers to) an act or omission forbidden by a Tribal Code provision which is punishable upon conviction by imprisonment, fine not designated as a civil fine or civil remedial forfeiture, or other penal discipline.

(2) "Enforcing officer" means federal enforcement agents, Tribal law enforcement officers, and other persons specifically authorized by Tribal law or a cross-deputization or mutual aid agreement with the Tribe to enforce Tribal law.

(3) "Indian" means any person of Native American ancestry who is subject to federal criminal jurisdiction under the Major Crimes Act, 18 U.S.C. 1153.

(4) "Non-Indian" means any person who is not an Indian as defined in sub. 3.

(5) "Reservation" includes all lands which are now or in the future become:

(a) located within the exterior boundaries of the Tribe's reservation;

(b) held in trust for the Tribe by the United States; or

(c) owned by the Tribe which are "dependent Indian communities" as that term is used in 18 U.S.C. 1151.

(6) "Tribe" (or "Tribal") means (or refers to) the Sault Ste. Marie Tribe of Chippewa Indians.

(7) "Tribal Court" means the Sault Ste. Marie Chippewa Tribal Court, as established by Tribal Code Chapter 80.

84.103 Tribal Ordinances Affected.

(1) Whenever any Tribal Code provision is covered by a civil fine or civil remedial money penalty or the civil remedial forfeiture of any property for its breach, the Tribe shall proceed against such person or property as provided in this Chapter, unless a different procedure is specified for that provision.

(b) The general provisions of other chapters of the Tribal Code, or of any rules of court promulgated by the Tribal Court to govern general procedures in Tribal Court, shall apply to proceedings instituted under this Chapter, to the extent such provisions are not inconsistent with the provisions of this Chapter.

84.104 Application to Non-Indians.

Any act or omission which constitutes a crime if committed by an Indian shall constitute a civil infraction subject to a civil remedial money penalty under this Chapter if committed by a non-Indian or any other person over whom the Tribe is not permitted by federal law to exercise criminal jurisdiction.

84.105 Property Used in Commission of Crime.

Any property used in the commission of any act which constitutes a crime if committed by an Indian shall be subject to civil remedial forfeiture of property under Subchapter III regardless of whether such property is owned by or was used by a non-Indian.

84.106 Parties to a Violation.

Any person who is concerned in the commission of a violation remediable under this Chapter is a principal and may be adjudged to have committed the violation although such person did not directly commit it and although the person who did directly do so has not been subjected to a criminal prosecution or the remedial provisions of this Chapter. A person is concerned in the commission of a violation if such person:

- (1) directly commits the violation; or
- (2) aids and abets the commission of a violation; or
- (3) is party to as conspiracy with one or more others to commit the violation or advises, hires, counsels, or otherwise procures another to commit the violation.

84.107 Jurisdiction.

The Tribal Court shall have jurisdiction overt proceedings instituted under this Chapter.

84.108 Party Plaintiff.

Any proceeding instituted under this Chapter shall be brought in the name of the Tribe, as plaintiff.

84.109 Effective Date.

This Chapter shall take effect immediately upon its enactment.

84.110 Implied Consent.

Entry upon the Reservation without the permission of the Tribe is prohibited. Such permission when given is expressly conditioned upon the consent of the person entering the Reservation to the jurisdiction of the Tribe for purposes of enforcing this Chapter and any other Tribal Code provision enforced by means of this Chapter. Entry upon the Reservation made in any manner other than in conformity with this Chapter or any Tribal Code provision enforced by means of this Chapter is made without consent. Any person who enters upon the Reservation shall be deemed to have given consent to the jurisdiction of the Tribe for purposes of enforcing this Chapter.

84.111 Severability.

If any section, provision or portion of this Chapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected.

84.112 Additional Remedies.

The civil remedial forfeiture remedies provided for in this Chapter are not mutually exclusive remedies of the Tribe for violation of its Tribal law. Nothing in this Chapter shall restrict or curtail the right of the Tribe to prosecute or seek the criminal prosecution of any defendant or owner or to institute a civil action for damages in any court against a defendant or owner. In addition to the civil remedies provided in this Chapter, the Tribal Court may order a defendant or owner to perform or refrain from performing such acts as may be necessary fully to protect the Tribe, its members, its property, or its natural resources. The Tribal Court may order abatement of a nuisance, restoration of a natural resource, or other appropriate action designed to eliminate or minimize damage caused by a defendant or owner.

SUBCHAPTER II: CIVIL REMEDIAL MONEY PENALTIES.

84.201 Institution of Proceedings; Citation.

Proceedings for the recovery of a civil remedial money penalty shall be instituted by the issuance of a citation by an enforcing officer. Whenever an officer has reason to believe that a person subject to tribal authority has committed a breach of a Tribal Code provision that is subject to a civil remedial money penalty, the officer shall issue a citation to that person and file a copy with the Tribal Court. A citation may be served personally or by ordinary mail.

84.202 Notice to Alleged Violator; Jurisdiction.

The issuance of a citation by an enforcing officer is sufficient notice to the alleged violator that he is charged with a civil infraction subject to a civil remedial money penalty, and is adequate process to give the Tribal Court jurisdiction over the person allegedly committing the violation upon the filing of the citation with the Tribal Court.

84.203 Citation Contents.

(1) It must appear on the face of the citation that there is a reasonable basis to believe that a breach of a Tribal Code provision has been committed and that the defendant charged has committed the breach.

(2) The citation form shall contain the following:

(a) The name of the person to whom the citation was issued, together with the person's age and address, if available;

- (b) The Tribal permit or license number of the defendant, if applicable;
- (c) The name of the issuing officer;
- (d) The breach alleged, the time and place of occurrence, a statement that the defendant committed the breach, the Tribal Code provision charged, and a description of the breach in language which can be easily understood;
- (e) The maximum civil remedial money penalty for which the defendant might be found liable;
- (f) A date, time and place for a Tribal Court appearance, and a notice to appear;
- (g) Provision for a deposit and stipulation of default in lieu of court appearance;
- (h) Notice that if the defendant fails to appear at the time fixed in the citation, he will be defaulted and judgment entered in an amount up to the maximum penalty;
- (i) Notice that if the defendant makes a deposit and stipulation of default, judgment will be entered in the amount of the deposit; and
- (j) Any other pertinent information.

84.204 Stipulation of Default; Deposit.

(1) A defendant to whom a citation is issued may make a deposit and stipulation of default in lieu of a court appearance at any time prior to the date set for appearance before the Tribal Court.

(2) The amount of the deposit shall be determined by an enforcing officer at the time of issuance of the citation, but shall not exceed the maximum penalty established in the Tribal code provision charged or by this Chapter or set forth in a deposit schedule adopted by the Tribal Court under its rulemaking authority.

(3) By signing the stipulation of default, the defendant consents to the entry of judgment against him or her for a penalty not to exceed the amount of the deposit.

(4) The Clerk of Tribal Court or the enforcing officer issuing the citation shall accept the deposit and stipulation of default and shall prepare a receipt showing the purpose for which the deposit was made, which shall be transmitted to the defendant. In the event that acceptance of the deposit and stipulation is made by an enforcing officer, the officer shall file the stipulation of default and a copy of the receipt with the Clerk of Tribal Court.

84.205. Burden of Proof.

In all actions under this Subchapter, the Tribe shall have the burden of showing by a preponderance of the evidence that the defendant breached the Tribal code provision charged in the citation. The Tribe shall not, however, be required to show that the defendant intended to breach the Tribal code provision charged.

84.206. Default.

Upon failure of the defendant to appear on the date indicated on the citation, an entry of default shall be made by the Clerk of Tribal Court and the Tribal Court may proceed with the hearing and enter judgment under this Subchapter. If the citation was served by ordinary mail, proof of receipt by the defendant shall be required before default may be entered.

84.207 Judgment.

If upon default or after the presentation of all the evidence the defendant is found by a preponderance of the evidence to have breached the Tribal code provision charged, the Tribal Court shall enter judgment against the defendant and in favor of the Tribe for a monetary amount not to exceed the maximum civil remedial money penalty provided for the offense or, if a deposit has been made by the defendant, for an amount not to exceed the amount of the deposit.

84.208 Amount of Penalty.

The maximum civil remedial money penalty which may be imposed for a violation of a Tribal code provision under this Subchapter shall be the lesser of:

- (1) \$5,000.00; or
- (2) the maximum amount provided in the Tribal Code provision violated, if an amount is specified; or
- (3) in the case of a civil infraction by a non-Indian subject to §84.104, the maximum criminal fine imposed by the Tribal Code provision violated, if such an amount is specified.

84.209 Enforcement of Judgment.

All civil remedies are available to enforce the judgment of the Tribal Court, including the power of civil contempt. A judgment shall be a lien upon any available property of the defendant which is located within the Reservation or within the jurisdiction of the Tribal

Court. When necessary, the Tribe may bring suit in any court on the judgment against the defendant or his property located beyond the jurisdiction of the Tribal Court.

84.210 Monies Tendered to the Tribal Court.

Deposits and money paid on judgments rendered under this Subchapter shall be tendered to the Clerk of Tribal Court. The Clerk shall tender such sums to the Tribal accounting department for deposit in the general fund of the Tribe or for such other disposition as may be directed by a provision of the Tribal Code.

SUBCHAPTER III: CIVIL REMEDIAL FORFEITURE OF PROPERTY.

84.301 Institution of Proceedings; Complaint.

Proceedings for the civil remedial forfeiture of property shall be instituted by the filing of a complaint in rem against the property in Tribal Court by an enforcing officer. A complaint shall be filed whenever such officer has a reasonable basis to believe that a Tribal Code provision has been breached and that the property is forfeitable under Tribal law.

84.302 Contents of Complaint.

(1) It must appear on the face of the complaint that there is a reasonable basis to believe that a Tribal Code provision has been breached and that the property is forfeitable under that provision or under another provision of the Tribal Code.

(2) The complaint shall contain the following:

- (a) A description of the property against which proceedings are instituted;
- (b) The Tribal Code provision allegedly breached;
- (c) A description of the breach in language which can be easily understood;
- (d) The name, address, and other pertinent information about the owner of the property, if known, or a statement that the owner of the property is unknown;
- (e) A request for an order from the Tribal Court to seize the property; and
- (f) The name and signature of the complaining enforcing officer.

84.303 Service of Complaint.

(1) If the owner of the property is identified in the complaint, the complaint and a notice to appear at a hearing on an order to seize shall be served on the owner as provided for service of civil complaints.

(2) If the owner of the property is not identified in the complaint or his present whereabouts is unknown and so recited in the complaint, service shall be made by posting the complaint and notice to appear at the Tribal Court, the central tribal office and by publication once in a newspaper of general circulation on the Reservation. An affidavit of publication and posting shall be filed with the Tribal Court.

84.304 Seizure of Property Without Order.

(1) Property may be seized by an enforcing officer prior to the filing of a complaint and issuance of an order to seize if one or more of the following circumstances exist:

(a) A Tribal Code provision authorizes the immediate seizure of the property;

(b) The property seized presents a danger to persons, property, or a natural resource of the Reservation;

(c) The enforcing officer has a reasonable basis to believe that without immediate seizure, the property will be removed from the jurisdiction of the Tribal Court; or

(d) The enforcing officer has a reasonable basis to believe that the property was used in the commission of an act which, if committed by an Indian, would constitute a crime on the Reservation.

(2) A receipt describing the property seized shall be issued to the person in possession of the property at the time of the seizure, if such person is present.

84.305 Seizure of Property With Order.

Any property alleged to be subject to civil remedial forfeiture may be seized under an order to seize issued by the Tribal Court. Any and all property so seized or seized without order as provided in §84.304 shall be held by the Tribal Court pending disposition of the complaint or until a bond has been posted with the Tribal Court as provided in §84.306.

84.306 Bond for Property Seized.

The Tribal Court may release property seized to the owner upon the posting of bond with the Tribal Court in an amount and under the conditions with the trial judge determines are necessary to protect the interests of the Tribe. In no event shall the amount of the bond exceed the fair market value of the property seized. Upon the posting of a proper bond, the bond shall be available to be levied against if the owner does not return the property to the custody of the Tribal Court in proper condition upon a determination of the Tribal Court that the property is forfeited.

84.307 Hearing; Time.

When property has been seized prior to the issuance of an order to seize, a hearing on the order to seize shall be held within five (5) working days after the seizure. If the hearing is not held within that time, the property seized shall be immediately returned to the owner, if the owner is known. The hearing on the order to seize requested in the complaint filed with the Tribal Court shall be held within thirty (30) days of the filing of the complaint.

84.308 Hearing Procedure.

(1) At the hearing on the order to seize, the Tribe shall have the burden of showing that there is a reasonable basis to believe that:

- (a) The property is subject to civil remedial forfeiture; and
- (b) The property is within the jurisdiction of the Tribal Court.

(2) The parties may present evidence through the testimony of witnesses. Affidavits will be accepted in lieu of testimony if, in the trial judge's discretion, it is determined that the interest of justice would be best served by doing so.

84.309 Order to Seize.

(1) If, after the hearing, the trial judge finds that there is a reasonable basis to believe that the property is subject to civil remedial forfeiture under the Tribal Code provision - alleged in the complaint, and that the property is within the jurisdiction of the Tribal Court, the trial judge shall issue an order to seize, directing an enforcing officer to seize the property and hold it pending disposition of the complaint.

(2) If, after hearing, the trial judge finds that there is not a reasonable basis to believe that the property is subject to civil remedial forfeiture under the Tribal Code provision alleged, or that the property is within the jurisdiction of the Tribal Court, the trial judge shall

dismiss the complaint and, if property was seized prior to the hearing, order the property immediately released.

84.310 Contents of an Order to Seize.

An order to seize shall contain the following:

- (1) A description of the property subject to the order;
- (2) The date of filing of the complaint for forfeiture, and the name and department of the complaining officer;
- (3) A finding that the property is within the jurisdiction of the Tribal Court;
- (4) A finding that there is a reasonable basis to believe that the property is subject to a civil remedial forfeiture, a brief factual narration of the grounds for the finding, and citation to the Tribal Code provision allegedly breached;
- (5) Notice of the date, time and place of trial; and
- (6) Notice that the property may be released by the posting of a proper bond.

The order to seize shall be served as provided in §84.303.

84.311 Existence of Security Interest in Seized Property.

The enforcing officer shall make a reasonable effort prior to the hearing on the order to seize to ascertain whether a perfected security interest exists in the property and, if one does exist, shall give notice to the secured party of any hearing in the case, and shall also give the secured party a minimum of fifteen (15) days notice of the time and place of any sale conducted under §84.113.

84.312 Trial.

At trial, the Tribe shall have the burden of showing by a preponderance of the evidence that the property is forfeitable under the ordinance Tribal Code provision charged or a provision of this Chapter. If the Tribe fails to meet this burden, the Tribal Court shall dissolve the order to seize, enter judgment awarding title to the property to the owner, and order immediate release of the property or discharge of the bond, whichever is appropriate. If the Tribe meets its burden, the Tribal Court shall dissolve the order to seize, enter judgment awarding title to the property to the Tribe, and place the property in the hands of the Tribe for disposition or, if bond was posted, order the bond forfeited to the Tribe.

84.313 Sale of Forfeited Property.

(1) Within thirty (30) days after entry of a judgment forfeiting property to the Tribe, but in no event less than fifteen (15) days after entry, the Tribe shall sell the property at the highest obtainable price. The net proceeds of such sale, after deducting sale expenses, shall be remitted to the Tribal accounting department, who shall place the proceeds in the Tribe's general account or make such other disposition as the Tribal Code provision breached shall require.

(2) If there exists a perfected security interest in the forfeited property, and the breach which occasioned the forfeiture was not committed with the knowledge, consent or connivance of the secured party, there shall also be deducted from the proceeds of sale the amount due under the security agreement, and such amount shall be paid to the secured party. In the event a sufficient amount does not remain for such purpose after deducting other sale expenses, any amount remaining shall be paid over.

(3) In lieu of sale of forfeited property, the Tribal Board of Directors may by motion provide for the retention and use of the property by the Tribe, as may be directed in the motion. If there exists a perfected security interest in the property, and the breach was not committed with the knowledge, consent or connivance of the secured party, the Tribe shall pay to the secured party the amount due under the security agreement before its retention and use of the property.

84.314 Sale of Perishable Property.

Any perishable property seized under this Subchapter may be sold by an enforcing officer at the highest available price, and the proceeds of such sale shall be tendered to the Tribal Court to await such disposition of the proceeds as the Tribal Court shall direct.

84.315 Effect on Seizure of Evidence.

Nothing in this Chapter shall affect or limit the power of enforcing officers to execute search warrants or seize and hold property which constitutes evidence in any criminal case. Such property shall not be forfeited, however, except in compliance with this Subchapter.

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