

MASHANTUCKET PEQUOT TRIBAL LAWS UNANNOTATED
2009-2014 Pocket Part Volume 2

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TITLE 24. PROBATE LAW

CHAPTER 7. TRUSTS

24 M.P.T.L. ch. 7 § 37

§ 37. Special Needs Trust

The Probate Court shall recognize and enforce the terms of any special needs or supplemental needs trust created under tribal or other laws. Such trust shall be enforced in accordance with the general trust provisions of tribal law. Special Needs Trusts may be established by the guardian, conservator, or the beneficiary or other individual with the power to otherwise establish trusts under tribal law.

TITLE 27. LAND ASSIGNMENT LAW

CHAPTER 1. PURPOSE, POLICY, DEFINITIONS

27 M.P.T.L. ch. 1 § 4

§ 4. Definitions

In construing the provisions of this Assignment Law, the following words or phrases shall have the meanings designated unless a different meaning is expressly provided, or the context clearly indicates otherwise:

a. "Assignee" means an enrolled individual Tribal Member or enrolled Tribal Members to whom an Assignment is conveyed in accordance with the provisions of this Assignment Law.

b. "Assignment" means the real property located on the Reservation to which Assignment Rights are made appurtenant and vested in an Assignee pursuant to 27 M.P.T.L., Land Assignment Law expressly including the following:

(1) any tract of land located within an Assignment Area described in, or delineated on, a Survey as suitable for the construction of a Dwelling; and

(2) such tract of land so described or delineated together with any Dwelling now or hereafter located thereon; and

(3) such other improvements as are now or hereafter made to such tract of land or to such Dwelling by an Assignee in accordance with Tribal Law for the benefit only of such Assignment.

c. "Assignment Area" means the Initial Assignment Area and that portion or those portions of the Reservation as the Tribal Council shall, from time to time, designate by resolution as subject to 27 M.P.T.L., Land Assignment Law:

d. "Assignment Conveyance" means the conveyance to an Assignee of an Assignment and the Assignment Rights appurtenant thereto.

e. "Assignment Mortgage" means a mortgage or other Instrument executed by an Assignee to the benefit of a Loan Program Lender, granting to such lender a security interest in an Assignment. Any mortgage or other Instrument purporting to grant a security interest in an Assignment or in a Dwelling that is not made pursuant to the terms of a Loan Program shall be deemed null, void and of no effect.

f. "Assignment Rights" means those rights appurtenant to an Assignment as specified in 27 M.P.T.L., ch. 2.

g. "Certificate of Assignment" means the written instrument by which an Assignment Conveyance is made.

h. "Certificate of Compliance" has the meaning as set forth in 27 M.P.T.L., ch. 5 § 5.

i. "Certificate of Conveyance" means any document issued by the DOH or the Tribe pursuant to Tribal Law and/or tribal custom which evidences that a named Tribal Member(s) has satisfied all financial obligations of such Tribal Member to the Tribe arising under an Occupancy Agreement and is therefore acknowledged by the Tribe to have certain rights to occupy the Dwelling, subject to any conditions and/or requirements of Tribal Law and custom. A Certificate of Conveyance shall not be deemed an Assignment Conveyance unless and until a Certificate of Assignment evidencing an Initial Assignment Conveyance to an Assignee is Recorded.

j. "Department of Housing" (herein "DOH") means the Mashantucket Pequot Department of Housing, an instrumentality of the Tribe charged with the responsibility of administering this 27 M.P.T.L., Land Assignment Law pursuant to Chapter 1 § 3.

k. "Dwelling" means a house, apartment, condominium, mobile or manufactured home, or other residential unit as permitted by 14 M.P.T.L. Land Use Law and applicable Zoning Regulations, located in the Assignment Area. No residential unit located outside of the Assignment Area shall be considered a Dwelling for purposes of this Assignment Law.

l. "Eligible Tribal Member" has the meaning as set forth in 27 M.P.T.L. ch. 2 § 1.

m. "Initial Assignment" means any Assignment Conveyance in which the Tribe is the grantor or assignor.

n. "Initial Assignment Area" means the geographic area denominated Tribal Housing Phase 7A as described in TCR030104-01 of 03.

o. "Instrument" means any writing or document evidencing or affecting:

(1) The Assignment Rights of an Assignee in and to an Assignment including, but not limited to, a Certificate of Assignment and a license of such rights as permitted under 27 M.P.T.L., Land Assignment Law;

(2) The rights of a Tribal Member in and to a Dwelling that is not an Assignment, including, but not limited to, an Occupancy Agreement and a Certificate of Conveyance;

(3) The rights of a Loan Program Lender in and to an Assignment including, but not limited to, an Assignment Mortgage; and

(4) The rights of the Tribe in and to an Assignment or Dwelling.

p. "Loan Program" means any loan program, such as Housing and Urban Development ("HUD") Section 184 or Fannie Mae Loan Guarantee programs, as the same may be approved by resolution of the Tribal Council.

q. "Loan Program Lender" means any lender making a loan to an Assignee secured by an Assignment Mortgage, together with any permitted Assignee of, or successor to such lender as provided for by the terms of the Loan Program pursuant to which such loan is made.

r. "Program" means any program heretofore established or authorized by the Tribal Council for the purpose of providing Tribal Members an opportunity to occupy and enjoy a Dwelling and, pursuant to the terms of such Program, to qualify for a Certificate of Conveyance upon the discharge of certain financial and other obligations. Programs include, but are not limited to, the program known as the Alternative Housing Program.

s. "Occupancy Agreement" means a written agreement between the Tribe and a Tribal Member conferring rights to occupy a Dwelling pursuant to a Housing Program. An Occupancy Agreement shall not be deemed an Assignment Conveyance unless and until a Certificate of Assignment evidencing an Initial Assignment Conveyance to an Assignee is Recorded.

t. "Recording", "Record", and "Recorded" shall mean the act of recording an Instrument as a public document in accordance with 27 M.P.T.L, ch. 5.

u. "Reservation" means the Mashantucket (Western) Pequot Reservation, which shall include all lands held in trust by the United States of America for the benefit of the Mashantucket (Western) Pequot Tribe.

v. "Survey" means such maps, surveys, or other documentation defining and delineating an Assignment Area and the Assignments therein established as is certified and adopted by Tribal Council for purposes of this Assignment Law and duly Recorded.

w. "Tribal Clerk" refers to the Office of the Tribal Clerk of the Tribe.

x. "Tribal Council" or "Council" means the Mashantucket Pequot Tribal Council, the governing body of the Tribe.

y. "Tribal Court" means the courts established by the Laws of the Tribe.

z. "Tribal Law" means all laws, resolutions, regulations, ordinances or other form of action by the Tribal Council, and such regulations and policies as are duly adopted

by a department of the Tribe in accordance with Tribal Law.

aa. "Tribal Member" means an individual who is an enrolled member of the Tribe in good standing.

bb. "Tribe" means the Mashantucket (Western) Pequot Tribe as recognized by the United States of America and also known as the Mashantucket Pequot Tribal Nation.

CHAPTER 6. INITIAL ASSIGNMENT AREA; ADDITIONAL ASSIGNMENT AREAS

27 M.P.T.L. ch. 6 § 6

§ 6. Construction Period Requirements

As the judicious allocation of scarce Dwellings on the Reservation is an underlying purpose of this Assignment Law, the following requirements shall apply to Assignees receiving an Assignment:

a. An Assignee shall have two (2) years from the date of the Recording of the Certificate of Assignment to commence construction of a Dwelling in accordance with all applicable Tribal Laws.

b. Assignee shall have completed construction of such Dwelling within five (5) years of the date of the Recording of the Assignment. The DOH may issue extensions for up to an additional six (6) months for completion upon a showing of good cause.

c. The failure of Assignee to install an appropriate foundation in accordance with Tribal Law shall be deemed conclusive evidence of a violation of subsection (a) of this section for purposes of the application of Chapter 3 of this Land Assignment Law.

d. The failure of Assignee to timely obtain a Certificate of Completion from the Tribe's Land Use Commission that such Dwelling complies with applicable Tribal Laws and is fit for human habitation shall create a presumption of the Assignee's violation of subsection (b) of this section for purposes of the application of Chapter 3 of this Assignment Law.

TITLE 28. RIGHT TO WORK LAW

28 M.P.T.L. § 1

§ 1. Findings, Purpose, and Authority

a. The Tribe finds that:

(1) It has exercised its sovereignty in enacting laws to govern employment relationships on the Reservation, and has determined that it is in the best interests

of all Employees on the Reservation to have the right to choose to work and not be prohibited from working on the Reservation based upon requirements of membership in, affiliation with, or financial support of a labor organization.

(2) Employees should have the right to work and not be discriminated against due to either membership or non-membership in a labor organization.

(3) It is the public policy of the Tribe that in order to maximize individual freedom of choice in the pursuit of employment and to encourage and enhance an employment atmosphere conducive to economic growth, the right of individuals to work on the Reservation shall not be denied or hindered based upon membership in a labor organization.

(4) It has the inherent authority to exclude persons from the Reservation and to place conditions on entry, on continued presence and on conduct within the Reservation.

(5) The Tribe's position is that the National Labor Relations Act does not apply to it as a government given the significant impact its application would have on the Tribe's exercise of sovereignty, including the numerous laws adopted that currently govern employment on the Reservation. However, given the uncertain climate of the issue before the courts, even if a court were to determine that the NLRA applies to the Tribe as an employer, it would not preempt the Tribe's right to enact this law providing all Employees on the Reservation, whether working for the Tribe or not, with the right to work and not requiring any Employee to affiliate with, join, or financially support a labor organization in order to work on the Reservation.

(6) It has enacted the Mashantucket Pequot Labor Relations Law under which Tribal employees have the right to elect to be represented by a labor organization and in order to encourage labor organizations to utilize tribal law and to preserve tribal sovereignty the Tribe, notwithstanding the above findings, recognizes an exception to the absolute prohibitions under Section 3(a) of this Law when Tribal Employees are represented by a labor organization certified under tribal law.

b. The purpose of this law is to ensure for all persons on the Reservation the right to work and pursue employment without the restraints of mandatory affiliation with, membership in, or payment of dues, fees, or assessments to a labor organization.

c. The Mashantucket Pequot Tribal Council, the governing body of the Tribe, enacts this law governing employment and labor on its Reservation pursuant to the Tribe's inherent sovereign authority to govern activities on the Reservation, whether the activities are of tribal members, non-members, Indians, or non-Indians, and whether based on consensual relationships with the Tribe or conduct which impacts and affects the health, safety, political and economic integrity of the Tribe and the Reservation community including members, Employees, vendors, patrons and others who enter the Reservation.

28 M.P.T.L. § 2

§ 2. Definitions

- a. "Employee" means any individual employed by an Employer.
- b. "Employer" means any person, firm, association, corporation and other entity operating in or upon the Mashantucket Pequot Reservation and directly or indirectly employing one or more Employees to perform work, and includes the Tribe. This Law does not apply to any such person, firm, association, corporation or other entity which has a principal place of business located outside the Mashantucket Pequot Reservation and operates in or upon the Mashantucket Pequot Reservation pursuant to an agreement with the Tribe to perform construction-related activities.
- c. "Labor organization" means any organization or agency or group of Employees or Employee committee or plan in which Employees participate that is organized or exists for the purpose of dealing with an employer or employers concerning hours of employment, wages, rates of pay, working conditions or grievances of any kind relating to employment.
- d. "Tribe" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any subdivision, agency, arm or department thereof including but not limited to the Mashantucket Pequot Gaming Enterprise, the Pequot Pharmaceutical Network, the Mashantucket Pequot Museum & Research Center, but does not include any legal entity established and organized by the Tribe under the laws of any state with a principal place of business located outside of the Reservation.
- e. "Mashantucket Pequot Reservation" means the "reservation" as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe and all other lands subject to the jurisdiction of the Tribe.
- f. "Person" means any individual, labor organization, corporation, partnership, company, association or other legal entity.
- g. "Union dues" means dues, fees, assessments or other charges of any kind or amount or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents and includes payments to any charity or other third party in lieu of such payments to a labor organization.

28 M.P.T.L. § 3

§ 3. Right to Work

a. No person shall be required, in order to obtain employment or as a condition of employment or continuation of employment on the Mashantucket Pequot Reservation, to do any of the following:

- (1) Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
- (2) Become or remain a member of a labor organization or be affiliated with a labor organization; or
- (3) Pay union dues as defined in this Law. Provided, however, that a Labor

Organization certified as the exclusive bargaining representative under Tribal Law may lawfully enter into a union security agreement with a Tribal Employer where said agreement does not violate the Indian Civil Rights Act, 25 U.S.C. § 1302, or the Tribal Civil Rights Code, 20 M.P.T.L. ch. 1, Section 1¹ and no election has been conducted by a special master or a MERO Board in which a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement.

b. Except as specifically provided in this Law, any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and any Employer that requires Employees of such Employer to obtain or maintain membership in any labor organization or to pay union dues as defined in this Law or otherwise violates the rights of Employees as defined by this Law, is against the public policy of the Tribe and is hereby declared to be null and void and of no legal effect.

c. No Employer shall deduct labor organization dues, charges, fees, contributions, fines or assessments from an Employee's earnings, wages or compensation, unless the Employer has first received from the Employee a written order or consent signed by the Employee, which written order or consent shall be terminable at any time by the Employee by giving at least thirty days written notice of such desire to terminate the order or consent to the Employer.

d. No Employer shall discriminate or retaliate against any Employee on the basis of an Employee's decision to participate or refrain from participating in any labor organization, or based upon an Employee's activities related to such participation in or refusal to participate in any labor organization.

e. No Person, labor organization, or officer, agent or member thereof, or Employer, or officer or agent thereof shall threaten or intimidate, in any manner, any Person, Employer, or Employee or prospective employee or any member of an Employee's family to compel or attempt to compel such Employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit rights guaranteed under this Law.

¹ In determining whether an agreement violates these laws, the Tribal Court should be guided by the federal court decisions interpreting similar limitations found in the U.S. Constitution applicable to public sector employees.

28 M.P.T.L. § 4

§ 4. Jurisdiction

a. The Mashantucket Pequot Tribal Court shall have jurisdiction over all causes of action alleging violations of this Law.

b. The Tribe hereby expressly waives its sovereign immunity from suit for claims alleging violations of this Law against the Tribe in the Mashantucket Pequot Tribal Court. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe in the state or federal courts, or any other forum or context.

28 M.P.T.L. § 5

§ 5. Civil Remedies

a. Any person injured as a result of any violation or threatened violation of the provisions of this Law shall be entitled to petition the Mashantucket Pequot Tribal Court for injunctive relief from or against any person who violates or threatens any violation of this Law, and may, in addition thereto, file a claim to recover any and all damages, including costs and reasonable attorney's fees, resulting from the violation or threatened violation. The remedy shall be independent of and in addition to any other penalties and remedies prescribed by applicable Law.

b. Any claim brought under this Law must be commenced by the filing of a complaint with the Tribal Court in accordance with the Mashantucket Pequot Rules of Civil Procedure and within 180 days from the date of the violation(s) or threatened violation(s) of the Law which form the basis of the complaint.

TITLE 31. MASHANTUCKET EMPLOYMENT RIGHTS LAW

CHAPTER 1

31 M.P.T.L. ch. 1 § 1

§ 1. Short Title

This law shall be known as the Mashantucket Employment Rights Law.

31 M.P.T.L. ch. 1 § 2

§ 2. Findings, Purpose and Authority

a. The Tribe finds that:

(1) It has enacted various laws that govern aspects of employment on the Reservation; however, it does not have a centralized office to oversee the regulation of employment on the Reservation whether it concerns tribal or non-tribal employees.

(2) There is a need for a centralized process to regulate employment for all employers on the Reservation.

(3) There is a need for an administrative process that utilizes the cultural preference for the resolution of disputes through a non-adversarial process such as the Peacemaker's Council. It is therefore important to the Tribe that employees and employers have an avenue to mediate and resolve disputes in this manner.

(4) It recognizes its continued commitment to create and foster a diverse employment atmosphere where differences are respected. This commitment can best be fulfilled

through the establishment of the Mashantucket Pequot Employment Rights Office to oversee, coordinate and enforce tribal employment laws and assist employees and employers in understanding the requirements of those laws.

b. The purpose of this Law is:

(1) To promote responsible Tribal governance and self sufficiency of the Mashantucket Pequot Tribal Nation by creating a centralized Mashantucket Employment Rights Office to coordinate and regulate equitable employment on the Mashantucket Pequot Reservation and various other Tribal Entities.

(2) To create a structure for the Mashantucket Employment Rights Office that includes the position of Director to oversee the office, and a Mediation panel to bring the culture of the Tribe and its preference for non-adversarial resolution of disputes to this structure.

c. Authority

The Tribe enacts this law as an exercise of its inherent sovereign powers and the powers delegated to it by the Constitution of the Mashantucket (Western) Pequot Tribe.

31 M.P.T.L. ch. 1 § 3

§ 3. Definitions

For purposes of this Title:

a. The term "Conflict of Interest" means the existence of a relationship between a person in a decision-making position with another person, employer or entity that may improperly influence the person's decision making to the detriment of the Tribe and shall include the appearance of a conflict even if the person believes the relationship would not affect his or her judgment in a matter.

b., c. Deleted by TCR062909-04 of 06, eff. June 29, 2009.

d. The term "Employee" shall mean any individual employed by an employer with or without a contract. This includes but is not limited to part-time employees, full time employees, and regular.

e. The term "Employer" shall mean any person, company, contractor, subcontractor or other entity located or engaged in work on the Reservation, trust lands and all area within the exterior boundaries of the reservation employing two or more persons, without regard for whether the employer or its owner is Indian or Non-Indian or a member of the Mashantucket (Western) Pequot Tribe or not. The term "employer" excludes Federal, State and County governments.

f. The term "MERO" means the Mashantucket Employment Rights Office.

g. The term "Order of Agreement" shall mean a written explanation of the agreement contemplated by the two parties and witnessed by the mediation panel.

h. The term "Person" means both persons and artificial persons, including, but not limited to corporations, partnerships, joint ventures, lessees, contractors, subcontractors, sole proprietorships, associations, trustees, public officials, Board members, fiduciaries and a private interest or private party and their agents.

i. The term "Reservation" means the Mashantucket (Western) Pequot Reservation, as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

j. The term "Record" means the written documentation of all evidence (whether by way of testimony or documentary) presented to the MERO in a particular case or matter.

k. The term "Tribal Council" shall mean the governing body of the Mashantucket (Western) Pequot Tribe as outlined in the Tribal Constitution.

l. The term "Tribal Entity" shall include all departments, businesses, boards and entities owned and operated by or under the auspices of the government and/or any branch of the government of the Tribe.

m. The terms "Tribal Member" and "Member" shall mean any person who is duly enrolled as a member of the Mashantucket (Western) Pequot Tribe.

n. The term "Tribe" shall mean the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation.

CHAPTER 2

31 M.P.T.L. ch. 2 § 1

§ 1. Establishment of Mashantucket Employment Rights Office

There is hereby established the Mashantucket Employment Rights Office charged with carrying out all tasks assigned to it by tribal law related to the regulation of employment on the Reservation. The Director of MERO shall be the head of the office as more fully established and described in Chapter 2, Section 4 of this law, and shall carry out the day to day functions and duties of the MERO. The Mediation panel established by Chapter 2, Section 5 of this law shall provide employees and employers with an opportunity to resolve disputes through a non-adversarial process.

31 M.P.T.L. ch. 2 § 2

§ 2. Establishment of the MERO Director Position

a. There is hereby established the position of the Director of MERO who shall have primary responsibility for day-to-day administration and operation of MERO and its employees. The compensation for this position shall be competitive and set by Tribal Council and the Director shall report directly to Tribal Council.

b. The Director shall be appointed by the majority vote of the Tribal Council based only on the recommendation of the joint action of the Judicial Committee and Administrative Support Committee which shall select a candidate provided that the candidate must meet the following minimum qualifications:

(1) Be licensed to practice law and be in good standing in the state of Connecticut and have practiced in the area of labor and employment law for a minimum of 10 years, or have a either a Juris Doctorate or a Master's Degree and have a minimum of 10 years experience in government regulation, employment or administration;

(2) Demonstrate an ability to organize and manage a newly formed government office in the nature of MERO;

(3) Have familiarity with or experience in tribal employment rights or equivalent type of experience;

(4) Demonstrate excellent communication and organizational skills;

(5) Be of the highest ethical and moral character; and

(6) Submit to and pass a background check, including a criminal background check and any required licensing.

c. The Director shall have those powers deemed necessary to properly carry out the duties and functions of the MERO which include but are not limited to the following:

(1) To develop a budget for MERO for submission and approval by Tribal Council;

(2) To supervise expenditures pursuant to the approved budget, and guard against and report any misuse or fraudulent use of the monies allocated pursuant to the budget;

(3) To develop, execute, and oversee a plan for implementation and distribution of this law and for any rules, regulations, procedures and/or guidelines established by MERO, to all employers and to all government or tribal entities receiving contracts or grants for work to be done on the Reservation;

(4) To perform any duty or requirement imposed upon the Director by any tribal law, including but not limited to any and all requirements related to Indian and tribal preferences;

(5) To adopt rules, regulations and/or procedures for the operation of the MERO;

(6) To hire personnel as required for the efficient operation of the MERO and as approved in the MERO budget. Initially, such personnel shall, at a minimum, include an administrative assistant and an investigator;

(7) To accept and review any claims, complaints, requests for information or any other matter related to the MERO office or as referred to MERO by any other tribal law;

(8) To conduct or direct personnel to conduct any necessary investigations;

(9) To assign, where appropriate, any of the above duties to MERO personnel;

(10) To adopt rules and/or regulations to insure that confidential information is kept confidential by the MERO, provided that nothing herein precludes the MERO from providing information to other parties to a case for adequate case processing or to the Tribal Court in conjunction with an appeal or enforcement action;

(11) To keep a written record of all proceedings before it and compile an official Record in all matters before it that shall include, at a minimum, a transcript of all testimony given and true and accurate copies of all documentary evidence considered by the MERO;

(12) To conduct surveys including those of Tribal Members, Native Americans, employers and tribal entities that work for the Tribe to ensure effectiveness and efficiency of tribal employment rights laws; and

(13) To create and generate quarterly reports and statistics of MERO complaints; including but not limited to the success of the complaint, how it was resolved, and who were the parties to the complaint and bring those statistics to Tribal Council.

31 M.P.T.L. ch. 2 § 3

§ 3. Establishment of Mediation Panel

a. There is hereby established a mediation panel to help resolve disputes between employers and employees arising under the Tribe's labor and employment laws. The mediation panel shall be comprised of three members from the Tribe's Peacemaker's Council who will be designated, on a case by case basis, by the Chair of the Peacemaker's Council provided that each member of the panel meet the following qualifications:

(1) Have a bachelor's degree or equivalent work experience with the Tribe;

(2) Have the highest moral and ethical character;

(3) Submit to and pass a background check, including a criminal background check and any required licensing;

(4) Demonstrate good judgment and communication skills, and a positive work ethic demonstrated through evaluations and attendance records from work experience; and

(5) Complete training or educational programs in Indian and tribal preference in employment, non-discrimination law, tribal law, federal Indian law, and other areas as determined by the Director of MERO.

b. The Chair of the Peacemaker's Council shall establish rules and regulations to govern mediation before the panel, and for determining the composition of the mediation panel.

c. The Director shall establish rules and regulations for an employer or employee to request mediation and referral to mediation.

d. All parties to any mediation before this panel must agree to the mediation as a first step to the resolution of a dispute between the parties.

e. At the end of a mediation agreement, there shall be a written order of agreement between the parties that shall be signed by the parties and the mediation panel.

f. If an agreement can not be met at the end of the mediation process, or if there is a violation of the order of agreement that the parties signed after mediation, the process will continue in the MERO's processes for the applicable case.

CHAPTER 3

31 M.P.T.L. ch. 3 § 1

§ 1. Scope of Coverage

a. This Law shall apply to all areas within the Reservation and shall apply to all persons, employees, employers, whether tribal or non-tribal, subject to the jurisdiction of the Tribe and Tribal law.

b. This Law shall be effective as of the date of its enactment.

31 M.P.T.L. ch. 3 § 2

§ 2. Hearings

a. Any hearings held before the MERO or in a proceeding under the auspices of the MERO must provide at a minimum the following procedural protections:

1. Written notice of the hearing, by certified mail return receipt requested, or in such other manner determined to be effective under the circumstances, to all interested parties including the claimant, the party against whom the allegations have been made, and the MERO Director. At a minimum, the notice shall include:

(a) the date, time and location of the hearing;

(b) the nature of the hearing;

(c) the right to be present and to participate in the hearing;

(d) the right to present witnesses and documentary evidence and to cross examine witnesses;

(e) the right to be represented by legal counsel at the party's own expense; and

(f) a copy of any rules or regulations governing the hearing.

2. Subpoena. On its own initiative or upon request of any Person notified of the hearing, the MERO may subpoena identified witnesses, documents or records.
3. Each party notified of the hearing shall have the right to be present at and participate in the hearing. Other persons claiming to be interested in the matter may petition the MERO to participate;
4. Each party shall have the right to present relevant sworn testimony and documentary evidence;
5. Each party shall have the right to call witnesses and to cross examine witnesses called by any other hearing participant;
6. Compliance with formal rules of evidence is not required, provided that the hearing is conducted in a manner that provides for the determination of the facts in an orderly and reasonable manner;
7. All proceedings shall be recorded and a complete transcript shall be made and maintained by the MERO;
8. The proceedings may be adjourned, postponed, or continued at the discretion of the MERO when it determines it is advisable or necessary; and
9. Any matter to be proven must be done so by a preponderance of the evidence, unless otherwise provided in applicable Law.

31 M.P.T.L. ch. 3 § 3

§ 3. Conflict with Other Laws or Policies

To the extent that any provision of this Law conflicts with any other law or any policy or procedure issued by any person, employer or Tribal entity, this law shall govern; except if expressly provided otherwise herein.

31 M.P.T.L. ch. 3 § 4

§ 4. Severability

If any provision or part of this Law or its application to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Law and the unaffected provisions of the Law shall continue to be in full force and effect.

31 M.P.T.L. ch. 3 § 5

§ 5. Sovereign Immunity

Nothing contained in this Title shall be construed to waive the sovereign immunity

of the Tribe or any arm, subdivision, department, commission, office, officer, employee or agent of the Tribe, including the MERO, the MERO Mediation Panel, and the MERO Director all as established by this title.

TITLE 32. MASHANTUCKET PEQUOT LABOR RELATIONS LAW

CHAPTER 1

32 M.P.T.L. ch. 1 § 1

§ 1. Title; Authority

This Law may be cited as the "Mashantucket Pequot Labor Relations Law". This Law is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate employment and labor relations within the Reservation. Further, the Tribe has the inherent authority to exclude persons from the Reservation and to place conditions on entry and continued presence on the Reservation, and to govern conduct within the Reservation.

32 M.P.T.L. ch. 1 § 2

§ 2. Findings

The Mashantucket Pequot Tribe, through the Mashantucket Pequot Tribal Council, finds that:

a. The public policy of the Tribe is that all employees working within Tribal territory be treated fairly: that there be fair and appropriate employment practices; fair and comprehensive wages and benefits; and fair and impartial procedures for resolving employment and labor relations issues. In furtherance of this public policy, the Tribe has adopted employment laws governing Tribal employment, and the Judicial and Administrative Support Committees of the Tribal Council recently reviewed the employment practices and procedures applicable to all employers on the Reservation and developed a phased approach to create the Mashantucket Employment Rights Office and related labor and employment laws. Based upon those recommendations, the Tribal Council adopted Title 31 of the Mashantucket Pequot Tribal Laws, establishing the Mashantucket Employment Rights Office, to fully regulate employment and labor relations on the Reservation and to provide administrative review and enforcement of Tribal employment and labor relations laws.

b. The Tribe, as an employer, provides excellent employment to thousands of people on its Reservation through the Mashantucket Pequot Gaming Enterprise, the Mashantucket Pequot Museum & Research Center, the Pequot Pharmaceutical Network, the Child Development Center, and other departments, divisions, entities or enterprises of the Tribe. The Tribe, as a government, has guaranteed, through Tribal employment and labor relations laws and policies, fair treatment to its employees.

c. Employees have the right under Tribal law to form, join, or assist labor organizations, to engage in collective bargaining and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as specifically provided in this Law and the right to refrain from any such activities. Based on the recent reversal of 30 years of precedent by a federal agency and a federal court, the Tribe acknowledges that labor organizations may seek the right to represent Tribal employees pursuant to federal law, commonly known as the National Labor Relations Act (NLRA) 29 U.S.C. § 151 et seq.

d. The NLRA was adopted in 1935 to encourage the practice of collective bargaining and to protect the exercise of self-organization by employees for the purpose of negotiating the terms and conditions of their employment with employers in the private sector. The NLRA expressly exempts federal, state and local governments from its definition of "employer", recognizing, among other things, that government employees provide essential services to their communities and that labor strikes could inflict unique harms in those communities. Nonetheless, pursuant to their inherent authority, the vast majority of state governments and the federal government have adopted legislation to govern labor relations between their respective governments as employers and their employees. Generally, to protect the public interest, as well as the orderly operation and functioning of the government, such legislation limits the scope of collective bargaining, prohibits strikes by employees and creates a procedure for the resolution of labor disputes.

e. The NLRA and its extensive legislative history are silent in relation to its application to Indian tribal governments as employers. This is not surprising given the fact that the U.S. Congress had just addressed the status of Indian tribes in the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. § 461 et seq., which protects tribal self-governance and promotes tribal economic development through enterprises operated directly by Indian tribes. As a matter of federal policy, the IRA sought to achieve two distinct but inseparable objectives: tribal self-governance and tribal economic self-sufficiency. By promoting both, the IRA sought to "rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." H.R. Rep. No. 73-804 (1934).

f. Since 1934, the United States government has consistently strengthened its policy of protecting tribal self-government and promoting tribal economic self-sufficiency through legislation, including, but not limited to the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 et seq. ("the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities"); the Indian Tribal Justice Act of 1993, 26 U.S.C. § 3601 ("the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government"); the Indian Financing Act of 1974, 25 U.S.C. § 1451 ("to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources"); the Tribal Self-Governance Act of 1994, 25 U.S.C. §§ 450a, 458aa et seq. ("transferring control to tribal governments ... over funding and decision making for Federal programs, services, functions and activities strengthens the Federal policy of Indian self-determination"); and the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 et seq. ("to provide a statutory basis for

the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments").

g. Given its inherent authority over employment and labor relations on the Reservation, the tribal regulation of employment on the Reservation, and the longstanding federal policy protecting tribal self-government and promoting tribal self-sufficiency, the Tribe finds that the NLRA does not apply to the Tribal government as an employer. Application of the NLRA to the Tribal government as an employer would substantially impair the ability of the Tribe to exercise its sovereign authority, including undermining Tribal employment laws, subjecting the Tribal government to the threat of strikes, and disrupting the Tribal government's ability to provide essential services to the community.

h. The Tribe has various departments, subdivisions and agencies within its government, including the Mashantucket Pequot Gaming Enterprise, an arm of the Tribal government, which operates (under the Tribal Council's control and oversight) the Tribal gaming operation known as Foxwoods Resort Casino. As provided by the Indian Gaming Regulatory Act, the Tribe's gaming operation funds the tribal government including various governmental services such as police, fire, utilities, education, the judicial system, environmental, health, social services and parks and recreational facilities. As an arm of the government, the Tribal employees at the Mashantucket Pequot Gaming Enterprise are government employees and have a recognized property right in their employment through various decisions of the Mashantucket Pequot Tribal Court. See *Johnson v. Mashantucket Pequot Gaming Enterprise*, I MPR 15 (1996).¹

i. The Tribe has considered and determined that it is appropriate to provide Tribal Employees with a procedure under Tribal law to determine whether they wish to be represented by a labor organization for the purposes of collective bargaining as defined in this Law.

¹ See, now, 1 Mash.Rep. 165 (1996).

32 M.P.T.L. ch. 1 § 3

§ 3. Purpose

The purpose of the Mashantucket Pequot Labor Relations Law is to provide Tribal Employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between the Tribe as an employer and Tribal Employees, and to protect the health, safety, political integrity and economic security of the Tribe.

32 M.P.T.L. ch. 1 § 4

§ 4. Definitions

a. "Tribal Employer" or "Tribe" means the Mashantucket Pequot Tribe, also known as the Mashantucket Pequot Tribal Nation, including any subdivision, agency, arm, department, entity or business thereof, but shall not include any entity created

by the Tribe under the laws of any state and which is located principally outside of the Reservation of the Tribe.

b. "Tribal Employee" means any employee of a Tribal Employer except:

1. Appointed or elected officials of the Tribe, including but not limited to Tribal Councilors and their staff, Tribal Court Judges, the Mashantucket Pequot Tribal Gaming Commissioners, the Workers Compensation Commissioner, or officials of any other commission or regulatory body of the Tribe, or

2. Supervisory employees, managerial employees, or confidential employees (as those terms are defined herein),

c. "Supervisory employees" or "supervisor" means any individual having authority, in the interest of a Tribal Employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

d. "Managerial employees" or "manager" means any individual who represents a Tribal Employer's interest and who formulates and effectuates a Tribal Employer's policies by expressing and making operative the decisions of the Tribal Employer.

e. "Confidential employees" means any individual who assists and acts in a confidential capacity to persons who formulate and effectuate a Tribal Employer's policies with regard to confidential matters including, but not limited to, employee relations, labor relations, business plans or performance, tribal government, and other Tribal interests, or those who regularly substitute for employees having such duties.

f. "MERO" means the Mashantucket Pequot Employment Rights Office established pursuant to Title 31 of the Mashantucket Pequot Tribal Laws.

g. "Labor organization" means any lawful organization whose primary purpose is the representation of employees in collective bargaining.

h. "Exclusive bargaining representative" means a labor organization that, as a result of certification under this Law, has the right to represent Tribal employees in an appropriate bargaining unit for the purpose of collective bargaining.

i. "Certification" means the designation by the MERO of a labor organization as the exclusive representative for all Tribal employees in an appropriate bargaining unit.

j. "Appropriate bargaining unit" means a group of Tribal employees designated as such by the MERO in accordance with the provisions of this Law and particularly subsection 12(g) for the purpose of collective bargaining.

k. "Collective bargaining" is defined in Section 9¹ of this Law.

l. "Impasse" means failure of a Tribal Employer and an exclusive bargaining representative, after good-faith bargaining, to reach agreement in the course of

negotiating a collective bargaining agreement.

m. "Lockout" means an act by a Tribal Employer which prevents its employees from going to work for the purpose of pressuring Tribal employees and/or their exclusive bargaining representative to accept the Tribal Employer's bargaining proposals.

n. "Strike" means a Tribal employee's refusal, in concerted action with other Tribal employees, to report for duty or his willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of Tribal employment;

o. "Tribal Court" means that Mashantucket Pequot Tribal Court as created and established by Title 1 of the Mashantucket Pequot Tribal Laws.

p. "Reservation" means the Mashantucket (Western) Pequot Reservation, as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

¹ 32 M.P.T.L. ch. 139.

32 M.P.T.L. ch. 1 § 5

§ 5. Rights and Duties of Tribal Employers, Tribal Employees, and Labor Organizations

a. Tribal Employees shall have the right of free choice to refrain from or engage in self-organization, from forming, joining, or assisting labor organizations, from bargaining collectively through representatives of their own choosing, engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to engage in any or all such activities.

b. When a labor organization has been designated by the MERO through the processes provided hereunder as the representative of the majority of Tribal Employees in an appropriate bargaining unit, that labor organization shall be recognized by the Tribal Employer as the exclusive bargaining representative for the Tribal Employees of such unit.

c. When a labor organization has been designated in accordance with the provisions of this Law as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, it shall have the right to act for and to negotiate agreements covering all Tribal Employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to labor organization membership; and such labor organization shall have the duty of fair representation to the employees in that unit.

d. A Tribal Employee represented by a labor organization may at any time present a grievance directly to a Tribal Employer and the Tribal Employer may address said grievance directly with the Tribal Employee without intervention of a labor

organization; provided that the resolution of such grievance may not violate the terms of a collective bargaining agreement then in effect and the exclusive bargaining representative has been given the opportunity to be present at the adjustment of said grievance.

e. The Tribal Employer and such labor organization as has been designated as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, through appropriate officials or their representatives, shall have the duty to bargain collectively, as defined in Section 9¹ of this Law.

¹ 32 M.P.T.L. ch. 1 § 9.

32 M.P.T.L. ch. 1 § 6

§ 6. Prohibited Practices

a. A Tribal Employer shall not:

1. Interfere with, restrain or coerce Tribal Employees in the exercise of their rights set forth in this Law;

2. Dominate or interfere with the formation, existence or administration of any labor organization;

3. Discriminate in regard to hire or tenure of employment or any term or condition of employment because of the Tribal Employee's exercise of rights under this Law, including because a Tribal Employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony or filed a claim or charges under this Law;

4. Refuse to bargain collectively in good faith with a labor organization that has been designated in accordance with this Law as the exclusive representative of the Tribal Employees in an appropriate bargaining unit; and

5. Refuse to comply with a collective bargaining agreement that has been entered into by the Tribal Employer and the exclusive bargaining representative.

b. A labor organization shall not:

1. Interfere with, restrain or coerce any Tribal Employee in the exercise of any right set forth in this Law;

2. Restrain or coerce a Tribal Employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances;

3. Discriminate against a Tribal Employee with regard to labor organization membership, or because of race, color, religion, creed, age, sex, national origin or membership in the Tribe or a Native American Tribe;

4. Force or require a Tribal Employer to recognize or bargain with a particular labor organization as the representative of Tribal Employees if another labor organization

has been certified as the exclusive bargaining representative of such Tribal Employees under the provisions of this Law;

5. Refuse to bargain collectively in good faith with a Tribal Employer, if it has been designated as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit under the provisions of this Law;

6. Refuse or fail to comply with a collective bargaining or other agreement with a Tribal Employer;

7. Attempt to influence the outcome of a Tribal government election in any manner, provided, however, that this subsection does not apply to a Tribal Employee who is a Tribal Member acting in his or her individual capacity;

8. Picket homes or private businesses of elected Tribal officials or Tribal employees;

9. Breach its duty of fair representation as provided in Section 5(c)¹ of this Law.

¹ 32 M.P.T.L. ch. 1 § 5(c).

32 M.P.T.L. ch. 1 § 7

§ 7. Dispute Resolution for Prohibited Practices Questions

a. Filing a Claim; Adjudication of Claim. When a question arises as to whether a practice prohibited by this Law has been committed, a claim may be filed with the MERO for a determination of whether the prohibited practice alleged has been or is being committed. The MERO shall adopt procedures for the administrative processing of such claims. Unless a party requests a MERO Three Member Board as described below, claims filed with the MERO shall be referred to the Tribal Court for the adjudication of the claims. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law and experience or advanced training in Tribal Law to hear and determine the claim. The person filing the claim must give the other party notice of the filing the same day it is filed. Within five (5) days of a claim being filed, either party may request adjudication of the claim under this Law by a MERO Board. If such a request is filed a panel shall be established consisting of three members appointed at the outset of each case. Within five (5) days of the request for the MERO Board, the Tribal Employer and the Labor organization (or if a claim is filed by a Tribal Employee, the Tribal Employee and responding party), will each appoint one member of the Board. The members appointed by each of the parties shall confer and jointly appoint a third member, who shall be the presiding officer of that MERO Board. If the members appointed by the parties cannot agree within five (5) days upon a third member, the MERO shall request from the American Arbitration Association a random panel of seven (7) arbitrators who are members of the National Academy of Arbitrators and the members appointed by the parties shall select a presiding officer from said list within five (5) days of receipt of the list. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The Tribal Court may adopt special procedures for claims to be heard by a special master; otherwise the Mashantucket Rules of Civil Procedure shall apply and the case shall proceed before

the special master and be considered in the same manner as any other civil matter.

b. Decisions and Orders. If, after all evidence is considered and arguments heard, the special master or the MERO Board, as the case may be, determines that a prohibited practice has been or is being committed, it shall state its findings of fact and conclusions of law, and shall issue and serve on the party committing the prohibited practice a decision and order requiring it or him/her to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of this Law including, but not limited to: (1) reinstatement of an employee discriminated against in violation of this Law, with or without back pay; (2) ordering relief that will make an individual whole; provided that nothing herein shall authorize awarding damages for emotional distress or pain and suffering.

c. Dismissal. If, after all evidence is considered and arguments heard, the special master or the MERO Board, as the case may be, determines that a prohibited practice has not been or is not being committed, it shall state its findings of fact and conclusions of law and shall issue a decision and order dismissing the claim.

d. Decisions and Appeals. Decisions of a special master and decisions of a MERO Board shall be adopted by the Tribal Court and become a final decision of the Tribal Court, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

e. Sovereign Immunity. The Tribe hereby waives its sovereign immunity from suit for claims brought under this section against a Tribal Employer before the Tribal Court or MERO including a MERO Board if one is formed at the request of a party or parties. Nothing contained herein shall be construed as a waiver of the Tribe's sovereign immunity from suit in the state or federal courts or in any state or federal agency or any other forum or context.

f. Sanctions for Frivolous Conduct. If it is ultimately determined that a claimant or respondent has engaged in frivolous conduct, including advancing a claim or defense that had no reasonable basis in fact or law, the special master appointed by the Tribal Court or a MERO Board, as the case may be, may order the party engaging in such conduct to pay the costs and reasonable attorneys' fees of the other party.

32 M.P.T.L. ch. 1 § 8

§ 8. Free Speech Provision

The expressing of any views, argument, or opinion by a Tribal Employer or a labor organization, or the dissemination thereof, whether in verbal, written, printed, graphic, or visual form, shall not constitute or be evidence of a prohibited practice under any of the provisions of this Law, if such expression contains no threat of reprisal or promise of benefit.

§ 9. Collective Bargaining

a. Duty to Bargain Collectively. To bargain collectively is the performance of the mutual obligation of a Tribal Employer and the designated exclusive bargaining representative of Tribal Employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, except for those matters excluded from collective bargaining as provided in this Law, or the negotiation of an agreement or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession or to agree to a proposal that would contradict or violate Tribal law. Nothing in Tribal law shall be construed to preclude a Tribal Employer and the designated exclusive bargaining representative of Tribal Employees from negotiating under Tribal law a procedure for binding resolution of contractual disputes, including disputes related to the discipline or discharge of Tribal Employees; provided that any such procedure shall provide protection for the due process rights of Tribal Employees equal to or greater than the protections provided under Title 8 M.P.T.L.; and provided further, that any Tribal Employee who has a right to review under the Board of Review process and Title 8, shall have the right to elect whether to proceed under the Board of Review and Title 8 or, alternatively, elect to proceed under the procedure established for resolution of contractual disputes pursuant to a collective bargaining agreement.

b. Exceptions Concerning Tribal Gaming Regulatory Authority. Nothing contained in this Law shall in any way diminish the authority and power of the Mashantucket Pequot Tribal Gaming Commission or any other agency, commission or regulatory body established by the Tribe to regulate the conduct of gaming on the Reservation and safeguard the integrity of the gaming including the prevention of illegal activity or influences affecting the gaming on the Reservation. Further, nothing contained in this Law or this section shall require a Tribal Employer to bargain concerning gaming regulatory issues including but not limited to:

1. The enforcement of all rules, whether in laws, rules, ordinances or procedures, with respect to the gaming operation and facility, and the power to conduct investigations and hearings with respect thereto;
2. Ensuring the physical safety of gaming operation patrons and employees, and any other person while in the gaming facility;
3. The physical safeguarding of assets transported to, within, and from the gaming facility;
4. The prevention of illegal activity from occurring within the gaming facility or with regard to the gaming operation, including, but not limited to the maintenance of employee procedures and surveillance systems;
5. The recording of any and all occurrences within the gaming facility that deviate from normal operating policies and procedures, which includes maintenance of a closed circuit surveillance system;

6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud or the like, consistent with industry practice;
7. The conduct of audits of the gaming operation;
8. The specifications, standards and procedures for each game;
9. The maintenance of a cashier's cage; or
10. Minimum employee and supervisor staffing requirements related to such regulation of gaming.

Provided, however, that the above list is not intended to remove from bargaining subjects that are otherwise appropriate for bargaining and which are not related to the conduct of gaming on the Reservation and safeguarding the integrity of the gaming, including the prevention of illegal activity or influences affecting the gaming on the Reservation. Provided further that whenever practicable, a Tribal Employer shall bargain with a duly certified labor organization regarding the implementation and effects of directives of the Mashantucket Pequot Tribal Gaming Commission.

c. Union Security Clauses. If a labor organization has been certified as the exclusive bargaining representative under Tribal law then a Tribal Employer may lawfully enter into a union security agreement where said agreement does not violate the Indian Civil Rights Act, 25 U.S.C. § 1302 or the Tribal Civil Rights Code, 20 M.P.T.L. ch. 1, Section 1¹ and no election has been conducted by a special master or MERO Board in which a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Other than under these conditions, nothing contained in this Law shall require a Tribal Employer to bargain concerning any union security clause, such as union shop, agency shop, or dues check-off provisions. The obligation of a Tribal Employer to bargain collectively pursuant to this law shall not be construed as authorizing the Tribal Employer and a labor organization to bargain and enter into an agreement that would be or is in conflict with the provisions of any other Law of the Tribe, including but not limited to the Tribal Right to Work Law, codified in Title 28 M.P.T.L.

d. Tribal and Native American Preference. Pursuant to the Mashantucket Pequot Tribal and Native American Preference Law, 33 M.P.T.L., Tribal Employers are required to give certain preferences in employment to members of the Tribe, their spouses and Native Americans. Nothing contained in this Law shall be construed to require or permit a Tribal Employer to bargain concerning the requirements imposed upon employers pursuant to Tribal law regarding Tribal and Native American preference, or shall in any way affect a Tribal Employer's obligation to follow Tribal law, policies or custom and traditions regarding Tribal and Native American preference in employment. In the event of a conflict between the Tribal law regarding Tribal and Native American preference and this Law, the Tribal law on Tribal and Native American preference shall govern.

e. Modification or Termination of Collective Bargaining Agreement. If there is in

effect a collective-bargaining agreement covering Tribal Employees, the duty to bargain collectively shall also mean that no party to such agreement shall terminate or modify such contract, unless the party desiring such termination or modification—

1. Serves a written notice upon the other party to the agreement of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such agreement contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;
2. Offers to meet and confer with the other party for the purpose of negotiating a new agreement or an agreement containing the proposed modifications; and
3. Complies with Section 11² of this Law prohibiting Strikes and Lock Outs.

¹ In determining whether an agreement violates these laws, the Tribal Court should be guided by the federal court decisions interpreting similar limitations found in the U.S. Constitution applicable to public sector employees.

² 32 M.P.T.L. ch. 1 § 11.

32 M.P.T.L. ch. 1 § 10

§ 10. Negotiations Timetable; Dispute and Impasse Resolution

a. Negotiations Timetable. If either a Tribal Employer or a labor organization which has been designated as the exclusive bargaining representative for an appropriate bargaining unit under this Law desires negotiations with respect to an original or successor collective bargaining agreement, such party shall serve written notice of such desire upon the other party. For successor collective bargaining agreements, such notice must be served upon the other party no earlier than one hundred twenty (120) days prior to the expiration of the existing collective bargaining agreement and no later than sixty (60) days prior thereto. Negotiations shall commence within thirty (30) days of such service, unless the parties mutually agree to a different date.

b. Mediation. Upon the joint request of the parties, at any time after negotiations have begun, the Chair of the Tribe's Peacemaker's Council shall designate a Mediation Panel, pursuant to Title 31 M.P.T.L., to assist the parties in continuing the negotiations and reaching an agreement, or the parties may agree to the designation of a single mediator selected by agreement of the parties.

c. Impasse. If the parties to negotiations do not reach an agreement within one hundred fifty (150) days after negotiations have begun, then either party may file a petition with the MERO. If either party requests within five (5) days of the petition being filed, a MERO Board shall be formed as provided in Section 7(a)¹ of this Law to resolve the impasse and all issues on which the parties cannot agree, otherwise the claim shall be referred to the Tribal Court, which shall appoint a special master. The party filing the petition must give the other party notice of the filing on the same day that it is filed.

(i) Upon appointment, the special master or the MERO Board shall immediately adopt

procedures for reaching a decision resolving all issues within sixty (60) days of the filing of the petition and shall convene a hearing to allow the parties to provide evidence and argument to the special master or the MERO Board. The parties shall have the right to submit written briefs. The record is officially closed at the later of the close of the hearing, or the special master's or the MERO Board's receipt of briefs.

(ii) Each party shall submit to the special master or the MERO Board, and to each other, a proposal setting forth its position on how each of the unresolved issues shall be resolved.

(iii) The special master's or the MERO Board's authority is limited to selecting one party or the other's complete proposal with respect to each issue and shall render a decision or award addressing each of the unresolved issues based on the complete proposal selected for that issue. The special master or the MERO Board shall issue an award within 60 days of the filing of the petition, unless the time period is extended by mutual agreement of the parties.

(iv) The costs of the MERO Board and any fees associated with the MERO Board proceeding shall be shared equally by the parties.

¹ 32 M.P.T.L. ch. 1 § 7.

32 M.P.T.L. ch. 1 § 11

§ 11. Strikes and Lockouts Prohibited

Strikes of any kind and lockouts are strictly prohibited. A labor organization shall not cause, instigate, encourage or support a Tribal Employee strike. A Tribal Employer shall not cause, instigate or engage in a lockout of its employees.

32 M.P.T.L. ch. 1 § 12

§ 12. Elections; Labor Organization Designation as Exclusive Representative; Appropriateness of Bargaining Unit; Representational Rights

a. Petition for Election. A labor organization may file a petition with the MERO Director stating that thirty (30) percent or more of the Tribal Employees in an appropriate bargaining unit, provided for under this Law, desire to be exclusively represented for the purposes of collective bargaining within the unit by the petitioning organization and request the designation of said organization as their exclusive representative. A petition filed hereunder must contain either the signatures of thirty (30) percent of the Tribal Employees in the bargaining unit proposed, or be accompanied by the submission of authorization cards from at least thirty (30) percent of the Tribal Employees in the bargaining unit. The petition must also describe the bargaining unit including a designation of each job category or position which the labor organization states should be included in the bargaining unit.

b. Receipt of Petition for Election. Upon receipt of such a petition the MERO Director

shall, unless a party requests a MERO Board as defined in Section 7(a)¹ of this Law, refer the petition to the Tribal Court. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law to act on the petition. If either party requests a MERO Board, one shall be formed pursuant to the procedures set forth in Section 7(a) of this law. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The special master or the MERO Board shall review the petition, verify the labor organization's showing of interest, certify that it is in compliance with this Law, review and decide any issues or objections raised concerning the petition or the appropriateness of the bargaining unit, and conduct a secret ballot election as provided herein.

c. Hearings. The special master or the MERO Board shall have authority to convene a hearing for the purpose of addressing any and all issues relating to the petition. At the hearing, the parties shall have the opportunity to present evidence on any and all issues relating to the petition. The parties shall have the right to submit briefs to the special master or the MERO Board. The parties may appeal any determinations of the special master or the MERO Board to the Tribal Court and its decision shall be final as to such issues. The Tribal Court shall adopt the decision of the MERO Board or the special master, unless the Tribal Court determines, under a clear and convincing evidence standard of review that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

d. Secret Ballot Election. When all issues, if any, relating to the petition have been resolved, the special master or the MERO Board shall conduct a secret ballot election if it determines that a valid petition has been filed. The ballot for the special election shall contain the name of any labor organization submitting a petition in compliance with subsection (a) of this section, and contain clear language providing the Tribal Employees with a choice to either select the labor organization that filed the petition as the exclusive representative for the Tribal Employees within the bargaining unit or to choose not to be represented by any labor organization.

e. Election Result and Appeal. If a majority (fifty percent plus one) of votes cast are in favor of certification of a labor organization, the special master or MERO Board shall certify the labor organization as the exclusive bargaining representative for the appropriate bargaining unit. If a labor organization does not receive a majority vote for certification, then the labor organization shall not be certified as the exclusive representative of the bargaining unit. If either the Tribal Employer or the labor organization has a good faith reason to believe that the election was not conducted in a fair and impartial manner or that fraud or prohibited practices affected the outcome of the election, the Tribal Employer or labor organization may file such objections with the special master or the MERO Board within ten (10) days after the election. The special master or the MERO Board shall conduct such investigation as it deems appropriate to resolve such objections. Whether to hold an evidentiary hearing on such objections shall be within the discretion of the special master or the MERO Board. Any determination of the special master or MERO Board on such objections to the election may be appealed to the Tribal Court and its decision shall be final on such issues. The Tribal Court shall adopt

the decision of the MERO Board or the special master, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

f. Time Limitation. No election shall be directed or held in any bargaining unit within which an election has been conducted in the twelve (12)-month period immediately preceding the proposed representation election.

g. Determination of Appropriateness of Bargaining Unit. In determining the appropriateness of a bargaining unit, the special master or MERO Board shall take into consideration but shall not be limited to considering the following factors:

1. That an appropriate bargaining unit is based on occupational groups or groups of employees who share clear and identifiable communities of interest in employment terms and conditions and related personnel matters;
2. The effects of over-fragmentation;
3. Principles of efficient administration of the Tribal government; and
4. Any history of collective bargaining for Tribal employees.

h. Guards or Other Security Personnel. A labor organization shall not be certified as the representative of employees in a bargaining unit of guards or other security personnel if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards or other security personnel.

i. Deauthorization. Upon the filing with the MERO Director, by thirty (30) per centum or more of the employees in a bargaining unit covered by a collective bargaining agreement containing a union security clause, of a petition alleging they desire that the authorization to enter such an agreement be rescinded, the MERO shall, unless a party requests a MERO Board as defined in Section 7(a) of this Law, refer the petition to the Tribal Court. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law to act on the petition. If either party requests a MERO Board, one shall be formed pursuant to the procedures set forth in Section 7(a) of this Law. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The special master or the MERO Board shall hold a secret ballot election of the employees in such unit and certify the results thereof to the affected labor organization and Tribal Employer. If a majority of the employees in the bargaining unit vote to rescind such authorization, then the provision for a union security clause shall be null and void and of no further force or effect. If the secret ballot election does not result in a majority of employees voting to rescind, then the provision in the collective bargaining agreement shall remain in full force and effect.

¹ 32 M.P.T.L. ch. 1 § 7(a).

32 M.P.T.L. ch. 1 § 13

§ 13. Decertification of Exclusive Representative

a. A Tribal Employee or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty (30) percent of the Tribal Employees in the bargaining unit make a written request to the MERO for a decertification election. If such a request is filed, the MERO shall conduct the decertification election in the same manner as a certification election is conducted pursuant to this Law. A labor organization will be decertified as the exclusive representative of an appropriate bargaining unit if a majority (fifty percent plus one) of the Tribal Employees in the bargaining unit vote for decertification.

b. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the MERO no earlier than ninety (90) days and no later than forty-five (45) days before the expiration of the collective bargaining agreement or at any time after the agreement has expired; provided, however, that if the term of a collective bargaining agreement is more than three (3) years, a request for decertification may be made at any time after the expiration of the third year.

32 M.P.T.L. ch. 1 § 14

§ 14. Registration of Labor Organization

a. Requirement to Register. Every labor organization operating within the territorial jurisdiction of the Tribe shall file a report with the Office of Legal Counsel for the Tribe, on or before sixty (60) days after enactment of this Title and thereafter on or before December 31 of each year. The report, which shall be filed by the president of the labor organization or another duly authorized officer of the labor organization, shall contain the following information:

1. The name and address of the labor organization;
2. The names and addresses of the president, secretary, treasurer, and business agent(s) of the labor organization;
3. The name and address of the national and/or international organization, if any, with which the labor organization is affiliated;
4. A copy of the collective bargaining agreement(s) between the labor organization and any employer within the territorial jurisdiction of the Tribe;
5. A copy of the current Constitution and By-laws of the labor organization, as well as any amendments, i.e., the basic written rules governing the organization; and
6. A copy of the labor organization's Annual Report.

b. Submission of New Information. The president of the labor organization shall file

with the Office of Legal Counsel for the Tribe a notice of any changes to the information required above within thirty (30) days after the changes are made and provide any additional information requested by the Office of Legal Counsel.

c. Violations. It shall be a violation of this subsection for any labor organization or any person acting on behalf of any labor organization to fail to register or to make any false statements on any reports required to be filed pursuant to this Law.

32 M.P.T.L. ch. 1 § 15

§ 15. Licensing of business agents.

a. No person shall act as a business agent of a labor organization within the territorial jurisdiction of the Tribe unless that person has received a license from the MERO.

1. Any person who seeks such a license shall pay a license fee of Twenty Five (\$25) Dollars, submit a statement signed by the president and the secretary of the labor organization which establishes the individual's authority to act as a business agent for the organization, and agree to undergo a background investigation.

2. No person shall be issued a license to act as a business agent within the territorial jurisdiction of the Tribe if that person has been convicted of a felony, has been convicted of a misdemeanor involving moral turpitude, is currently facing charges on a felony or on a misdemeanor involving moral turpitude or, based on the background investigation, is deemed by the MERO to be of questionable moral character.

3. If at any time after issuance of the license the MERO receives reliable information that the licensee should be deprived of his or her license based on the factors stated above, then the MERO may suspend or revoke the license. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

4. All licenses shall expire at midnight on December 31 of each year but may be renewed by the MERO on a form prescribed by the MERO for that purpose and upon payment of an annual renewal fee of Twenty Five (\$25) Dollars. However, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in subsection (a)(1) above.

5. Any person denied a license or whose license is suspended shall have the right to appeal such a determination to the Tribal Court.

b. It shall be a violation of this section for any person to:

1. Act as a business agent on the Reservation for a labor organization without having obtained a valid license;

2. Act as a business agent of any labor organization without the authority of the labor organization to do so;

3. Make any false statement on any reports required to be filed pursuant to this Law;

4. Make any false statement in an application for a business agent's license.

c. If the MERO Director, after investigation, determines that any person is in violation of this section of the Law, the Director may impose penalties. The MERO Director may also refer the matter to the Mashantucket Pequot Council of Elders to determine if an order of exclusion or banishment is appropriate, or, if the violation affects the Tribe's gaming operation, to the Mashantucket Pequot Tribal Gaming Commission for possible exclusion from the gaming facilities as may be allowed under Title 3, Section 5, of the Mashantucket Pequot Tribal Laws. Any person adversely affected by the imposition of penalties by the MERO Director shall have the right to appeal such imposition of penalties to the Tribal Court.

32 M.P.T.L. ch. 1 § 16

§ 16. Time For Filing Appeals

Any appeal to the Tribal Court allowed under this Law must be filed with the Tribal Court within twenty (20) days after the mailing of the determination, decision or order being appealed. If an appeal is not filed within that time period, the determination, decision or order shall be final.

TITLE 33. MASHANTUCKET PEQUOT TRIBAL AND NATIVE AMERICAN PREFERENCE LAW

CHAPTER 1.

33 M.P.T.L. ch. 1 § 1

§ 1. Title; Authority

This title may be cited as the "Mashantucket Pequot Tribal and Native American Preference Law". This title is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate labor and employment within the Reservation. Further, the Tribe has the inherent authority to exclude persons from the Reservation and to place conditions on entry and continued presence on the Reservation, and to govern conduct within the Reservation.

33 M.P.T.L. ch. 1 § 2

§ 2. Findings

The Mashantucket Pequot Tribe, through the Mashantucket Pequot Tribal Council finds that:

a. It has a Native American Preference Policy that requires preference in employment decisions for Tribal Members and Native Americans. This policy is applicable to the Tribe, its arms, subdivisions, entities and organizations and does not contain an enforcement mechanism or an administrative process to ensure compliance.

b. There are an increasing number of non-tribal employers on the Reservation and there is a need to establish the requirements of Native American and Tribal preferences for all employers, as well as establish a process for enforcing the requirements of the law.

c. There continues to be a need and desire to promote individual and tribal economic development within the Mashantucket Pequot Tribal Nation, both through Employment Opportunities and through contracting opportunities. To further the Tribe's goal to provide opportunities for professional growth and economic empowerment of its Tribal Members and Native Americans, and in recognition of the importance of cultural and traditional beliefs of Native Americans and the need for this influence in the employment environment, the Tribe recognizes that it is important to provide individuals and employers with guidance on these issues, the administrative structure to regulate this area, and a forum to address any issues that may arise concerning compliance with this Law.

d. In order to foster and advance its culture, mission, and laws, it is important to support the preservation and development of tribal families including Tribal Member Spouses. Providing preference in employment opportunities to Tribal Members and their Spouses furthers the important goal of preserving tribal families by promoting the economic well being of the tribal family and assuring that all family members can share in the benefits and responsibilities of tribal employment.

e. As recognized in the Constitution, the Mission Statement and the Strategic Objectives of the Mashantucket Pequot Tribal Nation, it is in the interests of all Tribal Members, the citizens of Mashantucket, to conserve and develop common resources and promote the welfare of Tribal Members and their descendants.

33 M.P.T.L. ch. 1 § 3

§ 3. Purpose

The purposes of this Law are:

a. To clearly set forth the requirements for all Employers within the jurisdiction of the Tribe to provide preference in Employment Opportunities for Tribal Members, Spouses of Tribal Members and Native Americans who meet the Minimum Necessary Qualifications of the job; and

b. To designate duties and obligations of the Mashantucket Employment Rights Office regarding the implementation of the various provisions and requirements of this Law, including the resolution of any claimed violations of the law, providing guidance to both individuals who may qualify for preference and Employers, and communicating the requirements of this Law to Employers and others.

33 M.P.T.L. ch. 1 § 4

§ 4. Definitions

- a. "Cultural Opportunity" means an accommodation for a cultural conviction unique to an individual's Tribal or Native American culture.
- b. "Employee" means an employee of an Employer who performs work, in whole or in part, on the Reservation, excluding appointed or elected officials of the Tribe.
- c. "Employment Opportunities" means hire, transfer, promotion, training, and non-disciplinary retention, including in any reorganization or layoff. Employment Opportunities does not mean the creation of a position or the creation of specialized training that is not otherwise provided to other employees.
- d. "Employer" means any Person that employs five (5) or more employees who, during any thirty (30) day period, each spend, cumulatively, forty (40) or more hours performing work on the Mashantucket Pequot Reservation. Employer shall include the Tribe and any agency, subdivision, arm, department, instrumentality, or entity thereof located or engaged in work on the Reservation. The term Employer excludes federal, state or local governments.
- e. "Hardship" means some identifiable direct or indirect operational harm or expense.
- f. "MERO Director" or "Director" means the Director of MERO as established and defined in Title 31 M.P.T.L.
- g. "MERO" or "MERO Office" means the Mashantucket Employment Rights Office as established and defined in Title 31 M.P.T.L.
- h. "Minimum Necessary Qualifications" means those job-related qualifications that are essential to the performance of the basic responsibilities of each employment position, including any essential qualifications concerning education, technical skills, training or job-related experience. Demonstrated ability to perform basic responsibilities shall be deemed satisfaction of essential qualifications.
- i. "Native American" or "Indian" means an individual enrolled in and recognized as a member by his or her tribe or tribal community; provided that the tribe or tribal community is recognized by the Mashantucket (Western) Pequot Tribe (through a Mashantucket Pequot Tribal Council Resolution), the Federal Government, by a state in the United States, or as a First Nation in Canada.
- j. "Natural Progression" means an employment position that is a logical next step in a career path for a current Employee.
- k. "Person" means both natural persons and artificial persons, including, but not limited to, entities considered Employers hereunder, corporations, partnerships, joint ventures, limited liability companies, sole proprietorships, associations, unions, trusts, trustees, and agents.
- l. "Reservation" means the Mashantucket Pequot Reservation as that term is defined

in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

m. "Restructure" shall mean a reorganization of positions in an effort to promote efficiencies or save money. When the Tribe is the Employer and a Restructure would result in the loss of employment for a Tribal Member, then the Tribal Council must approve such Restructure.

n. "Shift Assignments" shall mean those shift assignment opportunities resulting from an open position, or those opportunities to maintain a shift assignment during shift reassignments.

o. "Spouse" shall mean a man or woman joined in lawful marriage or a surviving spouse with a child as those terms are defined in Title 29, M.P.T.L., § 4, who is in good standing with the Tribe.

p. "Suspend" or "Suspension" means a final disciplinary action of unpaid leave of at least one (1) workday and does not include a suspension pending investigation.

q. "Training" means existing and available training opportunities.

r. "Tribal Council" means the governing body of the Mashantucket (Western) Pequot Tribe.

s. "Tribal Member" means a duly enrolled member of the Mashantucket (Western) Pequot Tribe who is in good standing.

t. "Tribe" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any arm, department, agency, subdivision, enterprise or organization within or wholly owned by the Tribe. Tribe does not include any entity created under state laws that is owned by the Tribe and operates primarily outside of the Tribe's Reservation.

33 M.P.T.L. ch. 1 § 5

§ 5. Preference in Employment

a. *Preference; Tribe as Employer.* When the Tribe is the Employer, it shall give preference in Employment Opportunities first to Tribal Members, then to Spouses of Tribal Members, and then to other Native Americans; provided that the Tribal Member, Spouse of Tribal Member or Native American, as the case may be, meets the Minimum Necessary Qualifications. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position. If no candidate for an Employment Opportunity meets the Minimum Necessary Qualifications, then preference shall be given first to Tribal Members, then to Spouses of Tribal Members, and then to other Native Americans, who are capable of being trained to the Minimum Necessary Qualifications of the position. The requirement for giving preference provided in this subsection 5(a) also applies to the hiring of student interns throughout the year or for after school, weekend, or summer vacation employment. An Employment Opportunity shall be awarded to the best candidate, as determined by the Employer, from among two (2) or more candidates of

the same preference category who meet the Minimum Necessary Qualifications of the position.

b. *Preference; Non-tribal Employers.* For Employers other than the Tribe, preference in Employment Opportunities shall be given to individuals who are members of a federally recognized Indian tribe and who live on or near a reservation; provided that they meet the Minimum Necessary Qualifications. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position. If no individual in the foregoing situations meet the Minimum Necessary Qualifications, then preference shall be given to a member of a federally recognized Indian tribe living on or near a reservation who is capable of being trained to the Minimum Necessary Qualifications of the position, if such an individual has applied for the position.

c. *Preference Exception.* Preference in an Employment Opportunity is not required to be given when a position is not otherwise open but results from a Restructure and is filled as approved by the Tribal Council or through Natural Progression by an employee already performing substantial duties of the position; or a position is filled through an intradepartmental Natural Progression of an employee already performing or overseeing substantial duties of the position, provided that if a vacated position exists, it is an Employment Opportunity.

d. *Additional Preference; Tribe as Employer.* In addition to any other preference provided herein or by practice or policy, when the Tribe is the Employer, it shall provide to Tribal Members and Spouses of Tribal Members notification at least two (2) days in advance of posting or advertising of employment position openings, and preference in Shift Assignments.

e. *Cultural Opportunities; Tribe as Employer.* In addition to any other preferences provided herein, when the Tribe is the Employer, Cultural Opportunities shall be provided to Tribal Members, Spouses of Tribal Members and Native Americans, unless providing the Cultural Opportunity would cause Hardship to the Employer.

f. *Exhaustion of Paid Leave.* When a preference in employment involves the Employer's provision of leave or time away from work to a Native American who is not a Tribal Member or Spouse of a Tribal Member, the Employer may require the employee to utilize any available paid, accrued leave time prior to receiving leave or time off without pay.

g. *Posting Requirements.* Employers are required to comply with all job posting requirements which may be mandated in any rules, regulations and/or guidelines promulgated by MERO. All Employers shall include and specify a preference policy statement in all job announcements and advertisements and applicable employer personnel policies consistent with this Law.

h. *Exclusion; Key Positions.* The preference in Employment Opportunities required by and set forth in this Law shall not be applicable to personnel actions regarding any key positions.

i. For purposes of this Law, a "key position" means a high-level managerial or critical function position such that the Employer would risk significant damage or loss if the position were not filled with the best qualified candidate regardless

of preference, or a position held or to be held by an individual holding a substantial ownership interest in the Employer, or a position that has a substantial impact on the ability of the Employer to execute its strategic objectives, or a position that directly enhances the strategic capabilities of the Employer. Political appointee positions as defined by TCR121201-01 of 04, elected officials, and all Tribal Court positions are key positions. "Key position" also includes any position designated by the Tribal Council as key, under the criteria set forth in this law; provided that when designating a position as key, the Tribal Council identifies the criteria relied upon in this Section and how the position meets the criteria.

ii. Absent Tribal Council designation, the Person claiming the exclusion bears the burden of proving the key position by a preponderance of the evidence.

i. *Collective Bargaining Agreement.* Every collective bargaining agreement covering Employees on the Reservation must be in compliance with the preference requirements of this Law.

j. *Reports.* Each Employer shall submit to MERO on or before October 15th of each year, a report on a form prescribed by MERO stating the number of employees hired by the Employer during the previous year and whether such employees remain employed by the Employer at the time the report is submitted. Such report shall also indicate the number of Tribal Members, Tribal Member Spouses and/or Native Americans, as applicable, employed by job category, number hired, number terminated and length of employment. All Employers shall also submit to MERO, in a timely manner, such information (including documentation) as MERO requests to enable it to determine whether the Employer is in compliance with this Law and any rules and regulations promulgated pursuant to this Law.

k. *Office of Native American Preference.* The Tribe as an Employer must employ an individual or individuals whose job duties include overseeing Tribal Employer compliance with the employment preferences required by this Law, and such individual(s) shall constitute the Office of Native American Preference ("ONAP"). ONAP's responsibilities shall include, without limitation, participation in any employment decisions related to this Law, such as the preferences provided in Section 5, and any disciplinary determinations, including discharge from employment. An ONAP representative shall also meet with each preference eligible employee together with a representative of the Tribal Employer within the employee's first ninety (90) days of employment in a position to review the employee's performance and to advise of any appropriate Training, if necessary. If ONAP identifies Training that would benefit the employee but such Training cannot be completed within the first ninety (90) days of employment, ONAP may extend the employee's probationary period for a period not to exceed sixty (60) days so that the employee may attend such identified Training. ONAP shall not be eliminated by the Tribal Employer unless the Mashantucket Pequot Tribal Council approves such action.

33 M.P.T.L. ch. 1 § 6

§ 6. Application Skills Bank

a. *Establish Skills Bank.* Upon the appropriation of funding, MERO shall establish an application skills bank to assist Employers in placing Tribal Members and Native

Americans in employment positions on the Reservation. MERO shall communicate with Tribal Members, and to the extent possible other Native Americans, to obtain a resume or application setting forth all necessary information in order to compile a list of Tribal Members and Native Americans who may be available for employment and the skills and qualifications of each individual.

b. *Annual Update.* MERO shall update the skills bank on an annual basis including the determination of any additional Tribal Members or Native Americans who should be included in the skills bank and to update qualifications of each individual in the skills bank.

33 M.P.T.L. ch. 1 § 9

§ 9. Claim Procedures; Investigations; Hearings, Mediation

a. *Claim Against Tribal Employer.*

i. When the Tribe is the Employer, claims must initially be filed with the Office of Native American Preference on a form created by ONAP within one hundred eighty (180) days of the alleged noncompliance. If the claim involves a position that has not been filled as of the date of filing of the claim with ONAP, ONAP may place a hold on the position so that the Employer may not fill the position for a period of no more than sixty (60) days; provided that if ONAP determines that the Employer has violated this Law, ONAP may continue the hold on filling the position until MERO has issued its decision. ONAP will investigate the claim, attempt to resolve any issues and render its decision within sixty (60) days of the claim being filed. ONAP's decision shall detail the facts found in its investigation and the application of the law to the facts in coming to its decision. If ONAP finds Employer noncompliance with this Law and is unable to secure the Employer's agreement to the remedy determined by ONAP, the ONAP decision will include a statement of Employer noncompliance. With its decision, ONAP will provide notice to the claimant of the right to file a claim with MERO if the claimant disagrees with the ONAP decision, or the decision includes a statement of Employer noncompliance.

ii. A claim may be filed with MERO within fifteen (15) days from the date of ONAP's decision on a form created by MERO. MERO will notify ONAP when a claim has been filed, and ONAP will provide MERO with a copy of its decision within five (5) business days of receipt of notice from MERO of the filing of the claim. MERO will conduct a Hearing under Title 40 M.P.T.L., the Administrative Procedures Act. MERO may require the production of documents or witnesses for such Hearing. MERO will render a final decision within sixty (60) days of the filing of the claim and shall include notice to the parties of the right to appeal the decision under 40 M.P.T.L.

b. *Claim Against Non-Tribal Employers.* Before filing a claim with MERO against a Non-Tribal Employer, an individual is required to follow any complaint processes offered by his or her Employer. A claimant's unreasonable failure to utilize an effective complaint process prior to filing a claim with MERO may be raised as a defense to a claim of non-compliance with this Law. A claim must be filed with MERO in writing on a form created by MERO within one hundred and eighty (180) days of the alleged noncompliance. MERO shall conduct a Hearing under Title 40 M.P.T.L. at which MERO may require the production of documents or witnesses. MERO shall render

a final decision within sixty (60) days of the filing of the claim and shall include notice to the parties of the right to appeal the decision under 40 M.P.T.L.

c. Dismissal of Claims Without Investigation or Hearing. Notwithstanding anything to the contrary in this Law, ONAP and MERO must dismiss a claim without investigation or Hearing, as the case may be, if:

i. A preference eligible individual in the highest preference category to which the Employer is required to afford preference receives the Employment Opportunity in question;

ii. The Tribal Council has approved filling a position pursuant to 33 M.P.T.L. ch. 1, Section 5(c) or has designated a position as key under 33 M.P.T.L. ch. 1, Section 5(h); provided that if the Council has not identified the criteria relied upon in designating the position and how the position meets the criteria, and does not cure the deficiency within ten (10) days of receipt of notice of the deficiency from ONAP or MERO, as applicable, the claim may proceed; or

iii. MERO determines at any time, as a matter of law, that there is no recognizable claim under this Law.

d. Cooperation in Hearings. All Persons subject to this Law have a duty to cooperate with any Hearing conducted by MERO under 40 M.P.T.L. and this Law.

e. Mediation. Mediation may be required by MERO upon request of a party or otherwise. In addition, if all parties agree, any matter may be referred to a MERO mediation panel for resolution as provided under Title 31 M.P.T.L. If the mediation does not produce an agreement between the parties within sixty (60) days of referral, which may be extended by agreement of the parties and consent of the mediator(s), the mediation will be considered closed. The time period for conducting a MERO Hearing and issuing a MERO decision shall be stayed during the pendency of any MERO approved mediation or conciliation.

f. Penalty Assessments. If a Person fails to comply with 33 M.P.T.L. ch. 1 Sections 5(g), 5(j) or 9(d), MERO may impose penalties as provided under Section 11 of this Law; provided that MERO sends written notice to the affected Person of the penalties being imposed, the reasons for such penalties, the Person's right to request a Hearing, and the Person's subsequent right to request review by the Tribal Court.

g. Minimally Qualified Presumption. A preference eligible individual awarded an employment opportunity is conclusively presumed minimally qualified for the position, provided that the individual is a member of the highest preference category to which the employer is required to afford preference.

33 M.P.T.L. ch. 1 § 10

§ 10. Tribal Court Review

a. Right to Appeal. Final Decisions issued by the MERO Director may be appealed to the Tribal Court in accordance with 40 M.P.T.L. ch. 3. A written appeal on a form provided by the Tribal Court clerk must be submitted to the Tribal Court. The notice

of appeal must include a copy of MERO's decision being appealed. All appeals under this Title shall be heard by the court, not a jury. A Fifty (\$50.00) Dollar filing fee is required to be paid to the Tribal Court for such an appeal. No costs shall be taxed against the Tribe.

b. Tribal Court Standard of Review. The Tribal Court shall review final decisions of the MERO Director pursuant to 40 M.P.T.L. ch. 3, § 8.

c. *Enforcement Action*. Absent a timely appeal to the Tribal Court, the MERO Director's decision and any associated remedy shall be final. Pursuant to 40 M.P.T.L. ch. 3, § 3(c), the MERO Director may bring an action in Tribal Court to seek enforcement of any final order of the MERO Director.

d. *Court of Appeals*. Pursuant to 40 M.P.T.L. ch. 3, § 10, decisions by the Tribal Court may be appealed to the Mashantucket Pequot Court of Appeals. Any decision of the Court of Appeals shall be final.

e. The MERO shall select its representation before the Tribal Court in an appeal or the enforcement of a final decision of the MERO Director. Such representation may be by the MERO Director who has the authority to enter an appearance and represent the MERO in any action before the Tribal Court.

33 M.P.T.L. ch. 1 § 11

§ 11. Sanctions, Penalties, or Awards

Any one or a combination of the following may be imposed by the MERO Director, after a Hearing or opportunity for Hearing, or by the Tribal Court on appeal:

a. An order of reinstatement, hiring, promotion, transfer or retention of the affected Employee either into the position sought if still available or into an available comparable position provided that the Employee meets the Minimum Necessary Qualifications, and/or training of the Employee.

b. An order for compensatory damages to the Employee affected, which may include but not exceed one (1) year of lost wages, which the affected Employee has a duty to mitigate. If however the affected Employee has already been awarded such damages under any other law, lost wages shall not be allowed under this Law.

c. If it is determined that a violation of this Law was intentional or due to gross negligence, an award of attorney's fees may be made. No award for attorney's fees may exceed one third of a lost wage award, if there is such an award, or in the absence of a lost wage award, fifty (50) hours of attorney time. Attorneys' fees award must be substantiated by contemporaneous records of hours billed and the billing rate(s) charged which must be consistent with prevailing billing rates of attorneys practicing before the Tribal Court.

d. If it is determined that a Person failed to comply with 33 M.P.T.L. ch. 1 Sections 5(g), 5(j) or 9(d), or that any Person's noncompliance with this Law was intentional, a civil monetary fine not to exceed Two Hundred Fifty (\$250.00) Dollars per violation may be assessed with a maximum aggregate fine of One Thousand (\$1,000.00) Dollars

per claim of non-compliance. Each day that a Person has been determined to be out of compliance with the requirements of this Law may be considered a separate violation.

e. An order that the Person cease and desist from non-compliance.

f. An order that the Person implement such changes in policies, procedures and/or conduct as are deemed necessary for the purpose of securing compliance with any requirement of this Law.

g. The Tribal Court may enter a judgment for declaratory relief.

h. In all claims where it is alleged that liability is based upon the action of an officer, agent, servant, or employee acting within the scope of his or her employment, there shall be no separate cause of action against the officer, agent, servant or employee.

33 M.P.T.L. ch. 1 § 12

§ 12. Waiver of Sovereign Immunity From Suit

a. *Waiver of Sovereign Immunity.* To the extent that a claim filed in the MERO Office is against the Tribe or review by the Tribal Court concerns claimed violations of this Law against the Tribe, the Tribe hereby expressly waives its sovereign immunity from suit for such claims and in such forums for the limited purpose of resolving the dispute as provided in this Law. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe from suit in any other forum or for any other claim, including any claim in state or federal court or in any state or federal agency, or in any other forum or context. Nothing in this law shall be construed to waive the sovereign immunity of the Tribe to the extent that sovereign immunity would be applicable to the officer, agent, servant or employee.

33 M.P.T.L. ch. 1 § 13

§ 13. Retaliation Prohibited

a. No Employer shall suspend or terminate from employment a preference eligible Employee in retaliation for filing a claim under this Law.

b. Any such Employee who believes that he or she has been suspended or terminated from employment in violation of this section may file a claim pursuant to Section 9(a) or 9(b).

c. If the suspended or terminated Employee files a claim pursuant to this Law, it shall be the sole cause of action against the Employer regarding the suspension or termination and the Employee may not also file a claim pursuant to 8 M.P.T.L. ch. 1, Employment, or otherwise.

TITLE 34. MASHANTUCKET PEQUOT TRIBAL OCCUPATIONAL SAFETY AND HEALTH LAW

34 M.P.T.L. § 1

§ 1. Title; Authority

This title may be cited as the Mashantucket Pequot Tribal Occupational Safety and Health Law. This law is enacted by the Mashantucket Pequot Tribal Council as the governing body of the Mashantucket Pequot Tribal Nation and pursuant to the inherent authority of the Mashantucket Pequot Tribal Nation to regulate activities and govern conduct on its Reservation and to place conditions on entry and continued presence on the Reservation.

34 M.P.T.L. § 2

§ 2. Findings

The Mashantucket Pequot Tribal Council finds that:

a. In or about 1998 the Mashantucket Pequot Public Safety Committee received recommendations to develop a centralized Tribal Occupational Safety and Health program to insure safe and healthful working conditions for all employees on the Reservation and to further exercise and enhance Tribal sovereignty.

b. The Tribal Council adopted a resolution in 1998 establishing the Tribal OSHA Program to administer and enforce employee safety and health regulations and practices on the Reservation and on all tribally owned or occupied properties including enterprises of the Tribal Nation. Since 1998 the Tribal OSHA program has fulfilled its mission of insuring safe and healthy working conditions for all employees on the Reservation.

c. It is important to more fully describe the regulatory authority of the Tribal OSHA as it relates to enforcement of the TOSHA law and to clarify the role of the Tribal Court in the enforcement of the law and the rights of appeal.

34 M.P.T.L. § 3

§ 3. Definitions

a. "Employee" means an individual employed by an Employer and who performs work, in whole or in part, for the Employer on the Reservation.

b. "Employer" means any Person that employs Employees who perform work, in whole or in part, on the Reservation. Employer shall include the Tribal Nation. The term Employer excludes federal, state or local governments.

c. "Mashantucket Pequot Tribal Council" or "Tribal Council" means the governing body of the Tribal Nation pursuant to Article VI, Section 1 of the Constitution of the Mashantucket (Western) Pequot Tribe.

d. "Person" means both natural persons and artificial persons, including, but not limited to, entities considered Employers hereunder, corporations, partnerships, joint ventures, limited liability companies, sole proprietorships, associations, unions, trusts, trustees, and agents.

e. "Reservation" means the Mashantucket (Western) Pequot Reservation, as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe and any other area subject to the Tribe's jurisdiction.

f. "TOSHA" or "TOSHA program" means the Tribal Occupational Safety and Health Administration Program.

g. "TOSHA Commissioner" or "Commissioner" means the person appointed by the Tribal Council as the Commissioner of TOSHA.

h. "Tribe" or "Tribal Nation" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any arm, department, agency, subdivision, enterprise, entity or organization of the Tribe or wholly owned by the Tribe.

34 M.P.T.L. § 4

§ 4. Authority of TOSHA Commissioner

a. The TOSHA Commissioner shall be responsible for administering and enforcing the TOSHA program which has the purpose and mission of insuring employee safety and health on the Reservation and on all tribally owned or occupied properties including enterprises of the Tribe.

b. The TOSHA Commissioner has the authority to:

(i) Adopt rules, regulations and/or procedures to govern the enforcement and administration of the TOSHA program;

(ii) Conduct educational programs so that all persons, including both Employees and Employers, are advised as to the existence of the TOSHA program and understand the process and procedures established for TOSHA;

(iii) Establish a system of inspection for all Employers located on the Reservation and for all tribally owned enterprises whether located on or off of the Reservation; and

(iv) Establish a system of enforcement as to all violations of safety and health regulations which system shall include a process for follow-up to insure correction of all violations.

34 M.P.T.L. § 5

§ 5. Adoption of Federal Standards

The standards and regulations of the Federal Occupational Safety and Health Administration are adopted as the tribal standards and regulations to be enforced through TOSHA on the Reservation provided that the adoption of such standards and regulations is not intended to and does not waive the Tribe's immunity from suit in any state or federal forum, whether administrative or judicial, or in any other forum except as provided in this Law. To the extent that this Law establishes a process or procedure different from that adopted in the federal regulations, the tribal law shall govern.

34 M.P.T.L. § 6

§ 6. Duties of Employers and Employees

a. Each Employer-

(1) shall furnish to each Employee employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or physical harm to the Employer's Employees;

(2) shall comply with occupational safety and health standards promulgated under or adopted by this Law.

b. Each Employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this law which are applicable to his or her own actions and conduct.

34 M.P.T.L. § 7

§ 7. Inspections, Investigations, and Recordkeeping

a. *Authority to enter, inspect and investigate places of employment.* In order to carry out the purposes of this Law, the Commissioner or her designee, upon presenting appropriate credentials to the owner, operator or agent in charge, is authorized-

(1) to enter without delay and at reasonable times any workplace or environment where work is performed by an Employee of an Employer including, but not limited to, any factory, plant, establishment, construction site, or other area; and

(2) to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such Employer, owner, operator, agent or Employee.

b. *Maintenance, preservation, and availability of records; issuance of regulations; posting of notices by employer.*

(1) Each Employer shall make, keep and preserve, and make available to the

Commissioner or her designee such records regarding the Employer's activities relating to this Law, as the Commissioner may prescribe by regulation as necessary or appropriate for the enforcement of this Law or for developing information regarding the causes and prevention of occupational accidents and illnesses. The Commissioner may also issue regulations requiring that Employers, through posting of notices or other appropriate means, keep their Employees informed of their protections and obligations under this Law.

(2) The Commissioner may prescribe regulations requiring Employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) Any information obtained by the Commissioner under this Law shall be obtained with a minimum burden upon Employers, especially those operating small businesses.

c. Employer and Employee Representative Accompany Commissioner on inspection of workplace. Subject to any regulations adopted by the Commissioner, a representative of the Employer and a representative authorized by the Employer's Employees shall be given an opportunity to accompany the Commissioner or her authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner or her authorized representative may consult with a reasonable number of Employees concerning matters of health and safety in the workplace.

d. Request for inspection by employees or representative of employees. Any Employee or representative of Employees who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Commissioner or her authorized representative of such violation or danger, Any such notice shall be in writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the Employee or the representative of Employees, and a copy shall be provided to the Employer or his agent no later than at the time of the inspection, except that upon request of the person giving such notice his or her name and the names of the individual Employees referred to therein shall not appear in such copy or on any record published, released, or made available to the public. If upon receipt of such notification the Commissioner determines there are reasonable grounds to believe that such violation or danger exists, she shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Commissioner determines there are no reasonable grounds to believe that a violation or danger exists she shall notify the Employees or representative of Employees in writing of such determination.

e. Results of enforcement activities; employee evaluations. The Commissioner shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate any employee involved in enforcement activities under this Law or to impose quotas or goals with regard to the results of such activities.

34 M.P.T.L. § 8

§ 8. Citations

a. *Authority to Issue.* If, upon inspection or investigation, the TOSHA Commissioner or her authorized representative believes that an Employer has violated a requirement of this Law, or of any standard, rule or order adopted pursuant to Sections 4 or 5¹ of this Law, she shall with reasonable promptness issue a citation to the Employer which citation may include the assessment of fines or penalties. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Commissioner may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

b. *Posting.* Each citation issued under this section, or a copy or copies thereof shall be posted as provided in any rules or regulations issued by the TOSHA Commissioner, at or near such place a violation referred to in the citation occurred.

c. *Time for issuance.* No citation may be issued under this section after the expiration of six months following the occurrence of any violation unless such violation is an ongoing violation.

¹ 34 M.P.T.L. § 4 or 5.

34 M.P.T.L. § 9

§ 9. Enforcement

a. *Right to An Informal Conference.* If after an inspection or investigation, the Commissioner issues a citation she shall, within a reasonable time after the termination of such inspection or investigation, notify the Employer of the citation and penalty, if any, proposed to be assessed and that the Employer has ten (10) business days within which to notify the Commissioner that the Employer wishes to be heard by the Commissioner in an informal conference the purpose of which is to discuss an informal resolution of the citation and proposed penalty. Notification of a citation and/or penalties to the Employer must be made by a method of delivery that insures receipt by Employer. If, within ten (10) business days from the mailing of the notice issued by the Commissioner the Employer fails to request an informal conference, the citation and the assessment or penalty, as proposed, shall be deemed a final order of the Commissioner. If an Employer requests an informal conference pursuant to this Section and such conference is held but an informal settlement agreement is not entered, the citation and assessment or penalty shall become a final order of the Commissioner.

b. *Right to Contest Final Order.* A Person who is aggrieved by a final order of the Commissioner may contest the final order by filing a notice of contest with the Mashantucket Pequot Tribal Court within ten (10) business days from the date that

an order of the Commissioner becomes final, whether by failure to enter an informal settlement agreement at the informal conference or due to an Employer's failure to request an informal conference within the time provided in Section 9(a).

c. *Procedure For Contesting Final Order.* The notice of contest shall specify the final order being challenged and attached a copy of such order; the date on which such order became final; the factual and legal basis supporting the requested reversal or modification of the final order; and state whether a hearing is requested. The notice shall name the Commissioner as the defendant. The Person filing the notice of contest shall serve, either by personal delivery or by regular mail, a copy of the notice of contest on the Commissioner. The Commissioner shall, within 10 days of filing of the statement of contest, file with the Court a responsive pleading addressing the factual and legal claims made in the statement of contest, providing a copy of any record before the Commissioner including any reports, citations, communications and/or orders, and a statement as to whether a hearing is requested. The Court may determine whether any further pleading or evidence is required and whether a hearing is necessary; provided that the Court shall make all efforts to expedite the process and decision.

d. *Remedies; Standard of Review.* The Court shall confirm a final order of the Commissioner unless it determines that the Commissioner clearly abused her discretion in rendering the final order. If the Court determines that the Commissioner clearly abused her discretion, the Court may vacate the order or modify the order if it is determined that such a modification would address the abuse of discretion identified by the Court.

e. *Stay of Enforcement.* The filing of a notice of contest shall not, of itself, stay enforcement of a final order of the Commissioner. An application of a stay may be made to the Court.

f. *Failure to Correct Violation; Enforcement Actions.* If an Employer fails to comply with any order issued by the Commissioner, including failure to correct a violation for which a citation has been issued within the period permitted for its correction and failure to pay a penalty assessed by the Commissioner, the Commissioner shall notify the Employer of such failure and of any penalty proposed to be assessed by reason of such failure, and that the Employer has ten (10) business days from receipt of notice to correct the noncompliance including the payment of any penalties assessed. Any notification made to an Employer must be by a method of delivery that insures receipt by the Employer. If an Employer continues to be in noncompliance at the expiration of the 10-day period, the Commissioner may bring an action in the Mashantucket Pequot Tribal Court seeking enforcement of her order, compliance with a citation and/or payment of penalties imposed, or such other appropriate relief.

34 M.P.T.L. § 10

§ 10. Discharge or Discrimination Prohibited

a. No Employer shall discharge or cause to be discharged, or in any manner discriminate against any Employee because such Employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this Law or has testified or is about to testify in any such proceeding or because of the

exercise by such Employee on behalf of himself or others of any right afforded by this Law.

b. Any Employee who believes that she has been discharged or otherwise discriminated against by an Employer in violation of this subsection may, within one hundred and eighty days (180) days after such violation occurs, bring a civil action in the Mashantucket Pequot Tribal Court pursuant to this Law. The Tribal Court shall have jurisdiction over such claims against Employers. The Tribe hereby waives the sovereign immunity from suit of the Tribe and its subdivisions, arms, departments and entities for an action in tribal court under this Section of the Law.

34 M.P.T.L. § 11

§ 11. Tribal Court Jurisdiction; Waiver of Sovereign Immunity

a. The Mashantucket Pequot Tribal Court shall have jurisdiction to hear and determine the claims established in this Law including those contesting a final order of the Commissioner, a civil claim by an Employee pursuant to Section 10¹ of this Law, and an enforcement action by the Commissioner under Section 9(f)² of this Law.

b. The Tribe hereby waives its sovereign immunity from suit and the immunity of any arm, agency, department, subdivision, enterprise, or entity of the Tribe for actions in the Mashantucket Pequot Tribal Court brought under this Law contesting a final order of the Commissioner or pursuant to Section 10 of this Law.

¹ 34 M.P.T.L. § 10.

² 34 M.P.T.L. § 9(f).

34 M.P.T.L. § 12

§ 12. Preservation of Other Law

Nothing in this Law shall be construed to supersede or in any manner affect the Tribal Workers' Compensation law, Title 13 M.P.T.L., or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of Employers and Employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

TITLE 35. MASHANTUCKET PEQUOT TRIBAL ELDERS FINANCIAL ASSISTANCE

35 M.P.T.L. § 1

§ 1. Findings, Purpose and Authority

The Tribe finds that:

a. There are elder members of the Tribe who may have chosen to retire or who may have reduced capacity to secure gainful employment or otherwise obtain sufficient income to be self-supporting; and

b. It is the policy of the Tribe to assure the essential welfare of its members by providing financial assistance to those Elders in need.

35 M.P.T.L. § 2

§ 2. Definitions

a. "Administrator" means the Chief Financial Officer of the Tribe or her designee, or such other officer as may subsequently be appointed by the Tribal Council to make determinations of eligibility under this Title.

b. "Offset Income" means the sum of-

(1) wages, salaries, tips, and any other income received by the recipient and required to be reported on Form W-2 or added to such amounts for purposes of reported employment income on a United States Individual Income Tax Return, plus

(2) net earnings from self-employment received by the recipient and required to be reported for purposes of the Self-Employment Tax on a United States Individual Income Tax Return, plus

(3) any other distribution of money to the recipient by or on behalf of the Tribe including but not limited to any Incentive program distribution, per capita payment, earned income supplement, meeting stipend, and any workers compensation payment or long term disability benefit attributable to the recipient's employment by the Tribe.

Notwithstanding the foregoing, the first Twenty-Five Thousand (\$25,000) Dollars of such income received by a Participant shall not be included in Offset Income for purposes of calculating the limitation in benefits provided under Section 5 of this Law.

c. "Participant" means a member of the Mashantucket Pequot Tribal Nation in good standing who has reached Benefit Age.

d. "Payment Year" means the calendar year.

e. "Benefit Age" means the age of sixty (60) years of age; provided, however, that solely with respect to any member who had attained the age of fifty-five (55) years of age as of December 31, 2010, Benefit Age shall be deemed to mean the age of fifty-five (55) years of age.

f. "Standard of Need" means the standard established from time to time by the Mashantucket Pequot Tribal Council to measure the amount of income necessary to meet the basic human needs of a participant. The initial standard of need is Fifty Thousand (\$50,000.00) Dollars applicable to the Payment Year commencing January 1, 2011. The

Tribal Council may, by Council resolution, adjust the standard of need as it determines necessary.

g. "Exempted Participant" means any member of the Mashantucket Pequot Tribal Nation in good standing who has attained the age of seventy (70) years.

35 M.P.T.L. § 3

§ 3. Determination of Eligibility

a. Any Exempted Participant may apply to the Administrator for financial assistance under this Title on a form made available by the Administrator, and shall not be subject to the limitations on benefits regarding offset income as provided in Section 5¹ of this Law.

b. Any Participant may apply to the Administrator for financial assistance under this Title on a form to be made available by the Administrator. The form shall require that a copy of the applicant's most recent Federal income tax return, complete with all supporting schedules and W-2 forms, be appended to the application.

c. The Administrator shall determine the age of any individual applying for financial assistance under Title 35 through use of birth certificates or, in the case of a missing birth certificate, such other evidence of age as the Administrator finds clear and convincing. The Administrator is authorized to request and receive information from the Tribal Clerk as may be required to determine or verify the birth date and age of any individual applying for financial assistance under Title 35.

d. In the event that the Administrator determines that the individual is not eligible for the full amount of financial assistance under this Title for which such applicant has applied as a result of Offset Income, the Administrator shall notify the applicant of the determination of the amount of assistance, if any, to which such individual is entitled.

e. In the event that the Administrator denies the application for assistance under this Section or determines that the individual is not eligible for the full amount of financial assistance under this Title, the Administrator shall provide a written explanation of her determination setting forth the reason(s) for the determination, and if the individual does not agree with such determination, an appeal of Administrator's decision may be filed with the Finance Committee of the Mashantucket Pequot Tribal Council, which will review the Administrator's determination and decide whether to uphold, reverse or modify the determination. The Finance Committee shall set forth its decision in writing. If an individual is aggrieved by the decision of the Finance Committee, an appeal may be filed in the Tribal Court in accordance with Section 4² of this Law.

¹ 35 M.P.T.L. § 5.

² 35 M.P.T.L. § 4.

35 M.P.T.L. § 4

§ 4. Tribal Court Review of Finance Committee's Decision

a. The tribal court is granted jurisdiction over an appeal seeking review of a final determination by the Finance Committee under this Title; provided that such appeal is filed with the tribal court within thirty (30) days following the issuance of the Finance Committee's final determination and is filed by the person aggrieved by such final determination. The tribal court is also granted jurisdiction to hear any claim brought pursuant to Section 6(b)¹ of this Title by the Administrator to recover excess payments.

b. The Tribe hereby expressly waives its sovereign immunity from suit in the tribal court for an appeal seeking review of a final determination by the Finance Committee under this Title.

c. The appeal under this section shall be instituted in the same manner that an employee appeal is instituted under Rule 3 of the Mashantucket Pequot Rules of Civil Procedure², except that the appeal under this section may only be brought against the Mashantucket Pequot Tribal Nation as the defendant. No separate cause of action shall exist against an agent, servant or employee of the Tribe acting within the scope of his or her employment or authority, and nothing in this law shall be construed to waive the sovereign immunity of the Tribe to the extent applicable to an agent, servant or employee of the Tribe and such sovereign immunity is waived only for purposes of an action against the Tribe in tribal court as specifically provided in this Section 4.

d. Within thirty (30) days of filing the appeal the Finance Committee, or its designee, shall certify to the Tribal Court the record considered in rendering the final determination which record shall consist of all evidence and materials before the Administrator and the Finance Committee, the Administrator's decision, and the Finance Committee's decision.

e. In deciding the appeal, the Court shall consider the record and any additional evidence it decides appropriate pursuant to Section 4(g) of this Title.

f. The Court shall determine whether there was a reasonable basis for the Finance Committee's final determination. If the Court determines that there was no reasonable basis to support the Finance Committee's final determination then the Court may reverse or modify the final determination. Otherwise, the Court shall affirm the Finance Committee's final determination.

g. Either party to the appeal may, within twenty (20) days of the certification of the record, file a request with the Court to present additional evidence to the Court. The party making such request shall specify, in detail, the additional evidence requested, the form of the evidence, and explain how the additional evidence is relevant and probative. In addition, the requesting party shall explain the good and sufficient reasons for failure to present the evidence in the proceedings or record before the Administrator. The other party may file an objection to such additional evidence or seek permission to present responsive evidence.

h. All appeals filed under this Title shall be tried to the tribal court and not to a jury. No costs shall be taxed against the Tribe.

i. The following shall not apply in appeals filed under this Law: (1) any rule of law imposing absolute or strict liability, or providing for punitive or exemplary damages; and (2) any order for injunctive relief.

¹ 35 M.P.T.L. § 6(b).

² 35 M.P.R.C.P. Rule 3.

35 M.P.T.L. § 5

§ 5. Income Limitation

a. No Participant who receives Offset Income during any Payment Year in an amount equal to or greater than the Standard of Need shall be eligible for financial assistance under this Title during such Payment Year; provided that the first \$25,000 of Offset Income shall not be calculated as Offset Income for purposes of this limitation. There is no income limitation or requirement for Exempt Participants.

b. Any Participant who receives Offset Income during any Payment Year in an amount less than the Standard of Need and is otherwise eligible for financial assistance under this Title shall be entitled to financial assistance, with respect to any Payment Year, in an amount equal to the difference between the Standard of Need and the Offset Income received by such Participant during such Payment Year.

c. A Participant who receives financial assistance under this Title shall affirm under penalties of perjury the amount, if any, of Offset Income to which such Participant is entitled with respect to each Payment Year, and shall annually furnish a copy of such individual's Federal income tax return as filed with the Internal Revenue Service within thirty days after filing such return. Every Participant receiving financial assistance under this Title shall also execute in such form as may be required by the Administrator a consent to the disclosure by the Internal Revenue Service to the Administrator of a true copy of such individual's Federal income tax return.

d. Exempted Participants are not subject to the income limitations in this Section 5.

35 M.P.T.L. § 6

§ 6. Payment of Benefits; Recovery of Excess Payments

a. A Participant who is eligible for financial assistance under this Title shall receive an amount on a monthly basis equal to one twelfth, or on a bi-weekly basis equal to one twenty-sixth, of the Standard of Need with respect to such Payment Year, less applicable offsets. The Chief Financial Officer of the Tribe shall make arrangements to disburse financial assistance under this Title through such means of payment as may be feasible and efficient in his or her sole discretion.

b. In the event that the Administrator determines that a Participant has received financial assistance under this Title in excess of the amount to which such

Participant was properly entitled under this Title, the Administrator shall make demand for return of such excess payment and shall unless such demand is satisfied within thirty days of notice to the Participant (i) offset such excess payments against future financial assistance under this Title that may be payable to the Participant, or (ii) commence an action in Tribal Court to recover such excess payment with interest for the period from the payment of such excess amount to the time of recovery of such excess payment at the interest rate charged with respect to the same period for purposes of late payment of Federal Income Taxes for an individual; provided, however, that the Administrator in his or her sole discretion may waive the demand for interest in the event that the Administrator determines that the excess payment resulted solely from an error by the Administrator in calculating benefits payable.

35 M.P.T.L. § 7

§ 7. Penalties for Fraud

a. Any person who provides false information on an application to establish eligibility for financial assistance under this Title or for purposes of verification of eligibility of earned income or to obtain financial assistance from any other tribal program shall be subject to denial of eligibility for financial assistance under this Title for a period of seven (7) years. The Administrator shall notify any individual subject to this penalty of such denial of eligibility. Such denial shall be subject to review by the Tribal Court in accordance with Section 4¹ of this Title.

b. Any person who obtains financial assistance by willfully providing false information on an application to establish eligibility for financial assistance under this Title or for purposes of verification of eligibility of earned income shall be guilty of the criminal offense of defrauding the Tribe. Whoever is convicted of such offense shall be punished by incarceration for up to one (1) year in jail and/or a fine of not more than Five Thousand (\$5,000) Dollars.

¹ 35 M.P.T.L. § 4.

35 M.P.T.L. § 8

§ 8. Income Taxation and Other Deductions and Offsets

a. Financial assistance payments under this Title are subject to federal taxation and will have applicable tax withheld in accordance with regulations of the Internal Revenue Service. Financial assistance payments under this Title to participants who are not residents of Mashantucket are also subject to state income taxes (where applicable), and will have applicable taxes withheld.

b. The Tribe has the right to deduct from or offset against any amounts otherwise payable to a Participant under this Title 35 for any amounts that may be owed to the Tribe by said Participant, or as otherwise allowed by applicable law.

35 M.P.T.L. § 9

§ 9. Effective Date

This Title shall take effect upon enactment with respect to the authority of the Administrator to receive and process applications for assistance and to render determinations of eligibility and with respect to the authority of the Tribal Court to review such determinations. The assistance provided pursuant to this Title shall commence on January 1, 2011, unless a later commencement date is established by Tribal Council.

35 M.P.T.L. § 10

§ 10. Termination of Benefits

The benefits paid under this Title shall cease upon the death of the recipient and no benefits shall be paid to the estate of a recipient except as provided in Section 11.

35 M.P.T.L. § 11

§ 11. Death Benefit

The Tribe shall pay bona fide and documented funeral expenses for a deceased Elder up to a maximum of Ten Thousand (\$10,000) Dollars. Said funds shall be made available to the Director of Tribal Member Services and paid directly to the service providers.

TITLE 36. MASHANTUCKET PEQUOT TRIBAL DISABILITY PROGRAM

36 M.P.T.L. § 1

§ 1. Findings, Purpose and Authority

The Tribe finds that:

a. It is the public policy of the Tribe to encourage and offer opportunities for adult members of the Tribe to maintain employment to support themselves and their families. It is further the objective of the Tribe that families within the MPTN Community will live healthier, longer lives, and will develop, enhance and maximize their human potential to establish and achieve personal, community and professional goals.

b. The provisions of this law are necessary to insure that members who are permanently unable to work in any capacity and support themselves through gainful employment as a result of a Disability have the financial and associated support services necessary to help them achieve a better quality of life.

c. The proper and responsible regulation of public well-being and health requires

that the minimum financial needs of such disabled tribal members are provided through a government program to insure that their basic human needs are satisfied.

d. The Tribe enacts this law pursuant to its inherent authority and its responsibility to regulate public health, well-being and safety within its territory and for its membership.

36 M.P.T.L. § 2

§ 2. Definitions

a. "Benefit Determination" means a notification, in writing, approved by the Tribal Health Services Professionals, issued by the Program Administrator to the applicant (or his or her Financial Conservator), that indicates a finding of approval or denial of his or her application for Disability Income Benefits and/or addresses a Participant's Continued Qualification for the Program, wherein Disability Income Benefits may be continued, suspended or terminated.

b. "Case Manager" means a professional who coordinates medical, behavioral health and social services required for the benefit of the Participant.

c. "Continued Qualification" means the process by which information is obtained, monitored and reviewed in order to determine that the Participant remains qualified to receive Disability Income Benefits and Transition Payments under this law.

d. "Disability" as it is used in this law, means a determination by an attending physician and specialist, if required by the Program Administrator, that an individual, due to his or her medical or psychological condition is permanently unable to perform work-related duties in any capacity, for life.

e. "Disability Income Benefit(s)" means the benefit amounts as determined by Tribal Council, from time to time, payable under the Program.

f. "Dual Diagnosis" means diagnoses for both substance dependency and mental health disability which prevents the applicant from working as determined by an appropriate provider and specialist, if required. Substance dependency means dependence on an addictive substance including, but not limited to, alcohol, illicit substances and/or prescribed narcotics.

g. "Disability Review Board" means a selection of qualified persons or entities as appointed by Tribal Council.

h. "Financial Conservator" means an individual appointed by a court of competent jurisdiction to protect and manage the financial affairs of a person who is unable to do so due to physical or mental limitations. Any permission, consent or other action that may be required by an applicant or Participant under this law may be completed by a duly appointed Financial Conservator.

i. "Mashantucket" means the Mashantucket Pequot Reservation as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

j. "Offset Income" means any distribution of money to the Participant by or on behalf of the Tribe including, but not limited to, any Incentive Program distribution, per capita payment, scholarship fund distribution and any workers compensation payment or short or long term disability benefit attributable to the Participant's employment, plus any other distribution of money received by the Participant through United States Social Security Disability Insurance ("SSDI") and does not include United States Social Security Administration Supplemental Security Income ("SSI").

k. "Participant" means any applicant who is approved to receive Disability Income Benefits or Transition Payments.

l. "Pre-Qualified Applicant" means an applicant who has been qualified through the SSI or SSDI programs.

m. "Program" means the Mashantucket Pequot Tribal Disability Program.

n. "Program Administrator" means the Director of MPTN Tribal Health Services, or designee, or such other person(s) or entity(ies) as may subsequently be appointed by the Tribal Council who shall administer the Program herein.

o. "Protected Health Information" means health information of applicants and Participants which is protected from disclosure in accordance with Tribal law.

p. "Transition Payments" mean up to twenty-six (26) weeks of payments in the weekly amount of the prior Disability Income Benefit made to a compliant Participant with a Dual Diagnosis who is ready to re-enter the workforce and who is working diligently to do so as determined by the Program Administrator.

q. "Tribal Health Services Professionals" means a select group of Tribal Health Services employees as designated by the Tribal Council, which shall include the Program Administrator, and who shall approve, by majority, Benefit Determinations prior to issuance.

r. "Tribe" means the Mashantucket Pequot Tribe.

36 M.P.T.L. § 3

§ 3. Eligibility Requirements

To be eligible to receive Disability Income Benefits, an applicant must:

- a. Be a duly enrolled member of the Tribe in good standing;
- b. Be between the ages of eighteen (18) years and fifty-nine (59) years of age;
- c. Be registered with the MPTN Tribal Health Services;
- d. Pursue any potential benefits he or she may be eligible for under SSI, SSDI, short term disability, long term disability or workers compensation program;

e. Have completed all necessary release authorizations and consent forms for release of Protected Health Information and supplied or verified all information requested by the Program Administrator;

f. Not have earnings that are more than the Disability Income Benefit amount annually (or the equivalent thereof for any pro-rata period) from the following income sources:

(1) any other distribution of money to the applicant by or on behalf of the Tribe including, but not limited to, any Incentive program distribution or per capita payment;

(2) Any distributions from a Short or Long Term Disability employment benefits or any workers compensation benefit for which the applicant is entitled; and

(3) Any distributions from United States Social Security Disability Insurance.

36 M.P.T.L. § 4

§ 4. Initial Qualification and Benefit Determination

a. If the applicant is determined not to be eligible pursuant to the criteria of Section 3 above, or is determined not to have a permanent Disability, or is determined not to have a Dual Diagnosis, then the Program Administrator will notify the applicant of the Benefit Determination and provide a written explanation setting forth the reason(s) for the determination.

b. If the applicant is determined to be eligible pursuant to the criteria of Section 3 above, and is determined to be a Pre-Qualified Applicant, to have a permanent Disability, or to have a Dual Diagnosis, then the Program Administrator will notify the applicant of the Benefit Determination approving the application and the effective date of the Disability Income Benefits, which shall be the latter of the date of the Disability or the date of the application.

c. The Program Administrator must issue a Benefit Determination in writing within thirty (30) days of receipt of all requested information.

d. In making a Benefit Determination, including any eligibility determination, Disability determination, Continued Qualification determination, or Transition Payment eligibility, the Program Administrator may request information and must ensure that information is verified. All financial information must be verified by the Finance Department. The Program Administrator may:

(1) Require that the applicant furnish financial information to the Finance Department, including his or her most recent federal income tax return, if applicable, complete with all supporting schedules and W-2 forms.

(2) Verify information with the Tribal Clerk as may be required to determine or verify the birthdate/age, and current contact information of any applicant.

(3) Require any other information reasonably necessary to make a determination under

this law.

(4) In his/her discretion, forward all relevant information to UNUM, or other qualified medical claims review provider, to provide a recommended Benefit Determination or part thereof.

36 M.P.T.L. § 5

§ 5. Continued Qualification

a. The Program Administrator shall, from time to time, but at least bi-annually, require a Participant to establish Continued Qualification for such benefits.

b. In order for a Participant to satisfy the Continued Qualification requirements to receive Disability Income Benefits or Transition Payments, a Participant must:

(1) Remain eligible;

(2) Continue to have a Disability or Dual Diagnosis as certified by a designated provider or specialist, as required;

(3) Have a second specialist document the Disability or Dual Diagnosis, if required by the Program Administrator. The second specialist must be a specialist designated or approved by the Program Administrator in accordance with the Disability Procedures. If a second specialist is required by the Program Administrator, and this specialist's determination conflicts with the prior specialist's determination, this second specialist's determination shall be final.

(4) Actively participate in any required programs;

(5) Comply with reasonable requests for additional information as may be required in § 4(d);

(6) Pursue any potential benefits under SSI, SSDI, short term disability, long term disability or workers compensation program; and

(7) Otherwise comply with the requirements of this law.

c. For Participants with a Dual Diagnosis the Program Administrator will require compliance with reasonable, specific programs or treatment plans, as recommended by a Participant's provider and/or Case Manager, as a condition to receiving or continuing to receive Disability Income Benefits or Transition Payments.

d. If a Participant receives any Offset Income, he/she is required to notify the Program Administrator within thirty (30) days upon receipt and will be subject to repayment of any payments made which he/she is not entitled to as a result of receipt of the Offset Income.

e. If a Participant becomes incarcerated while receiving Disability Income Benefits or Transition Payments, he/she is required to notify the Program Administrator within thirty (30) days. Payments will be suspended during the period of

incarceration, and the Participant will be required to satisfy the Continuing Qualification requirements of this section upon release.

f. If a Participant fails to satisfy the provisions of this Section 5, the Program Administrator will issue a Benefit Determination notifying the Participant that their Disability Income Benefits or Transition Payments will be suspended or terminated.

36 M.P.T.L. § 6

§ 6. Payment of Benefits

a. Participants shall receive Disability Income Benefits less any Offset Income, income taxes, garnishments and other deductions. The maximum amount of the Disability Income Benefit shall be reviewed and determined by Tribal Council periodically. The Chief Financial Officer of the Tribe, or designee, shall make arrangements to disburse all Disability Income Benefits under this law through such means of payment as may be feasible and efficient in his or her sole discretion.

b. The Tribe will withhold from Disability Income Benefits and Transition Payments for federal income tax. In addition, the Tribe will withhold from payments for Connecticut income tax for residents of the State of Connecticut only. No state income tax will be withheld for residents of Mashantucket. The responsibility to remit any state income taxes withholdings, other than for the states the Tribe is registered, rests with the Participant.

c. Participant who has a Dual Diagnosis shall be required to be in an approved treatment plan and have a Financial Conservator who shall receive and administer, on behalf of the Participant, the Disability Income Benefits and Transition Payments. The Disability Income Benefits for a Participant with a Dual Diagnosis are limited to a lifetime maximum of twenty-six (26) weeks and require strict compliance with a treatment plan. If successful, the Participant may then obtain Transition Payments for up to an additional twenty-six (26) week period provided that the following are met:

(1) Participant complies with this law including all Continued Qualification requirements;

(2) Participant also complies with Vocational Rehabilitation, Career Life/Assessment & Planning, or other recommended transition program, as appropriate, and as referred by the Case Manager;

(3) Offset Income shall still apply during the Transition Payments period, except that the first Two Hundred Eighty-Eight (\$288.00) Dollars per week (representing Fifteen Thousand (\$15,000) Dollars on an annualized basis) of any earned income (i.e., Form W-2 income and self-employment income) received by a Participant shall not be included as Offset Income.

d. The Tribe has the right to deduct from or offset against any amounts otherwise payable to a Participant under this law for any documented amounts that may be owed to the Tribe by said Participant, including any overpayment of benefits received

under this Title 36 or as otherwise allowed by applicable law.

36 M.P.T.L. § 7

§ 7. Disability Review Board

a. In the event the applicant or Participant does not agree with a Benefit Determination, the applicant or Participant may, within thirty (30) days from the date of issuance of the Benefit Determination, request a review by the Disability Review Board, and may submit such additional evidence that the applicant or Participant deems necessary to prove his or her entitlement to such Disability Income Benefits.

b. The Disability Review Board shall review the Benefit Determination and any additional evidence presented. The Disability Review Board shall determine whether there was a reasonable basis for the Benefit Determination and shall issue a Final Decision including a written explanation in support thereof within thirty (30) days of receipt of the applicant or Participant's request for review.

c. An appeal of the Disability Review Board's Final Decision may be filed with the Mashantucket Pequot Tribal Court pursuant to Section 9 of this law.

36 M.P.T.L. § 8

§ 8. Administration

a. The Program Administrator shall adopt comprehensive procedures to ensure the effective application of this law.

b. An annual audit of the Program shall be conducted by the Mashantucket Pequot Tribal Internal Audit Department, with its findings reported to the Tribal Council no later than June 30 of each calendar year.

36 M.P.T.L. § 9

§ 9. Tribal Court Review

a. Right to Appeal. The Final Decision issued by the Disability Review Board may be appealed to the Tribal Court in accordance with 40 M.P.T.L. ch. 3. A written appeal on a form provided by the Tribal Court Clerk must be submitted to the Tribal Court. Claims shall be brought only against the Tribe and there shall be no separate cause of action against any division, agency, committee, office, entity or instrumentality of the Tribe, or against any officer, agent, servant or employee of the Tribe. All appeals under this Title shall be heard by the court, not a jury. A Fifty (\$50.00) Dollar filing fee is required to be paid to the Tribal Court for such an appeal. No costs shall be taxed against the Tribe.

b. Tribal Court Standard of Review. The Tribal Court shall review the Final Decision of the Disability Review Board pursuant to 40 M.P.T.L. ch. 3, § 8.

c. Court of Appeals. Pursuant to 40 M.P.T.L., ch. 3 § 10, decisions by the Tribal Court may be appealed to the Mashantucket Pequot Court of Appeals. Any decision of the Court of Appeals shall be final.

36 M.P.T.L. § 10

§ 10. Penalties for Fraud

a. Any person who provides false information in an effort to obtain Disability Income Benefits or Transition Payments under this law or during the monitoring process for Continued Qualification for payments or to obtain benefits under any other MPTN financial assistance program shall be prohibited from obtaining benefits under this law for a period of seven (7) years.

b. Any person who obtains any benefits under this law by willfully providing false information in an effort to obtain or maintain Disability Income Benefits or Transition Payments shall be guilty of the criminal offense of defrauding the Tribe. Whoever is convicted of such offense shall be punished by incarceration for up to one (1) year in jail and/or a fine of not more than Five Thousand (\$5,000) Dollars.

c. Any person who is convicted of defrauding the Tribe may be subject to provide full restitution to the Tribe, as determined by the Tribal Court.

36 M.P.T.L. § 11

§ 11. Effective Date

This law shall take effect as of January 4, 2015.

TITLE 37. MASHANTUCKET PEQUOT TRIBAL WHISTLEBLOWER LAW

CHAPTER 1

37 M.P.T.L. ch. 1 § 1

§ 1. Title

This law shall be known and may be cited as the Whistleblower Law.

37 M.P.T.L. ch. 1 § 2

§ 2. Purpose

The Tribal Council finds and declares that it is in the vital interest of the Mashantucket Pequot Tribal Nation that its government operates in accordance with law and without fraud, waste or mismanagement. If this interest is to be protected,

tribal officials and employees must work in a climate where conscientious service is encouraged and disclosures of illegalities or improprieties may be made without reprisal or fear of reprisal.

37 M.P.T.L. ch. 1 § 3

§ 3. Reporting of Information to the Office of Legal Counsel (OLC). Investigation By OLC or Other Office as the OLC May Designate as Appropriate

a. Protected Employee: Any person having knowledge of any matter involving corruption, unethical practices, violation of applicable laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any tribal department or at any tribal enterprise, who transmits facts and information in his possession concerning such matter to the Office of Legal Counsel (OLC). The act of reporting shall be deemed protected conduct. No person shall have any cause of action under this Law unless the matter was reported to the OLC.

b. Investigation: The OLC, or other office as designated, shall review such matter and conduct an investigation into the matter as such office shall deem appropriate. OLC, or its designee, shall have power to question witnesses and require the production of any necessary books, papers or other documents, where necessary, for the purpose of investigation. Upon the conclusion of the investigation, the OLC, or its designee, shall, where necessary, report their findings to the Tribal Council.

c. Prohibited Conduct: No tribal officer or employee and no enterprise executive or employee shall take or threaten to take any personnel action against any Protected Employee in retaliation for such employee's good faith disclosure of information to the appropriate person under the provisions of Section 3(a) above.

d. Relief From Violation: If a Protected Employee alleges that a personnel action has been threatened or taken in retaliation for such employee's disclosure of information to the appropriate person under the provisions of Section 3(a) of this Law, the employee may file a complaint for the retaliatory action with the OLC who shall direct the matter to be investigated pursuant to Section 3(b) of this Law.

e. False Claims: Any employee of the tribal government, tribal enterprise or large tribal contractor, who is found to have, with knowledge, made false charges under Section 3(c) of this Law, shall be subject to disciplinary action by his/her employer up to and including dismissal.

37 M.P.T.L. ch. 1 § 4

§ 4. Remedies for Violation

a. In the event that any Protected Employee has been subject to Prohibited Conduct as described in Section 3(c) hereof, such employee shall have the following remedies:

(i) To the extent that the employee has been the subject of disciplinary action, as defined in 8 M.P.T.L. ch. 1 § 1(h), the disciplined employee may raise such issue

in an appeal taken pursuant to Title 8 and if the Court finds that the disciplinary action complained of is Prohibited Conduct, the Court may order reinstatement of the employee and/or award lost wages and benefits suffered by the employee;

(ii) In the alternative, a Protected Employee may institute an action in Tribal Court for any harm suffered by the employee as a result of such Prohibited Conduct, and as a remedy the Court may award actual damages for monetary losses, and in addition thereto the Court may fashion a remedy designed to restore the employee to any benefits or conditions of employment which the employee was deprived of by virtue of the Prohibited Conduct. Any cause of action instituted under this subsection shall, in the event of a Gaming Enterprise employee, be brought in the same manner as a tort claim under Title 4, and, in the event of a non-Gaming Enterprise employee, be brought in the same manner as a tort action to which the Tribe is a party under Title 12.

(iii) An action under Section 4(a) (ii) above must be instituted within one (1) year of the Prohibited Conduct. If an employee has asserted Prohibited Conduct in a proceeding described in Section 4(a) (i) above, they are barred from instituting an additional action under Section 4(a) (ii).

37 M.P.T.L. ch. 1 § 5

§ 5. Waiver of Sovereign Immunity

The Tribe hereby waives its sovereign immunity from suit against the Tribe and the Gaming Enterprise for actions in the Tribal Court, founded upon Prohibited Conduct as defined herein. Nothing herein shall be construed as a waiver of the sovereign immunity from suit against the Tribe or the Gaming Enterprise in state or federal court, or in any action before any state or federal agency, or in any other forum or context.

TITLE 38. SEX OFFENDER NOTIFICATION AND REGISTRATION LAW

CHAPTER 1. TITLE, FINDINGS, PURPOSE, DEFINITIONS

38 M.P.T.L. ch. 1 § 1

§ 1. Title; Authority

a. This law shall be known as the "Mashantucket Pequot Sex Offender Registration and Notification Law".

b. This Title is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket (Western) Pequot Tribe, to regulate conduct of prior convicted Sex Offenders within Tribal Lands. The Tribe has the inherent authority to exclude persons from Tribal Lands and to place conditions on entry and continued presence on Tribal Lands.

38 M.P.T.L. ch. 1 § 2

§ 2. Findings

a. Violent crime in Indian Country is more than twice the national average. Native American nations are disproportionately affected by violent crime and Sex Offenses in particular from both tribal and nontribal perpetrators; consequently, the conduct and presence of convicted Sex Offenders in Indian Country threatens the political integrity, economic security, health and welfare of tribal nations even to the point of imperiling the substance of tribal communities.

b. The Mashantucket Pequot Tribal Council finds that sex offenders present a serious risk of re-offense and that the efforts of law enforcement to protect the community, conduct investigations and to apprehend those who commit sex offenses is impaired by the lack of information available about individuals who have pled to, or have been found guilty of, sex offenses.

38 M.P.T.L. ch. 1 § 3

§ 3. Purpose

The purpose of the Mashantucket Pequot Sex Offender and Registration Law is primarily to protect the public from the risk of re-offense by convicted sex offenders through implementation of the Federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) (Codified at 42 U.S.C. §§ 16901 et seq.). This law shall be interpreted liberally to comply with the terms and conditions of SORNA and any applicable rules or regulations promulgated under SORNA, as presently written or hereafter amended.

38 M.P.T.L. ch. 1 § 4

§ 4. Definitions

a. "Abscond" means failure to register and/or leave, flee or depart quickly and secretly and hide oneself with intent to avoid arrest or prosecution.

b. "Convicted" means subjected to penal consequences based on a conviction, regardless of how the convictions may be styled. This shall include, but not be limited to, convictions and Juvenile adjudications of Minors tried as an adult in tribal, state, and federal courts. A Juvenile offender is "convicted" for the purposes of this law if the juvenile offender is either:

1. Prosecuted and found guilty as an adult for a Sex Offense; or

2. Adjudicated delinquent as a Juvenile for a Sex Offense, but only if the offender is fourteen (14) years of age at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of Section 2241 of Title 18, United States Code), or was an attempt or

conspiracy to commit such an offense.

c. "Dru Sjodin National Sex Offender Public Website" means the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.

d. "Employee" means any individual who is self-employed or works for another person or entity, including the Tribe, regardless of compensation. Volunteers, interns, externs, apprentices, and those providing community services are included within the definition of Employee for registration purposes.

e. "Employer" means the Tribe and any person or entity that has Employees who work on Tribal Lands.

f. "Employment" means compensated, volunteer, or vocational work or service on behalf of an Employer. "Employment" includes an internship, externship, apprenticeship, and community service. To be "employed" means to have such employment.

g. "Federal Offense" means an offense prosecuted under Section 1152 or 1153 of Title 18 of the United States Code or under Section 1591, or chapter 109A, 110 (other than Section 2257, 2257A, or 2258), or 117, of Title 18 of the United States Code.

h. "Foreign Conviction" means a conviction obtained outside of the United States.

i. "Homeless" means a person who does not have a permanent or temporary Residence, unless it is a homeless shelter.

j. "IAFIS" means the Integrated Automated Fingerprint Identification System, a national fingerprint and history system maintained by the Federal Bureau of Investigation.

k. "Immediate" and "immediately" means within three (3) business days.

l. "Imprisonment" and "imprisoned" means incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local tribal "jail". Persons under "house arrest" following conviction of a registerable Sex Offense are required to register pursuant to the provisions of this code during their period of "house arrest".

m. "Indian" means a person who is a member of a federally recognized Indian Tribe.

n. "Jurisdiction" means the 50 states, the District of Columbia, the five principal U.S. territories, i.e., the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe that elects to function as a registration jurisdiction under SORNA.

o. "Juvenile" means an individual under the age of eighteen (18).

p. "Loiter" means standing or sitting idly whether in or out of a vehicle, or remaining in or around property, not their own, without permission or a legitimate

reason.

q. "Minor" means an individual who has not attained the age of eighteen (18) years.

r. "National Crime Information Center" or "NCIC" means the computerized index of criminal justice information maintained by the Federal Bureau of Investigation.

s. "NSOR" means the National Sex Offender Registry, the national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16919.

t. "Playground" means a small or large open space where Minors play or gather with or without dedicated play equipment and/or is a place, often part of a school yard, for outdoor games and recreation, an athletic field, playing field or court.

u. "Primary address" means the mailing address of the person's dwelling, including physical location of the dwelling described with as much specificity as possible.

v. "Police Department" means the Mashantucket Pequot Tribal Police Department or Mashantucket Pequot police force or any sworn officer of that force.

w. "Public Website" means the Mashantucket Pequot Sex Offender Registry Public Website.

x. "Residence" or "Residency" means a place where a person, including Students, temporary Employees, and military personnel on assignment, is living or temporarily staying for longer than thirty (30) consecutive days, such as a shelter or structure that can be located by a street address or landmarks, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

y. "Reside" or "Resides" means with respect to an individual, the location of the individual's home or other place where the individual lives, sleeps, or frequents for more than thirty (30) consecutive days.

z. "School" means a building, facility, or room in a building or facility designated as a place for instruction, education, teaching, learning, or academics and is a public or private daycare, childcare facility, preschool, elementary school, secondary school, trade school, professional school, or institute of higher learning where teaching, training, supervision, recreation, and/or medical services for Minors, for the disabled, or for the elderly, or anytime care given to preschool children or to Minors after school or during school vacation, as at a day care center, or to the elderly as at a social agency. "School" includes but is not limited to the Mashantucket Pequot Child Development Center and the Mashantucket Pequot Community Center.

aa. "School Personnel" means teachers, caregivers, the principal, or superintendent of Schools, a member of the School board or Employee or any entity working for, or rendering or exchanging any service or performing any act for or on behalf of the Tribe in any capacity full or part time.

bb. "Secondary Address" means a mailing address of any place where the person regularly or occasionally stays overnight, including the physical location of the

place described with as much specificity as possible.

cc. "Sexual Act" or "Sexual Activity" means:

1. Contact between the penis and the vulva or the penis and the anus; for purposes of this definition, contact involving the penis occurs upon penetration, however slight.
2. Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.
3. The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
4. The intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of eighteen (18) years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

dd. "Sexual Contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

ee. "Sex Offender" means a person convicted of a Sex Offense in any state, federal, tribal, foreign, or military court.

ff. "Sex Offender Registry" means the registry of Sex Offenders, and a notification program, maintained by the Police Department.

gg. "Sex Offense" means the crimes appearing in SORNA § 111(5) [42 U.S.C. § 1699(5) as amended], and those offenses enumerated in this Law or any other registerable offense under federal, state, military, foreign, or tribal law, and any criminal offense that has an element involving a Sexual Act or Sexual Contact with another, except

1. Offenses involving consensual sexual conduct if

- a. the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or
- b. the victim was at least thirteen (13) years old and the offender was not more than four (4) years older than the victim.

2. A Foreign Conviction unless it was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country which the U.S. State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

hh. "SMART Office" means the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, which was established within the United

States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

ii. "SORNA" means the Sex Offender Registration and Notification Act (Title 1 of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. § 16911 *et seq.*, as amended.

jj. "Specified Offense Against a Minor" means an offense against a Minor that involves any of the following:

1. An offense (unless committed by a parent or guardian) involving kidnapping;
2. An offense (unless committed by a parent or guardian) involving false imprisonment;
3. Solicitation to engage in sexual conduct;
4. Use in a sexual performance;
5. Solicitation to practice prostitution;
6. Video voyeurism as described in Section 1801 of Title 18 of the United States Code;
7. Possession, production, or distribution of child pornography;
8. Criminal sexual conduct involving a Minor, or the use of the internet to facilitate or attempt such conduct; or
9. Any conduct that by its nature is a Sex Offense against a Minor.

kk. "Student" means a person who enrolls in or attends either a private or public education institution, including a daycare, childcare facility, preschool, secondary school, trade, or professional school, or an institution of higher education. "Student" includes an intern, extern, and apprentice.

ll. "Temporary Lodging" means any place in which an offender under this Title lives, sleeps, or frequents for more than seven (7) consecutive days (168 hours).

mm. "Tier-1 Sex Offender" or a Sex Offender designated as "Tier-1" means a person who has been convicted of a Tier-1 Sex Offense as defined in Chapter 2, Section 3(a) of this Title.

nn. "Tier-2 Sex Offender" or a "Sex Offender" designated as "Tier-2" means a person who has been convicted of a Tier-2 Sex Offense as defined in Chapter 2, Section 3(b) of this Title or who is subject to the recidivist provisions of Chapter 2, Section 2(b) (1).

oo. "Tier-3 Sex Offender" or a "Sex Offender" designated as "Tier-3" means a person who has been convicted of a "Tier-3" Sex Offense as defined in Chapter 2, Section 3(c) (1) of this Title or who is subject to the recidivist provisions of Chapter 2, Section 3(c) (1) of this Title.

pp. "Transient" means a person who lacks a Residence.

qq. "Tribal Court" means the Mashantucket Pequot Tribal Court or any court established by the Tribe to adjudicate and enforce the provisions of this Title or violations of other tribal laws.

rr. "Tribal Lands" means the Mashantucket Pequot Reservation as that term is defined in 25 U.S.C. § 1752(7) together with any land held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

ss. "Tribe" means the Mashantucket (Western) Pequot Tribe, also known as the Mashantucket Pequot Tribal Nation, including but not limited to any arm, agency, department, subdivision, enterprise, entity or organization within or wholly owned by the Tribe. "Tribe" does not include any entity created by the Tribe under state laws that is located and operates principally outside of Tribal Lands. "Tribal" refers to this Tribe.

tt. "Visit" means any Temporary Lodging on Tribal Lands of more than seven (7) consecutive days (168 hours).

uu. "Visitor" means any person staying for seven (7) consecutive days (or 168 hours) on Tribal Lands.

CHAPTER 2. REGISTRIES, OFFENSES, TIERS

38 M.P.T.L. ch. 2 § 1

§ 1. Creation of Registries

a. Sex Offender Registry. There is hereby established a sex offender registry program called the Mashantucket Pequot Sex Offender Registry, which the Tribal Police Department shall maintain and operate pursuant to the provisions of this law.

b. Public Sex Offender Registry Website. There is hereby established a public sex offender registry website called the Mashantucket Pequot Sex Offender Registry Public Website, which the Tribal Police Department shall maintain and operate pursuant to the provisions of this law.

38 M.P.T.L. ch. 2 § 2

§ 2. Registerable Offenses

Individuals who have been convicted of any of the following offenses and who reside or are Visitors on property within the exterior boundaries of Tribal Lands, regardless of location; or who are employed within Tribal Lands; or who attend School on Tribal Lands; are subject to the requirements of this Title:

a. Attempts and conspiracies. Any attempt or conspiracy to commit any Sex Offense,

including those enumerated in this subsection.

b. A criminal offense that is a Specified Offense Against a Minor.

c. Tribal offenses. Any Sex Offenses codified in Title 2 of the Mashantucket Pequot Tribal Laws. Such laws include, but are not limited to, the following:

1. Mash. Pequot Crim. Code § 53-21 (Injury, or risk of injury to, or impairing morals of, children; Sale of children);
2. Mash. Pequot Crim. Code § 53a-70 (sexual assault in the first degree);
3. Mash. Pequot Crim. Code § 53a-70a (aggravated sexual assault in the first degree);
4. Mash. Pequot Crim. Code § 53a-70b (sexual assault in spousal or cohabiting relationship);
5. Mash. Pequot Crim. Code § 53a-70c (aggravated sexual assault of a Minor);
6. Mash. Pequot Crim. Code § 53a-71 (sexual assault in the second degree);
7. Mash. Pequot Crim. Code § 53a-72a (sexual assault in the third degree);
8. Mash. Pequot Crim. Code § 53a-72b (sexual assault in the third degree with a firearm);
9. Mash. Pequot Crim. Code § 53a-73a (sexual assault in the fourth degree);
10. Mash. Pequot Crim. Code §§ 53a-86 through 88 (promoting prostitution);
11. Mash. Pequot Crim. Code § 53a-89 (permitting prostitution);
12. Mash. Pequot Crim. Code § 53a-90a (enticing a Minor);
13. Mash. Pequot Crim. Code § 53a-90b (misrepresenting age to entice a Minor);
14. Mash. Pequot Crim. Code § 53a-92 (a) (2) (kidnapping with intent to commit physical or sexual abuse);
15. Mash. Pequot Crim. Code § 53a-92a (kidnapping with firearm) when intent is to commit physical or sexual abuse;
16. Mash. Pequot Crim. Code § 53a-189a (voyeurism);
17. Mash. Pequot Crim. Code § 53a-192(a) (1) if the offense involves a Sexual Act or an offense against a Minor (coercion);
18. Mash. Pequot Crim. Code § 53a-194 when it involves a Minor (obscenity);
19. Mash. Pequot Crim. Code § 53a-196 (obscenity as to Minors);
20. Mash. Pequot Crim. Code § 53a-196a (employing a Minor in an obscene performance);

21. Mash. Pequot Crim. Code § 53a-196b (promoting a Minor in an obscene performance);
 22. Mash. Pequot Crim. Code § 53a-196c (importing child pornography);
 23. Mash. Pequot Crim. Code § 53a-196d (possessing child pornography in the first degree);
 24. Mash. Pequot Crim. Code § 53a-196e (possessing child pornography in the second degree);
 25. Mash. Pequot Crim. Code § 53a-196f (possessing child pornography in the third degree);
 26. Mash. Pequot Crim. Code § 53a-196h (possessing or transmitting child pornography by Minor);
 27. Mash. Pequot Crim. Code § 53a-223 (formerly § 53a-110b) (criminal violation of a protective order) when involving a sex offense.
- d. Federal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of "Sex Offense" at 42 U.S.C. § 16911(5):
1. 18 U.S.C. § 1591 (sex trafficking of children);
 2. 18 U.S.C. § 1801 (video voyeurism of a Minor);
 3. 18 U.S.C. § 2241 (aggravated sexual abuse);
 4. 18 U.S.C. § 2242 (sexual abuse);
 5. 18 U.S.C. § 2243 (sexual abuse of a Minor or ward);
 6. 18 U.S.C. § 2244 (abusive Sexual Contact);
 7. 18 U.S.C. § 2245 (offenses resulting in death);
 8. 18 U.S.C. § 2251 (sexual exploitation of Minors);
 9. 18 U.S.C. § 2251A (selling or buying of Minors);
 10. 18 U.S.C. § 2252 (material involving the sexual exploitation of a Minor);
 11. 18 U.S.C. § 2252A (material containing child pornography);
 12. 18 U.S.C. § 2252B (misleading domain names on the internet);
 13. 18 U.S.C. § 2252C (misleading words or digital images on the internet);
 14. 18 U.S.C. § 2260 (production of sexually explicit depictions of a Minor for import into the U.S.);

15. 18 U.S.C. § 2421 (transportation of a Minor for illegal Sexual Activity);
16. 18 U.S.C. § 2422 (coercion and enticement of a Minor for illegal Sexual Activity);
17. 18 U.S.C. § 2423 (Transportation of Minors for Illegal Sexual Activity, Travel with the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in Illicit Sexual Conduct in Foreign Places (Mann Act));
18. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual);
19. 18 U.S.C. § 2425 (transmitting information about a Minor to further criminal sexual conduct).

e. Foreign Offenses. Any conviction for a Sex Offense involving any conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand. A Foreign Conviction is not a Sex Offense for the purposes of this law unless it was either:

1. Obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand; or
2. Under the laws of any foreign country, when the United States State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial, including ensuring sufficient safeguards for fundamental fairness and due process, in that country during the year in which the conviction occurred.

f. Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note 2).

g. Juvenile Offenses or Adjudications. Any Sex Offense, or attempt or conspiracy to commit a Sex Offense, committed by a person who was a juvenile at the time of the offense and

1. Was prosecuted and convicted as an adult; or
2. Was adjudicated delinquent as a Juvenile for a Sex Offense, but only if:
 - (A) The offender was fourteen (14) years of age or older at the time of the offense, and
 - (B) The offense adjudicated was comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. § 2241). This includes engaging in a Sexual Act with another by force or the threat of serious violence, or engaging in a Sexual Act with another by rendering unconscious or involuntarily drugging the victim.

h. Other Registerable Offenses. Any Sex Offense, as defined in this Title, committed in any state, territory, or other tribal Jurisdiction, including the District of Columbia, that led to a conviction.

38 M.P.T.L. ch. 2 § 3

§ 3. Tiered Offenses

a. Tier-1 Offenses:

1. Sex Offenses. A Tier-1 offense includes any Sex Offense for which a person has been convicted in a state, local, foreign, and/or tribal jurisdiction, or an attempt or conspiracy to commit such an offense, that is not a Tier-2 or Tier-3 offense.

2. Offenses involving Minors. A Tier-1 offense also includes any offense, not otherwise classified in Tier-2 or Tier-3 below, for which a person has been convicted by any federal, state, foreign, and/or tribal jurisdiction that involves the false imprisonment of a Minor, video voyeurism of a Minor, or possession or receipt of child pornography;

3. Tribal Offenses. Conviction for any of the following Tribal or state offenses shall be considered conviction for a Tier-1 offense:

(A) Mash. Pequot Crim. Code § 53a-70b (sexual assault in spousal or cohabiting relationship);

(B) Mash. Pequot Crim. Code § 53a-73a when the victim is not a Minor (sexual assault in the fourth degree);

(C) Mash. Pequot Crim. Code § 53a-89 (permitting prostitution);

(D) Mash. Pequot Crim. Code § 53a-194 when it involves a Minor (obscenity); or

(E) Mash. Pequot Crim. Code § 53a-196d (possessing child pornography in the first degree).

4. Federal Offenses. Conviction for any of the following Federal Offenses shall be considered a conviction for Tier-1 offense:

(A) 18 U.S.C. § 1801 (video voyeurism of a Minor);

(B) 18 U.S.C. § 2252 (receipt or possession of child pornography);

(C) 18 U.S.C. § 2252A (receipt or possession of child pornography);

(D) 18 U.S.C. § 2252B (misleading domain names on the internet);

(E) 18 U.S.C. § 2252C (misleading words or digital images on the internet);

(F) 18 U.S.C. § 2422(a) (coercion to engage in prostitution);

(G) 18 U.S.C. § 2423(b) (travel with the intent to engage in illicit conduct);

(H) 18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places);

(I) 18 U.S.C. § 2423(d) (arranging, inducing, procuring, or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain),

(J) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual);
or

(K) 18 U.S.C. § 2425 (transmitting information about Minor to further criminal sexual conduct).

5. Certain Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(c)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note 2) that is similar to those offenses outlined in subsections (1), (2), (3), or (4) of Chapter 2, Section 3(a) above [38 M.P.T.L. ch. 2 § 3(a)(1)-(4)] shall be considered a Tier-1 offense.

b. Tier-2 Offenses. A Tier-2 Offense is any of the following:

1. Recidivism and Felonies. Unless otherwise covered by a Tier-3 offense, any Sex Offense that is not the first Sex Offense for which a person has been convicted in a state, local, foreign, and/or tribal jurisdiction, and is an offense punishable by no more than one (1) year's imprisonment or is an offense punishable by more than six (6) months' imprisonment in a jurisdiction limited to one-year sentencing, is considered a Tier-2 offense.

2. Offenses involving Minors. A Tier-2 offense includes any Sex Offense against a Minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense that involves:

(A) The use of Minors in prostitution, including solicitations;

(B) Enticing a Minor to engage in criminal Sexual Activity;

(C) A non-forcible Sexual Act with a Minor sixteen (16) or seventeen (17) years old;

(D) Sexual Contact with a Minor thirteen (13) years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body;

(E) The use of a Minor in sexual performance, or;

(F) The production or distribution of child pornography.

3. Certain Tribal Offenses. Conviction for any of the following Tribal or state offenses shall be considered conviction for a Tier-2 offense:

(A) Mash. Pequot Crim. Code § 53-21 (Injury, or risk of injury to, or impairing morals of, children; Sale of children);

(B) Mash. Pequot Crim. Code § 53a-71 when the victim is not a Minor (sexual assault in the second degree);

(C) Mash. Pequot Crim. Code § 53a-72a (sexual assault in the third degree);

(D) Mash. Pequot Crim. Code § 53a-73a when the victim is a Minor (sexual assault in the fourth degree);

(E) Mash. Pequot Crim. Code § 53a-87 through 88 (promoting prostitution in the second and third degrees);

(F) Mash. Pequot Crim. Code § 53a-90a (enticing a Minor);

(G) Mash. Pequot Crim. Code § 53a-90b (misrepresentation of age to entice a Minor);

(H) Mash. Pequot Crim. Code § 53a-189a (voyeurism);

(I) Mash. Pequot Crim. Code § 53a-192(a) (1) (coercion, if the offense involves a Sexual Act or a Specified Offense Against a Minor);

(J) Mash. Pequot Crim. Code § 53a-196 (obscenity as to Minors);

(K) Mash. Pequot Crim. Code § 53a-196e (possessing child pornography in the second degree);

(L) Mash. Pequot Crim. Code § 53a-196f (possessing child pornography in the third degree);

(M) Mash. Pequot Crim. Code § 53a-196h (possessing or transmitting child pornography by minor); or

(N) Mash. Pequot Crim. Code § 53a-223 (formerly § 53a-110b) (criminal violation of a protective order), when involving a sex offense.

4. Certain Federal Offenses. Conviction for any of the following Federal Offenses shall be considered a conviction for a Tier-2 offense:

(A) 18 U.S.C. § 1591 (sex trafficking by force, fraud or coercion);

(B) 18 U.S.C. § 2244 (abusive Sexual Contact, where the victim is thirteen (13) years of age or older);

(C) 18 U.S.C. § 2251 (sexual exploitation of children);

(D) 18 U.S.C. § 2251A (selling or buying of children);

(E) 18 U.S.C. § 2252A (production or distribution of material containing child pornography);

(F) 18 U.S.C. § 2260 (production of sexually explicit depictions of a Minor for import into the United States);

(G) 18 U.S.C. § 2421 (transportation of a Minor for illegal Sexual Activity);

(H) 18 U.S.C. § 2422(b) (coercing a Minor to engage in prostitution);

(I) 18 U.S.C. § 2423(a) (transporting a Minor to engage in illicit conduct); or

(J) 18 U.S.C. § 2423(d) (arranging, inducing, procuring or facilitating travel in interstate commerce of a Minor for the purpose of engaging in illicit conduct for financial gain).

5. Certain Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note 2) that is similar to those offenses outlined in subsections (1), (2), (3), or (4) of Chapter 2, Section 3(b) above [38 M.P.T.L. ch. 2 § 3(b)(1)-(4)] shall be considered a Tier-2 offense.

c. Tier-3 Offenses. A Tier-3 Offense is any of the following:

1. Recidivism and Felonies. Any Sex Offense that is punishable by more than one (1) year in jail where the offender has at least one (1) prior conviction for a Tier-2 Sex Offense, or has previously become a Tier-2 Sex Offender, is a Tier-3 Sex Offense.

2. General Offenses. A Tier-3 offense includes any Sex Offense for which a person has been convicted in a state, local, foreign, or tribal jurisdiction, or an attempt or conspiracy to commit such an offense, which involves:

(A) Non-parental kidnapping of a Minor;

(B) A Sexual Act with another by force or threat;

(C) A Sexual Act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of either appraising the nature of the conduct or declining to participate; or

(D) Sexual Contact with a Minor twelve (12) years of age or younger, including offenses that cover Sexual Contact with the intimate parts of the body, either directly or through the clothing.

3. Certain Tribal Offenses. Conviction for any of the following Tribal or state offenses shall be considered conviction for a Tier-3 offense:

(A) Mash. Pequot Crim. Code § 53-21 (Injury or risk of injury to, or impairing morals of minors, when inclusive with another Sex Offense; Sale of minors);

(B) Mash. Pequot Crim. Code § 53a-70 (sexual assault in the first degree);

(C) Mash. Pequot Crim. Code § 53a-70a (aggravated sexual assault in the first degree);

(D) Mash. Pequot Crim. Code § 53a-70c (aggravated sexual assault of a Minor);

(E) Mash. Pequot Crim. Code § 53a-7I when the victim is a Minor (sexual assault in the second degree);

(F) Mash. Pequot Crim. Code § 53a-72b (sexual assault in the third degree with a

firearm);

(G) Mash. Pequot Crim. Code § 53a-86 (promoting prostitution in the first degree);

(H) Mash. Pequot Crim. Code § 53a-92 (a) (2) (kidnapping with intent to commit physical or sexual abuse);

(I) Mash. Pequot Crim. Code § 53a-92a (kidnapping with firearm) when intent is to commit physical or sexual abuse;

(J) Mash. Pequot Crim. Code § 53a-196a (employing a Minor in an obscene performance);

(K) Mash. Pequot Crim. Code § 53a-196b (promoting a Minor in an obscene performance);

(L) Mash. Pequot Crim. Code § 53a-196c (importing child pornography); or

(M) Mash. Pequot Crim. Code § 53a-196d (possessing child pornography in the first degree).

4. Certain Federal Offenses. Conviction for any of the following Federal Offenses shall be considered conviction for a Tier-3 offense:

(A) 18 U.S.C. § 2241 (aggravated sexual abuse);

(B) 18 U.S.C. § 2242 (sexual abuse);

(C) 18 U.S.C. § 2243 (sexual abuse of a Minor or ward);

(D) Where the victim is twelve (12) years of age or younger, 18 U.S.C. § 2244 (abusive Sexual Contact).

5. Certain Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a) (8) (C) (i) or Public Law 105-119 (codified at 10 U.S.C. § 951 note 2) that is similar to those offenses outlined in subsections (1), (2), (3), or (4) of Chapter 2, Section 3(c) above [38 M.P.T.L. ch. 2 § 3(c) (1)-(4)] shall be considered a Tier-3 offense.

CHAPTER 3. REGISTRATION AND VERIFICATION REQUIREMENTS

38 M.P.T.L. ch. 3 § 1

§ 1. Registration, Verification and In-Person Appearance Requirements

a. General Requirements.

1. Duties. A Sex Offender covered by this Title who is required to register with the Tribe pursuant to this Title shall provide all of the information detailed in this Chapter to the Police Department. The Police Department shall obtain all of the information detailed in this Chapter from registerable Sex Offenders who are required to register with the Tribe and shall implement any relevant policies and

procedures.

2. Digitization. All information obtained under this Chapter shall be, at a minimum, maintained by the Police Department in a digitized format.

3. Electronic Database. A Sex Offender registry shall be maintained in an electronic database by the Police Department and shall be in a form capable of electronic transmission.

b. Where Registration is Required.

1. Jurisdiction of Conviction. A Sex Offender must initially register with the Police Department if the Sex Offender was convicted in the Tribal Court of a registerable Sex Offense, regardless of the Sex Offender's actual or intended Residency.

2. Jurisdiction of Incarceration. A Sex Offender must register with the Police Department if the Sex Offender is imprisoned by the Tribe while completing any sentence for a registerable Sex Offense, regardless of whether it is the same Jurisdiction as the Jurisdiction of conviction or Residence.

3. Jurisdiction of Residence. A Sex Offender must register with the Police Department if the Sex Offender resides or is Homeless or is a Transient within Tribal Lands.

4. Jurisdiction of Employment. A Sex Offender must register with the Police Department if the Sex Offender is an Employee of the Tribe or within Tribal Lands.

5. Jurisdiction of School Attendance. A Sex Offender must register with the Police Department if the Sex Offender is a Student in any capacity within Tribal Lands. A Sex Offender at any School within a Jurisdiction found in this section is required to register with that Jurisdiction.

6. Jurisdiction of Visitor. A Sex Offender who is a Visitor under this Chapter shall register with the Police Department within twenty-four (24) hours of such Visit.

c. Timing of Registration. A Sex Offender required to register with the Tribe under this Title shall do so in-person and in the following timeframe:

1. If convicted by the Tribal Court for a registerable Sex Offense and imprisoned, the Sex Offender must register before being released from Imprisonment.

2. If convicted by the Tribal Court but not imprisoned, immediately after sentencing for the registerable offense, and within twenty-four (24) hours of establishing a Residence, commencing Employment, or becoming a Student on Tribal Lands.

3. If a Visitor convicted for a registerable Sex Offense by the Tribal Court or any other court enumerated in this Chapter, before entry onto Tribal Lands. If circumstances do not permit such registration, then within twenty-four (24) hours after entry onto Tribal Lands.

4. For convictions in any other court, including, but not limited to convictions in state, federal, military, foreign, or tribal courts, a Sex Offender must appear in-person to register with the Police Department, no later than twenty-four (24)

hours of establishing a Residence, commencing Employment, or becoming a Student on Tribal Lands.

5. If imprisoned in any tribal, state, federal, military or foreign Jurisdiction as limited by this Title, before release from Imprisonment for the registerable offense.

d. Duties of the Police Department. The Police Department or its designees shall have policies and procedures in place to ensure the following:

1. That any Sex Offender imprisoned or sentenced by the Tribe for a registerable Sex Offense completes their initial registration with the Police Department;

2. That any Sex Offender initially registering with the Tribe is informed of their duties under SORNA and this Title, and that such duties under SORNA and this Title are explained to them;

3. That the Sex Offender reads, or has read to them, and signs an Acknowledgement Form stating that the duty to register has been explained to them and that the Sex Offender understands the registration requirement;

4. That the Sex Offender is registered and added to the Public Website;

5. That upon entry of the Sex Offender's information into the Mashantucket Pequot Sex Offender Registry, that information is immediately forwarded to all other Jurisdictions in which the Sex Offender is required to register due to the Sex Offender's Residency, Employment, or Student status;

6. That all information is immediately entered and updated in NCIC and NSOR; and

7. That the text of each provision of law mentioned in Chapter 3, Section 2(q) (1) (A), below, shall be cross-linked to the Sex Offender Registry.

e. Retroactive Registration and Recapture. The Police Department shall have policies and procedures in place to ensure the following three (3) categories of Sex Offenders are subject to the registration and updating requirements of this Chapter:

1. Sex Offenders imprisoned or under the supervision of the Tribe, whether for a registerable Sex Offense or other crime;

2. Sex Offenders already registered or subject to a pre-existing Sex Offender registration requirement under the Tribe's laws, and;

3. Sex Offenders reentering the justice system due to conviction for any crime.

f. Timing of Recapture. The Police Department shall ensure recapture of the Sex Offenders mentioned in Chapter 3, Section 1(e), above, within the following timeframe to be calculated from the date of passage of this Chapter:

1. For Tier-1 Sex Offenders, one (1) year;

2. For Tier-2 Sex Offenders, one hundred eighty (180) days;

3. For Tier-3 Sex Offenders, ninety (90) days.

g. Changes in Information/Keeping Registration Current.

1. Jurisdiction of Residency. All Sex Offenders who reside on Tribal Lands and are required to register in this jurisdiction shall, within twenty-four (24) hours of knowledge of a change in Residency, appear in person at the Police Department to update any changes to their name, Primary or Secondary Residence (including termination of Residency), Employment, or School attendance. All Sex Offenders required to register in this jurisdiction shall, within twenty-four (24) hours, inform the Police Department in person of any changes to their Temporary Lodging information, vehicle information, internet identifiers, email addresses, instant message addresses, and any other designations used in internet communications, postings, or telephone communications or numbers. A registerable Sex Offender who is absent from his or her Residence or Temporary Lodging for seven (7) or more consecutive days shall provide to the Police Department, in-person and no later than seven (7) days before the scheduled domestic travel, or no later than twenty one (21) days before international travel, the following information:

(A) Identifying information of where the Sex Offender will be in Temporary Lodging, including addresses and names, and;

(B) The dates the Sex Offender will be staying at each temporary location,

and the Police Department shall immediately notify the Jurisdiction in which the Sex Offender will be temporarily staying.

2. Jurisdiction of School Attendance. Any Sex Offender who is a Student in any capacity within Tribal Lands, regardless of location, that changes his/her School, or otherwise terminates his/her schooling shall, within twenty-four (24) hours of the change, appear in person at the Police Department to update that information. The Police Department shall ensure that each Jurisdiction in which the Sex Offender is required to register, or was required to register prior to the updated information being given, is immediately notified of the change.

3. Jurisdiction of Employment. Any Sex Offender who is an Employee within Tribal Lands, regardless of location, who changes or otherwise terminates his/her Employment shall, within twenty-four (24) hours of the change, appear in-person at the Police Department to update that information. The Police Department shall ensure that each Jurisdiction in which the Sex Offender is required to register, or was required to register prior to the updated information being given, is immediately notified of the change.

4. Jurisdiction of Visitor. A Sex Offender must register with the Police Department if the Sex Offender visits Tribal Lands for seven (7) consecutive days (168 hours) or more.

5. Duties of the Police Department. With regard to changes in a Sex Offender's registration information, the Police Department, shall notify:

(A) All Jurisdictions where a Sex Offender intends to reside, work, or attend School.

(B) Any Jurisdiction where the Sex Offender is either registered or required to register.

(C) Specifically with respect to information relating to a Sex Offender's intent to commence Residence, School, or Employment outside of the United States, any Jurisdiction where the Sex Offender is either registered or required to register, and the U.S. Marshals Service. The Police Department shall also ensure this information is immediately provided to the Connecticut State Police for update into NCIC.

h. Failure to Appear or Register; Absconding.

1. Failure to Appear. In the event another Jurisdiction notifies the Police Department of a registered Sex Offender's proposed commencement of Residency, Employment, or School attendance on Tribal Lands, and that Sex Offender fails to register with the Tribe as required by this Title, the Police Department shall immediately inform the Jurisdiction that provided notification that the offender failed to appear for registration.

2. Failure to Register. In the event a Sex Offender, who is required to register due to his or her Residence, Employment, or School attendance, fails to do so or otherwise violates a registration requirement of this Chapter, the Police Department shall take all appropriate follow-up measures including those outlined below in Chapter 3, Section 1(h)(3). The Police Department shall first make an effort to determine if the Sex Offender actually resides, is an Employee or Student on Tribal Lands. In the event another Jurisdiction had notified the Police Department of the offender's Residence, Employment, or School attendance on Tribal Lands, the Police Department shall immediately inform the Jurisdiction which provided notification to the Tribe that the Sex Offender failed to register with the Tribe.

3. Absconded Sex Offender. If the Police Department receives information that a Sex Offender has absconded, the Police Department shall make an effort to determine if the Sex Offender has actually absconded.

(A) In the event no determination can be made, the Police Department or designee shall ensure the appropriate law enforcement agency is notified.

(B) If the information indicating the possible absconding came through notice from another Jurisdiction or federal authorities, the Police Department shall inform them that the Sex Offender failed to appear and register.

(C) If an absconded Sex Offender cannot be located, the Police Department shall take the following steps:

(i) Update the Sex Offender Registry and Public Website to reflect the Sex Offender has absconded or is otherwise not capable of being located;

(ii) Notify the U.S. Marshals Service;

(iii) Seek a warrant for the Sex Offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the Sex Offender's

arrest;

(iv) Update the NCIC and NSOR to reflect the Sex Offender's status as an absconder, or is otherwise not capable of being located; and

(v) Enter the Sex Offender into the National Crime Information Center Wanted Person File.

i. Frequency and Duration of In-Person Registration. A Sex Offender who is required to register shall, at a minimum, appear in-person at the Police Department for purposes of verification and keeping their registration current in accordance with the following time frames:

1. Tier-1 Sex Offenders must register once every year for fifteen (15) years from either the time of release from custody if imprisoned for the registerable offense, or from the date of sentencing if not imprisoned for the registerable offense.

2. Tier-2 Sex Offenders must register once every one hundred eighty (180) days for twenty-five (25) years from either the time of release from custody if imprisoned for the registerable offense, or from the date of sentencing if not imprisoned for the registerable offense.

3. Tier-3 Sex Offenders must register once every ninety (90) days for the rest of their lives.

j. Requirements for In-Person Appearances. A Sex Offender who is required to appear "in-person" shall comply with the following:

1. Photographs. At each in-person verification, the Sex Offender shall permit the Police Department to take a photograph of the Sex Offender.

2. Review of Information. At each in-person verification, the Sex Offender shall review existing information for accuracy.

3. Notification. If any new information or change of information is obtained at an in-person verification, the Police Department shall immediately update the NCIC and NSOR.

k. Address Verification; Homeless; Transient. A Sex Offender who is required to register under this Title shall register at the local Jurisdiction in-person.

1. Homeless; Transient. A Sex Offender who is Homeless or Transient shall verify his or her address (city, county, township, and street) daily with the Police Department, even if that address is a temporary abode at the home of a family member or friend or at a shelter or a bench on a specific street or a tent in a particular location or any such place where the Sex Offender frequents or stations himself or herself during the day or sleeps at night.

i. Mandatory Disclosure

1. Employees. A Sex Offender who works or volunteers for an Employer where the Employee will have direct contact with Minors shall notify the Employer of the Sex

Offender's conviction at the time of application for Employment, or at a minimum upon commencing Employment. Such notification must be in writing to the Employer. The Employer must notify potential Employees of this disclosure requirement upon application of the Employee, or prior to acceptance of the Employee's service, whichever comes first. The Employer must also notify the Police Department of any acceptance of a Sex Offender as an Employee.

2. Disclosure regardless of Conviction Date. Any person required to register under this Title must disclose the information required by this Title regardless of the date of conviction.

3. Disqualifications. Applicants who fail to meet standards of character outlined in 25 U.S.C. § 3207 and any regulations promulgated under it may not be employed by the Tribe or Employers.

38 M.P.T.L. ch. 3 § 2

§ 2. Required Information

a. Criminal History. The Police Department shall obtain, and a registerable Sex Offender shall provide, the following information related to the Sex Offender's criminal history:

1. The date of all arrests;
2. The date and place of all convictions, including adjudications or acquittals by reason of insanity;
3. The Sex Offender's status of parole, probation, or supervised release;
4. The Sex Offender's registration status; and
5. Any outstanding arrest warrants.

b. Date of Birth. The Police Department shall obtain, and a registerable Sex Offender shall provide, the following information related to the Sex Offender's date of birth:

1. The Sex Offender's actual date of birth; and
2. Any other date of birth used by the Sex Offender.

c. DNA Sample.

1. DNA. If the Sex Offender's DNA is not already contained in the Combined DNA Index System (CODIS), the Sex Offender shall provide the Police Department a sample of his DNA.

2. CODIS. Any DNA sample obtained from a Sex Offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile into CODIS.

d. Driver's Licenses, Identification Cards, Passports, and Immigration Documents.

1. Driver's License. A Sex Offender shall provide all of the Sex Offender's valid driver's licenses issued by any jurisdiction. The Police Department shall obtain a photocopy of any such licenses.

2. Identification Cards, Passports, and Immigration Documents. A Sex Offender shall provide any passports, immigration documents, and identification cards, including the Sex Offender's tribal enrollment card, issued by any jurisdiction. The Police Department shall make a photocopy of any such identification cards, passports, or immigration documents.

e. Employment Information. The Police Department shall obtain, and a Sex Offender shall provide, the following information related to the Sex Offender's Employment, to include any and all places where the Sex Offender is or will be employed in any means, including volunteer and unpaid positions:

1. The name of the Sex Offender's Employer,
2. The address of the Sex Offender's Employer, and
3. Similar information related to any transient or day labor Employment.

f. Finger and Palm Prints. The Police Department shall obtain, and a Sex Offender shall provide, both finger prints and palm prints of the Sex Offender in a digitized format. The Police Department shall provide the fingerprint information to the IAFIS and the palm prints to the FBI Next Generation Identification Program, or in accordance with 42 U.S.C. § 16901 et seq.

g. Internet Identifiers/Internet Names. The Police Department shall obtain, and a Sex Offender shall provide, the following information related to the Sex Offender's internet-related activity:

1. Any and all email addresses used by the Sex Offender;
2. Any and all Instant Message addresses and identifiers;
3. Any and all other designations or monikers used for self-identification in internet communications or postings; and
4. Any and all designations used by the Sex Offender for the purpose of routing or self-identification in internet communications or postings, including but not limited to social network identifications, Twitter accounts, and video posting site identifications such as YouTube.

h. Name. The Police Department shall obtain, and a Sex Offender shall provide, the following information related to the Sex Offender's name:

1. The Sex Offender's full primary given name;
2. Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used; and

3. Any and all ethnic or tribal names by which the Sex Offender is commonly known.

i. Phone Numbers. The Police Department shall obtain, and a Sex Offender shall provide, any and all telephone numbers and any other designations used by the Sex Offender for purposes of routing or self-identification in telephonic communication, including but not limited to:

1. Any and all land line telephone numbers,
2. Any and all cellular telephone numbers, and
3. Any and all Voice-Over IP telephone numbers.

j. Picture

1. Photograph. The Police Department shall obtain, and a registerable Sex Offender shall provide, a current photograph of the Sex Offender.

2. Update Requirements: Unless the appearance of a Sex Offender has not changed significantly, a digitized photograph shall be collected:

- (A) every ninety (90) days for Tier-3 Sex Offenders,
- (B) every one hundred eighty (180) days for Tier-2 Sex Offenders, and
- (C) every year for Tier-1 Sex Offenders.

3. A Sex Offender who changes his or her appearance between the registration deadlines of Chapter 3, Section 2(j) (2) above shall, within twenty-four (24) hours, appear in-person to the Police Department so as to provide a current and accurate photograph.

k. Physical Description. The Police Department shall obtain, and a Sex Offender shall provide, an accurate description of the Sex Offender as follows:

1. A physical description;
2. A general description of the Sex Offender's physical appearance or characteristics; and
3. Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

1. Professional Licensing Information. The Police Department shall obtain, and a Sex Offender shall provide, all licensing of the Sex Offender that authorizes the Sex Offender to engage in an occupation or carry out a trade or business.

m. Residence Address. The Police Department shall obtain, and a Sex Offender shall provide, the following information related to the Sex Offender's Residence:

1. The address of each Residence at which the Sex Offender resides or will reside; and

2. Any location or description that identifies where the Sex Offender resides regardless of whether it pertains to a permanent Residence or location otherwise identifiable by a street or address, even if that address is a temporary abode, at the home of family members or friends, or at a shelter or a bench on a specific street or a tent in a particular location or any such place where the Sex Offender frequents or stations himself or herself during the day or sleeps at night.

n. School/School Location. The Police Department shall obtain, and a Sex Offender shall provide, the following information related to the Sex Offender's School:

1. The address of each School where the Sex Offender is or will be a Student or Employee; and

2. The name of each School the Sex Offender is or will be a Student or Employee.

o. Social Security Number. The Police Department shall obtain, and a Sex Offender shall provide, the following information:

1. A valid social security number for the Sex Offender; and

2. Any social security number the Sex Offender has used in the past, valid or otherwise.

p. Temporary Lodging Information. No later than three (3) days prior to a Sex Offender's travel, the Police Department shall obtain, and the Sex Offender shall provide in-person, the following information when the Sex Offender will be absent from his Residence for three (3) days or more:

1. Identifying information of the Temporary Lodging locations including addresses and names, and

2. The dates the Sex Offender will be staying at each Temporary Lodging location.

q. Offense Information.

1. The Police Department shall obtain, and a Sex Offender shall provide:

(A) The text of each provision of law defining the criminal offense(s) for which the Sex Offender is registered, or a brief description of the offense for which the registration is required;

(B) Criminal offense history, including a copy of all Sex Offense judgments, criminal offense dates, gender of victims, and probation, parole or other release status and terms and contact information for the supervisory group;

(C) Documentation of any treatment received or any mental abnormality or personality disorder of the offender; and

(D) Any other information deemed necessary.

2. The Police Department shall cross-link the text of each provision of law mentioned

in Chapter 3, Section 2(q)(1)(A), above, to the Sex Offender Registry.

r. Vehicle Information. The Police Department or designee shall obtain, and a Sex Offender shall provide, the following information related to all vehicles owned, registered to, or operated by, the Sex Offender for work or personal use including land vehicles, aircraft, and watercraft:

1. License plate numbers;
2. Registration numbers or identifiers;
3. General description of the vehicle(s) to include color, make, model, and year; and
4. Any permanent or frequent location where any covered vehicle is kept.

s. International Travel.

1. Travel Abroad. Sex Offenders must inform their Jurisdiction(s) of Residence if they intend to travel outside of the United States twenty-one (21) days in advance of such travel, including:

(A) dates, times, and places of departure, arrival, and return (if applicable), including the name of the city or town that is the point of departure from each country;

(B) means of travel, whether by airplane, train, or marine vessel;

(C) itinerary details, including but not limited to:

(i) the names of ports, airports, or stations from which leaving, passing through, or arriving;

(ii) times of departure and arrival, and layover places and times; and

(iii) airline names, flight numbers, train names and numbers and/or marine vessel names or identification numbers, and the ports or stations from which they are scheduled to leave and/or arrive;

(D) country, number, and date of issuance of any visa issued;

(E) purpose of travel, whether for business, tourism or other specified reason;

(F) if the travel is for longer than thirty (30) days, whether it is due to deportation, employment, military relocation, school, assisting a family member, or other specified reason; and

(G) address or other reported contact information for destination country, including:

(i) notifying agency and contact information;

(ii) registering Jurisdiction (state, tribe, or territory) and contact information;

(iii) whether direct notice of the Sex Offender's intended travel has been given to INTERPOL-Washington or to any other federal law enforcement agency.

2. The Police Department will notify the U.S. Marshals Service of the information gathered according to Chapter 3, Section 9(s) (1) and immediately:

(A) notify any other Jurisdiction where the Sex Offender is either registered, or is required to register, of any updated information gained from Section 9(s) (1), above; and

(B) update NCIC and NSOR.

CHAPTER 4. PUBLICATION AND COMMUNITY NOTIFICATIONS; PUBLIC WEBSITE

38 M.P.T.L. ch. 4 § 1

§ 1. Publications and Community Notifications

a. Law Enforcement Notification. Whenever a Sex Offender registers or updates his or her information with the Tribe, the Police Department shall:

1. Monitor and utilize the SORNA Exchange Portal for inter-Jurisdictional change of Residence, Employment, or Student status;

2. Immediately update NCIC and NSOR;

3. Immediately notify any agency, department, or program within the Tribe that is responsible for criminal investigation, prosecution, child welfare or Sex Offender supervision functions, including, but not limited to police, whether state, federal or tribal; tribal prosecutors; tribal probation, and tribal child protection services;

4. Immediately notify any and all other registration Jurisdictions where the Sex Offender is registered due to the Sex Offender's Residency, School attendance, or Employment;

5. Immediately notify any Jurisdiction which notified the Police Department of an area in which it is the Sex Offender's intent to reside, attend School, or commence Employment;

6. Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting Employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 U.S.C. § 5119a) when a Sex Offender registers or updates registration; and

7. Immediately enter or update information posted on the Public Website.

b. Community Notification. The Police Department or its designee shall ensure there

is an automated community notification process in place that ensures the following:

1. Upon a Sex Offender's registration or update of information with the Police Department, the Public Website is immediately updated; and

2. The Public Website has a function that enables the general public to request an e-mail notice when a Sex Offender commences Residence, Employment, or School attendance within Tribal Lands. The Public Website system shall have a function that will automatically send an e-mail notice to the requester with the Sex Offender's identity upon any updates to the Public Website, such as the posting of new Residence, School, or Employment of a Sex Offender, so that the requester can access the Public Website for the new information;

c. **Mandatory Publication & Notification.** Immediately upon a Sex Offender's registering or updating his or her information, the Police Department shall disclose the Sex Offender's: name, address or location; most recent photograph, if available; date of photograph; place of Employment; address of School attended; vehicle description and license plate numbers; crime for which convicted; date and place of conviction; hair color; height; race; sex; age; and any other information deemed necessary for the protection of the public, to:

1. Each School, public housing agency, and community center in each area in which the Sex Offender resides, is an Employee, or is a Student;

2. Child Protective Services and any other social service agencies responsible for protecting Minors in the child welfare system, and any agency, department, or program within the Tribe that is responsible for criminal investigations, prosecution, child welfare or Sex Offender supervision functions, including but not limited to police, whether tribal, state or federal; tribal prosecutors; and tribal probation.

d. **Volunteer and other organizations.** Immediately upon a Sex Offender's registration or update of registration information, the Police Department shall notify the following organizations of the updated information in the Public Website:

1. Any volunteer organization in which contact with Minors or other vulnerable individuals might occur, and

2. Any organization, company, or individual who requests such notification pursuant to procedures established by the Police Department.

e. **Public and Community Notifications.** Individuals may obtain a list of registered Sex Offender from the Public Website, including name, aliases, addresses, most recent photograph, physical description, vehicle description and license plate numbers, and any other information required under Chapter 4, Section 2(b), below.

1. The Tribe may, at its discretion and only through approval of the Mashantucket Pequot Tribal Council, publish names and/or pictures of all registered Sex Offenders in local media other than the Public Website.

2. Records maintained pursuant to this Title shall be open to law enforcement agencies which shall be authorized to release relevant and necessary information regarding Sex Offenders to the public.

3. Information disclosed pursuant to this subsection (Chapter 4, Section 1(e)) shall not include information that would identify the victim.

4. Any release of information under this section will be accompanied by the following:

WARNING

This information is made available for the purpose of protecting the public. It is not to be used for the purpose of harassing or intimidating anyone. A person who uses Sex Offender Registry information to commit a criminal act against another person is subject to arrest and prosecution under 38 M.P.T.L. ch. 5 § 2.

38 M.P.T.L. ch. 4 § 2

§ 2. Public Sex Offender Registry Website

a. Website.

1. Website. The Police Department shall use and maintain a public Sex Offender registry website which website will be called the Mashantucket Pequot Sex Offender Registry Public Website ("Public Website").

2. Links. The Public Website shall include links to Sex Offender safety and education resources.

3. Instructions. The Public Website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

4. Warnings. The Public Website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

5. Search Capabilities. The Public Website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and (3) zip code and/or geographic radius.

6. Dru Sjodin National Sex Offender Public Website. The Tribe shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

b. Required Information. The following information shall be made available to the public on the Public Website:

1. Notice that a Sex Offender is in violation of his or her registration requirements or cannot be located if the Sex Offender has absconded;

2. All Sex Offenses for which the Sex Offender has been convicted;
 3. The Sex Offense(s) for which the Sex Offender is currently registered;
 4. The address of the Sex Offender's Employe(s);
 5. The name of the Sex Offender including all aliases;
 6. A current photograph of the Sex Offender;
 7. A physical description of the Sex Offender;
 8. The Residential address and, if relevant, a description of the Residence of the Sex Offender;
 9. All addresses of Schools attended by the Sex Offender; and
 10. The Sex Offender's vehicle license plate number along with a description of the vehicle.
- c. Prohibited Information. The following information shall not be made available to the public on the Public Website:
1. Any arrest that did not result in conviction,
 2. The Sex Offender's social security number,
 3. Any travel and immigration documents,
 4. The names of any Employers or Schools where the Sex Offender is working or attending,
 5. The identity of the victim,
 6. The Sex Offender's email addresses and other Internet identifiers (as defined in 42 U.S.C. § 16915a(e)(2)), and
 7. Any other information exempted from disclosure under 42 U.S.C. § 16915a(b).
- d. Witness Protection. For Sex Offenders who are under a witness protection program, the Police Department may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the Sex Offender on the Public Website.

CHAPTER 5. SAFETY ZONES; SANCTIONS

38 M.P.T.L. ch. 5 § 1

§ 1. Safety Zones

The following safety zones shall apply to any Sex Offender whose victim was a Minor and to all Tier-3 Sex Offenders:

a. Prohibition Against Sex Offender Being Present on or Within a Certain Distance of School Building, School Property, or Playground.

1. Unless exempted under Chapter 5, Section 1(a), (2), (3), or (4) below, it is unlawful for any Tier-1 or Tier-2 Sex Offender whose victim was a Minor, and for any Tier-3 Sex Offender:

(A) To be present in any School building, on real property comprising any School, or in any vehicle owned, leased, or contracted by a School to transport Students to or from School or a School-related activity when Minors are present in the building, on the grounds or in the vehicle; or

(B) To loiter or work within one thousand (1000) feet of a School building or real property comprising any School or Playground.

2. A person required to register under this Title as a Tier-3 Sex Offender, or as a Tier-1 or Tier-2 Sex Offender whose victim was a Minor, who is a parent or guardian of a Student attending School and has registered as required under this Title, may be present on School property if the parent or guardian is:

(A) Attending a conference at the School with School Personnel to discuss the academic or social progress of the Sex Offender's child;

(B) Participating in child review conferences in which evaluation and placement decisions may be made with respect to the Sex Offender's child regarding special education services;

(C) Attending conferences to discuss other Student issues concerning the Sex Offender's child such as retention and promotion;

(D) Transporting the Sex Offender's child to and from School; or

(E) Present at the School because the presence of the Sex Offender had been requested by the principal or superintendent for any other reason relating to the welfare of the child.

3. Subsection (a) (1) of this section shall not apply to a Sex Offender who is legally enrolled in a particular School or is participating in a School-sponsored educational program located at a particular School when the Sex Offender is present at that School.

4. Nothing in this section shall be construed to infringe upon the constitutional or civil right of a Sex Offender to be present in a School building that is used as a polling place for the purpose of voting.

b. Prohibition of Offenders Residing Within One Thousand Feet of a School or Playground.

1. Any person who has been classified as a Tier-3 Sex Offender, and any other Sex

Offender whose victim was a Minor, shall not reside within one thousand (1000) feet of any School or Playground which is in existence at the time the person begins to reside at the location.

2. If a Tier-3 Sex Offender or a Sex Offender whose victim was a Minor has already established a Residence, and a School or Playground is subsequently built or placed within one thousand (1000) feet of such person's Residence, then such person shall, prior to one week of the opening of such School or Playground, notify the Police Department and the Department of Public Safety where such School or Playground is located that he or she is now residing within fifteen hundred feet of such School or Playground and shall provide verifiable proof to the Department of Public Safety that he or she resided there prior to the opening of such School.

3. Restrictions and prohibitions in the above subsections 1(b)(1) and (2) do not apply to a Sex Offender already residing within a School or Playground area safety zone prior to the enactment and effective date of this Title, or to a Sex Offender who is imprisoned or is at a facility within a safety zone, or worked within the Student safety zone prior to the effective date of this Title, or to Sex Offenders who intermittently or sporadically enter a safety zone for the purposes of work. All Tier-3 Sex Offenders, and all Sex Offenders whose victims were Minors, who were convicted prior to enactment of this Title and are still living within a School or Playground safety zone *may not* initiate nor maintain contact with Minors in the safety zone.

38 M.P.T.L. ch. 5 § 2

§ 2. Civil and Criminal Sanctions

a. Civil Penalty. Each violation of a provision of this Title by a Sex Offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including but not limited to the issuance of fines, forfeitures, and civil contempt.

b. Criminal Penalties. Each violation of a provision of this Title by a Sex Offender who is an Indian shall be considered a crime and subject to a period of Imprisonment of up to one (1) year and/or a fine of up to Five Thousand (\$5,000) Dollars.

c. Criminal Sanctions.

1. Failure to Register. Any person required to register under this Title who fails to register within the time specified under this Title shall be guilty of an offense punishable by up to one (1) year's Imprisonment and/or a fine of up to Five Thousand (\$5,000) Dollars.

2. Providing false or misleading registration information. Any person required to register under this Title who knowingly provides false or misleading information required under Chapter 3, Section 2 shall be guilty of an offense punishable by up to one (1) year's Imprisonment and/or a fine of up to Five Thousand (\$5,000) Dollars.

3. Failure to update registration information. Any person required to register under this Title who fails to update their registration information in violation of Chapter

3, Section 1(g) shall be guilty of an offense punishable by up to one (1) year's Imprisonment and/or a fine of up to Five Thousand (\$5,000) Dollars.

4. Failure to appear for periodic registration. Any person required to appear for periodic in-person verification under Chapter 3, Section 1(h) who fails to comply with this Title shall be guilty of an offense punishable by up to one (1) year's Imprisonment and/or a fine of up to Five Thousand (\$5,000) Dollars.

5. Violation of School safety zone. Any Sex Offender who violates Chapter 5, Section 1(a) is guilty of an offense punishable by up to one (1) year's Imprisonment and/or a Five Thousand (\$5,000) Dollar fine.

6. Violation of Residency restrictions. Any Sex Offender who violates Chapter 5, Section 1(b) is guilty of an offense punishable by up to one (1) year's Imprisonment and/or a fine of up to Five Thousand (\$5,000) Dollars.

7. Hindrance of Sex Offender Registration. A person is guilty of a criminal offense punishable by up to one (1) year's Imprisonment and/or a fine of up to Five Thousand (\$5,000) Dollars if the person:

(A) knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a Sex Offender who is in violation of this Title;

(B) knowingly assists a Sex Offender in eluding a law enforcement agency that is seeking to find the Sex Offender to question the Sex Offender about, or to arrest the Sex Offender for, noncompliance with the requirements of this Title; or

(C) provides information which the person knows to be false regarding a Sex Offender to a law enforcement agency.

8. Misuse of Registration Information.

(A) Any person, who willfully misuses or alters public record information relating to a Sex Offender or sexual predator, including information displayed by law enforcement agencies on websites, shall be guilty of an offense punishable by up to one (1) year's Imprisonment and/or a fine of up to Five Thousand (\$5,000) Dollars.

(B) The sale or exchange of Sex Offender information for profit is prohibited. Any violation of this subsection (B) of Chapter 5, Section 2(b)(8) [38 M.P.T.L. ch. 5 § 2(b)(8)(B)] is an offense punishable up to one (1) year's Imprisonment and/or a Five Thousand (\$5,000) Dollar fine.

9. Repeat Offenders. Any second or subsequent violation under this Title occurring within the mandatory registration period shall be an offense punishable by up to one (1) year's Imprisonment and/or a Five Thousand (\$5,000) Dollar fine.

CHAPTER 6. MISCELLANEOUS

38 M.P.T.L. ch. 6 § 1

§ 1. Sovereign Immunity

No waiver of immunity. Nothing in this Chapter shall be construed as a waiver of sovereign immunity for the Tribe, or its departments, agencies, Employees, or agents, from suit in tribal, state or federal court, or in any action before any tribal, state or federal agency or in any other forum or context.

38 M.P.T.L. ch. 6 § 2

§ 2. Savings Clause

If any court of competent jurisdiction finds that any section, subsection, or phrase of this Title violates the Constitution or laws of the Tribe or applicable federal laws, such stand-alone part will be deleted from this Title and, so long as the intent remains intact, the remainder of this Title will take full force and effect.

38 M.P.T.L. ch. 6 § 3

§ 3. Effective Date; Implementation

This law shall become effective as of the date of passage by Mashantucket Pequot Tribal Council resolution approving and adopting the same. The Police Department shall have authority to and will draft Policies and Procedures to implement this Chapter, provided any imposition of fees, fines or penalties are approved by the Mashantucket Pequot Tribal Council.

TITLE 39. PRECIOUS METALS BUYERS LICENSE LAW

CHAPTER 1. TITLE, FINDINGS, PURPOSE, DEFINITIONS

39 M.P.T.L. ch. 1 § 1

§ 1. Title; Authority

a. This law shall be known as the "Mashantucket Pequot Precious Metals Buyers License Law".

b. This Title is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket (Western) Pequot Tribe, to regulate conduct of precious metals buyers.

39 M.P.T.L. ch. 1 § 2

§ 2. License Required. Record of Transactions

a. No person may engage in or carry on the business of purchasing gold or gold-plated

ware, silver or silver-plated ware, platinum ware, watches, jewelry, precious stones or coins unless such person is licensed by the chief of police, except that the provisions of this section shall not apply to the purchase of such items from a wholesaler by a manufacturer or retail seller whose primary place of business is located at Mashantucket. Such person shall pay an annual fee of One Hundred (\$100.00) Dollars for such license. The license may be revocable for cause, which shall include, but not be limited to, failure to comply with any requirements for licensure specified by the licensing authority at the time of issuance. The chief of police shall refuse to issue a license under this section to a person who has been convicted of a felony. The chief of police may require any applicant for a license to submit to state and national criminal history records checks. For the purposes of this section "wholesaler" means a person in the business of selling tangible personal property to be resold at retail or raw materials to be manufactured into suitable forms for use by consumers. License fees shall be paid to the Mashantucket Pequot Police Department.

b. Each such licensed person shall keep a record in which he shall note at the time of each transaction, a description of the goods purchased and the price paid for them, the name and address of the person selling the goods, and the date and hour any such goods were received. Each such licensed person shall demand positive identification from the person selling the article and the type or form of identification received shall be noted in the record. Any tribal police officer shall have access to the record required to be kept under this section and may inspect the place where the business is carried on as well as any goods purchased or received.

c. No such licensed person may purchase any goods from a minor unless such minor is accompanied by a parent or guardian. Each such licensed person may only pay for goods received by check, draft or money order and no cash shall be transferred to either party in the course of a transaction subject to the provisions of this section.

d. At the time of making any purchase each licensed person shall deliver to the person selling goods a receipt containing the information required to be recorded in Section (b) of this Title, the amount paid for any goods sold and the name and address of the purchaser.

e. Upon request of the chief of police each such licensed person shall make a weekly sworn statement, describing the goods received and setting forth the name and address of each person from whom goods were purchased.

f. Any person who violates any provision of this Title shall be fined not more than One Thousand (\$1,000.00) Dollars per offense.

TITLE 40. ADMINISTRATIVE PROCEDURE ACT

CHAPTER 1. PURPOSE, APPLICABILITY, AND DEFINITIONS

40 M.P.T.L. ch. 1 § 1

§ 1. Purpose

a. The Mashantucket Pequot Tribal Nation has an interest in assuring that the administrative procedures carried out by the Tribe, and implemented through its administrative bodies pursuant to its Constitution and Tribal Law, are consistent with the basic principles of common sense, justice, and fairness. This Administrative Procedure Act is intended to implement the following major principles:

i. Administrative adjudicatory hearings, whether Formal or Informal, shall be fundamentally fair, particularly in regard to such matters as notice, the opportunity to be heard, and the preparation of the Agency Record;

ii. Responsible deciding Agency officials in quasi-judicial cases shall be personally familiar with the evidence presented in that proceeding; and,

iii. Adequate provision shall be made for judicial review of administrative decisions.

b. The Mashantucket Pequot Tribal Nation has jurisdiction to adopt and enforce the Administrative Procedure Act to insure that all persons are provided with due process of law when a liberty or property interest is at stake. Tribal jurisdiction of all such persons and over tribal territory is necessary to protect the economy, health, safety, and welfare of the Tribal community including Tribal Members, Tribal family members, employees, patrons and others visiting the Reservation.

40 M.P.T.L. ch. 1 § 2

§ 2. Applicability

a. This Title shall apply to Agencies that hold a Hearing to determine the legal rights, duties, or privileges of specific Persons.

40 M.P.T.L. ch. 1 § 3

§ 3. Definitions

For purposes of this Title:

a. "Agency Record" means the official account of an Agency Hearing.

b. "Agency" means each commission, committee as defined in Article VI of the Tribal Constitution, or regulatory official of the Mashantucket Pequot Tribal Nation authorized by Tribal Law or such other official as specifically granted authority by Tribal Council Resolution to determine Contested Matters. Agency does not include the Mashantucket Pequot Tribal Council, Mashantucket Pequot Elders Council, the Mashantucket Pequot Peacemakers, the Mashantucket Pequot Tribal Gaming Commission, the Mashantucket Pequot Tribal Court, the Mashantucket Pequot Police Department, the Mashantucket Pequot Workers Compensation Commissioner, Child Protective Services, decisions appealable under 15 M.P.T.L. and concerning a

tribally-sponsored employee benefit plan, the TOSHA Commissioner, the Captive Insurance Commissioner, the Housing Committee with respect to Hearings held regarding evictions and foreclosures, the MERO with respect to Hearings held pursuant to Title 32 of the Mashantucket Pequot Tribal Law, Hearings held pursuant to a collective bargaining agreement, or a Board of Review as defined in Title 8 of the Mashantucket Pequot Tribal Law.

c. "Contested Matter" means a matter before an Agency in which the Agency makes a determination of the legal rights, duties, or privileges of specific Persons. This term includes all cases of Permitting where a Permit is revoked, suspended, or modified, or in which the granting of an application is contested by a Person having standing to contest such matter under Tribal Law.

d. "Declaratory Judgment" or "Declaratory Ruling" means a judgment affirming a right or establishing the legal status or interpretation of a Tribal Law or instrument. It is binding but it does not include an executive element (an order that something be done); instead it simply declares or defines rights to be observed or wrongs to be eschewed by litigants, or expresses the Tribal Court's or Agency's view on a contested question of law.

e. "Final Decision" means (1) an Agency determination at the conclusion of a Hearing, (2) a Declaratory Ruling issued by an Agency, or (3) an Agency determination after Reconsideration. The term does not include a ruling of an Agency granting or denying a petition for Reconsideration.

f. "Formal Hearing" means an in-person, trial-type proceeding, which may include cross-examination of witnesses, and which is recorded and/or transcribed.

g. "Hearing" means an Agency proceeding to determine legal rights or responsibilities of the parties. Hearings may either be Formal or Informal.

h. "Hearing Official" means an individual or individuals designated by an Agency or by Tribal Law to conduct a Hearing and issue Proposed and Final Decisions on behalf of the Agency.

i. "Informal Hearing" means an investigation by inquiry and taking of evidence through means other than an in-person trial type hearing.

j. "Permit" means the whole or part of an Agency permit, certificate, approval, registration, charter, statutory exemption, or other form of permission. Permit does not include a gaming license or a non-gaming license if such licenses are implemented by Tribal Law.

k. "Permitting" means the Agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a Permit.

l. "Person" means any individual, association of individuals; partnership; private, public, tribal, or municipal corporation; tribal enterprise; company; business enterprise; any county, tribal, federal, state, or local government; or governmental entity.

m. "Proposed Decision" means a Decision proposed by an Agency or Hearing Official prior to it becoming final.

n. "Reconsideration" means to consider a prior decision with the possibility of altering the outcome.

CHAPTER 2. HEARINGS

40 M.P.T.L. ch. 2 § 1

§ 1. Right to Hearing

A Person may request a Hearing when permitted by Tribal Law or Agency rules or regulations, or when there is a Contested Matter. The Agency or Hearing Official will determine whether a Formal or Informal Hearing is required on a case-by-case basis. Unless otherwise provided by Tribal Law, Hearings are open only to those parties with an interest in the Contested Matter, persons compelled to appear in person before an Agency, and their counsel, unless otherwise provided by Agency rules.

40 M.P.T.L. ch. 2 § 2

§ 2. Factors for Determining Type of Hearing

The Agency or Hearing Official shall consider the following factors to determine whether a Formal or Informal Hearing is necessary.

a. Factors weighing in favor of a Formal Hearing:

- i. The credibility or truthfulness of witnesses may be at issue; or,
- ii. An evidentiary hearing would likely yield a more reliable determination.

b. Factors weighing in favor of an Informal Hearing:

- i. The matter may be determined through an interpretation of Tribal Law without reference to the facts in a particular case;
- ii. The parties may request reconsideration of the Proposed Decision and submit additional documentation; or,
- iii. The decision rests solely on inspections, tests, or document review.

40 M.P.T.L. ch. 2 § 3

§ 3. Formal Hearing

a. The Agency or Hearing Official will give all parties advance notice of a Formal Hearing of at least twenty (20) days. The notice shall include:

- i. The time, place, and nature of the proceeding;
 - ii. A statement of the legal authority and jurisdiction under which the Hearing is to be held;
 - iii. A reference to applicable sections of Tribal Law;
 - iv. Whether the Tribal Rules of Civil Procedure and Evidence will be used as general guides for the Formal Hearing. These rules do not need to be used provided that the hearing is conducted in a manner that provides for the determination of the facts in an orderly and reasonable manner; and,
 - v. A short and plain statement of the issues and matters asserted.
- b. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues noticed.
 - c. The Hearing Official may:
 - i. Administer oaths and affirmations, examine witnesses, and receive evidence, but no person shall be compelled to divulge information which he or she could not be compelled to divulge in Tribal Court;
 - ii. Rule upon offers of proof and receive relevant evidence;
 - iii. Dispose of procedural matters by decision;
 - iv. Hold conferences for settlement or simplification of the issues; and,
 - v. Take any other action authorized by Tribal Law consistent with this chapter.
 - d. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.
 - e. Any oral or documentary evidence, including hearsay, may be received, but the Hearing Official shall exclude any irrelevant, immaterial, or unduly repetitious evidence.
 - f. Oral proceedings shall be recorded and transcribed. A copy of the entire Agency Record or any part thereof shall be furnished to any party upon their written request thereof and payment of the costs thereof.
 - g. The Agency Record shall include:
 - i. All pleadings, motions, intermediate rulings;
 - ii. Evidence received or considered;
 - iii. A list of documents considered *in camera*, if any;
 - iv. A statement of matters officially noticed;

- v. Questions and offers of proof, objections, and rulings thereon;
 - vi. Transcript of the proceeding;
 - vii. Proposed findings and exceptions; and,
 - viii. Any decision, opinion, or report by the Hearing Official.
- h. Unless precluded by Tribal Law, Contested Matters may be disposed of by stipulation, agreed settlement, consent order, or default.
- i. The Hearing Official shall personally consider the whole Agency Record or such portions thereof as may be cited by the parties. Subsequent to the close of the Hearing and when determined to be in the interest of justice, the Hearing Official may temporarily postpone his or her Proposed or Final Decision and elect to re-open the Agency Record to request that the parties submit additional argument or evidence. After fully considering such additional written presentations, the Hearing Official shall promptly render his or her decision.

40 M.P.T.L. ch. 2 § 4

§ 4. Informal Hearing

- a. An Informal Hearing may include or consist of a review of statements, affidavits, and documents submitted by the parties to a Hearing Official; or, an informal meeting between the parties and the Hearing Official.
- b. The Hearing Official will determine the form of the Informal Hearing.
- c. The Agency or Hearing Official will give all parties advance notice of an Informal Hearing. The notice shall include:
- i. The time and place, if applicable, and nature of the proceeding;
 - ii. A statement of the legal authority and jurisdiction under which the Hearing is to be held;
 - iii. A reference to the particular sections of Tribal Law involved; and,
 - iv. A short and plain statement of the issues and matters asserted.
- d. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues noticed.
- e. The Hearing Official may:
- i. Examine witnesses and receive evidence, but no person shall be compelled to divulge information which he or she could not be compelled to divulge in Tribal Court;
 - ii. Rule upon offers of proof and receive relevant evidence;

- iii. Hold conferences for settlement or simplification of the issues; and,
- iv. Take any other action authorized by Tribal Law consistent with this chapter.
- f. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.
- g. Informal Hearings are not to be recorded or transcribed. The Hearing Official will issue a summary of the proceedings with his or her Proposed Decision, when permitted under Tribal Law, and Final Decision.
- h. The Agency Record shall include:
 - i. All pleadings, statements, and affidavits;
 - ii. Evidence received or considered;
 - iii. A list of documents considered *in camera*;
 - iv. A statement of matters officially noticed;
 - v. Questions and offers of proof, objections, and rulings thereon;
 - vi. Proposed findings and exceptions; and,
 - vii. Any decision, opinion, and summary by the Hearing Official.
- i. Unless precluded by Tribal Law, Contested Matters may be disposed of by stipulation, agreed settlement, consent order, or default.
- j. The Hearing Official shall personally consider the whole Agency Record or such portions thereof as may be cited by the parties. Subsequent to the close of the Hearing and when determined to be in the interest of justice, the Hearing Official may temporarily postpone his or her Proposed or Final Decision and elect to re-open the Agency Record to request that the parties submit additional argument. After fully considering such additional written presentations, the Hearing Official shall promptly render his or her decision.

40 M.P.T.L. ch. 2 § 5

§ 5. Decisions and Requests for Reconsideration

- a. All Proposed and Final Decisions by a Hearing Official shall be reasoned decisions issued in writing and shall be accompanied by a summary of the facts and conclusions of law.
- b. Parties to the Contested Matter shall be notified of the Proposed and Final Decisions by mail.
- c. When permitted by Tribal Law, parties may request Reconsideration of the Proposed

Decision.

CHAPTER 3. JUDICIAL REVIEW

40 M.P.T.L. ch. 3 § 1

§ 1. Applicability

This chapter applies to all Agency Final Decisions except to the extent that a statute precludes judicial review. To the extent that any provision of this Chapter conflicts with any other law, this law shall govern for claims filed on or after the Effective Date.

40 M.P.T.L. ch. 3 § 2

§ 2. Jurisdiction

a. The Tribal Court is hereby granted jurisdiction to review a Final Decision including the Hearing Official's decision under 40 M.P.T.L. ch. 2, §§ 1 and 2 concerning whether to conduct a Formal or Informal Hearing.

b. The Tribe hereby expressly waives its sovereign immunity and the sovereign immunity of an Agency from suit in the Tribal Court for actions founded upon a review of a Final Decision; provided that the parties have exhausted all administrative remedies provided under statute and the Agency policies, and the suit has been timely filed. A party does not need to file a request for reconsideration to exhaust administrative remedies.

c. An action pursuant to this Title shall be the Person's exclusive cause of action against the Tribe and the Agency.

d. When it is alleged that the liability of the Agency is based upon the action of an officer, agent, servant, or employee of the Agency acting within the scope of his or her employment there shall be no separate cause of action against said officer, agent, servant or employee, and nothing in this law shall be construed to waive the sovereign immunity of the Tribe or the Agency to the extent that it extends to such an individual.

40 M.P.T.L. ch. 3 § 3

§ 3. Right of Review

a. A Person dissatisfied with a Final Decision of an Agency is entitled to Tribal Court review thereof, unless decisions by the Agency are expressly exempt from judicial review by Tribal Law.

b. After the exhaustion of administrative remedies, a Person challenging the issuance of a penalty by an Agency is entitled to Tribal Court review thereof, unless penalties by the Agency are expressly exempt from judicial review by Tribal Law.

c. If a Person does not comply with an Agency Final Decision, including the issuance of a penalty or citation, the Agency may institute an enforcement action.

i. Prior to filing an enforcement action with the Tribal Court, the Agency that issued the Final Decision to a Person who is noncompliant must issue that Person a notice that includes a description of the non-compliance (e.g., failure to pay a fine) and the date by which the non-compliance must be resolved.

ii. Enforcement actions shall be instituted by the Agency's filing of a complaint with the Tribal Court clerk in the Mashantucket Pequot Tribal Court. The complaint shall be filed within thirty (30) days of the expiration of the deadline set forth in the notice issued pursuant to (i).

iii. Copies of the complaint shall be served by the Tribal Court clerk upon the non-compliant party, with a copy to the General Counsel of the Mashantucket Pequot Tribal Nation.

40 M.P.T.L. ch. 3 § 4

§ 4. Procedures

a. Review under this Chapter shall be instituted by the filing of a form provided by the Tribal Court clerk in the Mashantucket Pequot Tribal Court and complying with any filing requirements under Tribal Law.

b. An appeal shall be filed within thirty (30) days of mailing to the addresses provided by the parties or hand delivery of the Final Decision by the Agency making the Final Decision. Copies of any such appeal shall be served by the Tribal Court clerk upon the Agency and all other parties before the Agency with a copy to the General Counsel of the Mashantucket Pequot Tribal Nation.

c. The filing of an appeal shall not stay enforcement of the Final Decision. Where other Tribal Laws provide for a stay, it may be stayed by the Agency or Tribal Court only as provided therein.

d. Within thirty (30) days after service of the appeal, or within such further time as the Tribal Court may allow, the Agency shall accumulate the Agency Record on appeal and shall certify to the Tribal Court that it is a true and correct copy of the original documents on file with the Agency, and shall file the Agency Record with the Tribal Court. The Agency shall organize the Agency Record in such a manner that allows the Tribal Court to easily locate significant materials, such as binding and consecutively numbering pages of the Agency Record with a Table of Contents indicating the identity of separate documents. A copy of the certified Agency Record shall be provided by the Agency to all parties at no charge.

40 M.P.T.L. ch. 3 § 5

§ 5. Pre-Hearing Conference

a. Within thirty (30) days of the filing of the Agency Record on appeal the Tribal Court shall schedule and conduct a pre-hearing conference to address the following matters:

- i. Correction of the Agency Record, if needed;
- ii. Clarification of the issues;
- iii. The treatment of documents submitted *in camera* during the Hearing;
- iv. Preparation of stipulations;
- v. Scheduling of briefs or other written argument;
- vi. Setting the hearing date and such other deadlines as the court deems appropriate;
- vii. Setting a date for an additional pre-hearing conference, if necessary; or
- viii. Other matters that may facilitate the resolution of the matter.

b. At the conclusion of the pre-hearing conference, the Tribal Court may issue any necessary orders.

c. The Tribal Court may extend or shorten deadlines in the interest of fairness or expediting the proceedings.

40 M.P.T.L. ch. 3 § 6

§ 6. Briefing

a. No later than sixty (60) days from the filing of the Agency Record, the appellant shall file two (2) copies of a typed or clearly legible copies of a brief that shall clearly and concisely set forth the specific reasons for requesting judicial review of the Final Decision. The brief shall not exceed twenty-five (25) double-spaced pages in length, unless permission is granted by the Tribal Court, and shall include citations to any legal authorities relied upon and specific references to the Agency Record.

b. The appellee's brief shall be filed within thirty (30) days of the filing of the appellant's brief and shall conform with the page limit and other rules set forth above.

c. The appellant shall have the right to submit a reply brief within ten (10) days of the filing of the appellee's brief. The reply brief shall not exceed ten (10) double spaced pages in length and shall be limited to the issues raised in the appellee's brief.

d. At the conclusion of its hearing, if any, the Tribal Court may order additional briefs, as the court deems necessary.

e. The Tribal Court, on its own or by way of motion by either party, may modify the

foregoing briefing timetable as necessary and appropriate to accommodate its own calendar or that of the movant, provided that doing so would not cause undue hardship to the non-moving party.

40 M.P.T.L. ch. 3 § 7

§ 7. Tribal Court Oral Argument

a. If necessary, an oral argument shall be held within ten (10) days of the filing due date of the reply brief, unless the Tribal Court orders otherwise. The Tribal Court may decide the matter on the filings.

b. All actions brought pursuant to this Title shall be heard by the Tribal Court and not a jury. No costs shall be taxed against the Tribe or its enterprises.

40 M.P.T.L. ch. 3 § 8

§ 8. Scope of Review

a. The Tribal Court's review shall be limited to the Agency Record before the court, any briefs filed by the parties, and oral argument presented by the parties.

b. The Tribal Court shall not substitute its judgment for that of the Agency as to the weight of the evidence or credibility of any witnesses.

c. Upon a showing of exceptional circumstances, the Tribal Court must remand the matter to the Agency to review new or additional evidence, provided that such new or additional evidence has been shown not to have been available for consideration at the Hearing through no fault of any party, that such new evidence is relevant and probative of the party's appeal, and that failure to consider such evidence would be prejudicial; or, the Hearing Official improperly excluded the evidence from the Agency's review.

d. If the Tribal Court determines that a Formal Hearing was required and a Formal Hearing was not conducted, it shall remand the matter to the Agency for further proceedings.

e. The Tribal Court shall affirm the Final Decision unless the court finds that the Final Decision is:

i. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with Tribal Law; or,

ii. In excess of statutory jurisdiction or authority.

40 M.P.T.L. ch. 3 § 9

§ 9. Rulings

a. The Tribal Court shall issue a written reasoned decision supported by reference

to the Agency Record.

b. If the Tribal Court finds that the Agency's Final Decision was arbitrary and capricious, it may render a judgment under subsection (c) of this section or remand the matter to the Agency for further proceedings in accordance with the Court's decision.

c. If a particular Agency action is required by Tribal Law, the Tribal Court, on sustaining the appeal, may render a judgment that modifies the Agency decision, orders the particular Agency action, or orders the particular Agency to take such action as may be necessary to effect the particular action.

d. If the Tribal Court upholds an enforcement action brought by an Agency, the Tribal Court may take such action as necessary to compel compliance.

40 M.P.T.L. ch. 3 § 10

§ 10. Appeal of Tribal Court Decision

The decision of the Tribal Court may be appealed to the Mashantucket Pequot Court of Appeals. The decision of the Court of Appeals shall be final.

40 M.P.T.L. ch. 3 § 11

§ 11. Application of the Law

Any matter brought pursuant to this Title shall be determined in accordance with Tribal Law. The court may be guided, but shall not be bound, by the common law of other jurisdictions.

CHAPTER 4. MISCELLANEOUS

40 M.P.T.L. ch. 4 § 1

§ 1. Effective Date

The Title and any amendments thereto shall be effective upon the day the Tribal Council enacts this Title or amendment thereto.

TITLE 41. VITAL STATISTICS

CHAPTER 1. BURIALS

41 M.P.T.L. ch. 1 § 1

§ 1. Governing Law

Upon enactment of this law or any amendment thereto, the provisions herein shall govern matters relating to burials on the Mashantucket Pequot Reservation.

41 M.P.T.L. ch. 1 § 2

§ 2. Removal, Transit, and Burial Permits

a. Only an embalmer licensed by the state where the decedent died may assume charge of the burial of a deceased person who had a communicable disease, as defined in the Connecticut Public Health Code, at the time of death and such licensed embalmer must file, with the Tribal Clerk's Office, an affidavit signed and sworn to by such licensed embalmer stating that the body has been disinfected.

b. After the filing of the death certificate with the Mashantucket Pequot Tribal Clerk's Office, the Tribal Clerk shall issue a removal, transit, and burial permit for burials taking place on the Reservation. The certificate shall be issued in duplicate and one copy shall be affixed to the coffin during transportation of the body.

c. The Tribal Clerk shall forward a copy of the removal, transit and burial permit to the registrar of vital statistics in the town in which the death occurred, if other than Mashantucket, not later than seven (7) business days after receipt of the death certificate and issuance of the removal, transit, and burial permit.

d. The Tribal Clerk shall charge a fee of Three (\$3.00) Dollars for each removal, transit and burial permit.

e. After the burial, the cemetery sexton shall complete the removal, transit and burial permit by filling in the location of burial (section of burial place, lot or grave) within the cemetery, executing the permit, and returning it to the Tribal Clerk's office with a copy to the registrar of vital statistics in the town where the death occurred, if other than Mashantucket, within five (5) business days of each burial.

41 M.P.T.L. ch. 1 § 3

§ 3. Connecticut Department of Public Health

As a matter of comity and respect for the government to government relationship the Tribe has with the State of Connecticut, the Tribal Clerk shall forward a copy of all completed and executed Removal, Transit, and Burial Permits for burials occurring on the Reservation within ten (10) business days of each burial.

41 M.P.T.L. ch. 1 § 4

§ 4. Cemetery Sexton

a. The Executive Director of Public Works, Community Planning & Property Management and the Office of the Chief of Staff will be responsible for the oversight, care, operation, and maintenance of the Tribe's burial sites located within Mashantucket.

b. The Tribe's cemetery sexton shall be the Executive Director of Public Works, Community Planning & Property Management and shall be in charge of maintaining the burial sites located within Mashantucket, including grave site plotting, repairs, renovations, and the proper registration of all removal, transit, and burial permits for burials taking place in such sites.

c. The cemetery sexton shall report all interments, disinterments, and removals made by such sexton to the Tribal Clerk's Office pursuant to § 2(e).

CHAPTER 2. BIRTH, MARRIAGE, AND DEATH CERTIFICATES

41 M.P.T.L. ch. 2 § 1

§ 1. Purpose

This Title provides for the recording of births, marriages, and deaths that occur within Mashantucket, the issuance of certified copies, and the sharing of information with the State.

41 M.P.T.L. ch. 2 § 2

§ 2. Birth Certificates

a. A birth certificate for each live birth that occurs in Mashantucket shall be completed on a form provided by the Mashantucket Pequot's Tribal Clerk's Office and filed with the Tribal Clerk's Office no later than ten (10) business days after the birth.

b. The Tribal Clerk's Office shall maintain a registry of birth certificates filed in alphabetical order and shall issue certified copies of such certificates pursuant to § 2(c).

c. The Tribal Clerk's Office shall restrict access to and issuance of certified copies of birth certificates to the following eligible parties:

(1) the person whose birth is recorded, if such person is over the age of eighteen (18);

(2) the person whose birth is recorded, if such person is an emancipated minor pursuant to 6 M.P.T.L. ch. 7 or the laws of the state in which the person resides;

(3) such person's children, grandchildren, spouse, parent, guardian or grandparent;

(4) an attorney representing such person or such person's parent, guardian, child, or surviving spouse. The attorney must provide documentation that he/she represents one of the individual's listed above;

(5) a court-appointed conservator for such person. A copy of the court order appointing the conservator must be provided with the request for a copy of the birth certificate; and,

(6) agents of a state or federal agency.

d. Access to confidential files on paternity, adoption, gender change or gestational agreements, or information contained within such files, shall not be released to any party including the eligible parties listed in this subsection, except upon an order from Tribal Court.

41 M.P.T.L. ch. 2 § 3

§ 3. Death Certificates

a. A death certificate for each death that occurs in Mashantucket shall be completed and filed with the Mashantucket Pequot Tribal Clerk's Office no later than five (5) business days after the death.

b. The Tribal Clerk's Office shall maintain a registry of death certificates filed in alphabetical order and shall issue certified copies of such certificates pursuant to Section 3(c) below.

c. (i) Certified copies of death certificates in the custody of the Tribal Clerk's Office may only be obtained by the decedent's immediate family. For purposes of this section the term "immediate family" shall mean spouse, child, adoptive child, brother, sister, mother, or father.

(ii) Only the surviving spouse, next of kin, or tribal, state and federal agencies authorized by federal law may receive a certified copy of a death certificate with the decedent's Social Security number. "Next of kin" includes, in the order of priority, the decedent's spouse, adult son or daughter, parent, and adult brother or sister.

41 M.P.T.L. ch. 2 § 4

§ 4. Marriage Certificates

a. Marriage certificates for each marriage that occurs in Mashantucket shall be completed and filed with the Mashantucket Pequot Tribal Clerk's Office pursuant to 6 M.P.T.L. ch. 3.

41 M.P.T.L. ch. 2 § 5

§ 5. Administrative

a. The Tribal Clerk's Office will send to the Commissioner of the State of Connecticut Department of Public Health an authenticated copy of each certificate of birth,

marriage, and death received by the registrar for the calendar month preceding. Such notification shall occur on a schedule agreed upon by the Tribe and the state.

b. There shall be a Five (\$5.00) Dollar fee for each certified copy of a birth or death certificate.

TITLE 42. COMMERCIAL FORECLOSURE

CHAPTER 1. FINDINGS AND GENERAL PROVISIONS

42 M.P.T.L. ch. 1 § 1

§ 1. Findings

The Tribal Council hereby finds that:

a. Adequate and clear recording of Leasehold Interests and liens, commercial foreclosure, and eviction procedures are a necessity for the financing of businesses operating on the Mashantucket Pequot (Western) Tribal Nation Reservation.

b. Commercial foreclosure procedures are necessary to ensure a remedy for Commercial Lenders in the event of a default. Commercial Eviction procedures are necessary to assure the orderly utilization of available Commercial Space located on trust lands, to provide for the orderly enforcement of rights and obligations of Occupants and to provide for an orderly means of removing Occupants following a foreclosure and sale.

c. A single uniform commercial foreclosure and eviction code would enhance the operations of the Tribal Government and provides a remedy for Commercial Lenders.

42 M.P.T.L. ch. 1 § 2

§ 2. Scope

The provisions of this Law shall apply only to the following matters relative to Commercial Spaces:

a. The recording of a Mortgage or security interest in a Leasehold Interest with the Tribal Clerk's Office.

b. The enforcement of the foreclosure rights of Commercial Lenders holding a Mortgage where a Lease serves as collateral.

c. The manner by which the rights of Occupants in and to Commercial Spaces are terminated and the eviction of such Occupants.

d. The manner by which eviction and ejection of Occupants from Commercial Spaces

following a foreclosure and sale is to be effected.

42 M.P.T.L. ch. 1 § 3

§ 3. Exclusion

a. Nothing in this title shall be construed to divest the Tribe of its ownership and control of Tribal land, pursuant to its trust relationship with the United States.

b. The provisions of this shall not apply to any Residential Housing.

CHAPTER 2. DEFINITIONS

42 M.P.T.L. ch. 2 § 1

§ 1. Definitions

Capitalized terms, wherever appearing in this law, shall have the meaning as set forth in this section.

a. "Assignment of Leases and Rents" means an assignment from a Borrower to a Commercial Lender of Borrower's rights, as lessor, in any leases, licenses, subleases and any other use or occupancy agreement including, if applicable, the right to receive rent thereunder as collateral for the Loan.

b. "Borrower" means a Person and his assigns or successors in interest to whom a thing or money is lent at such Person's request.

c. "Commercial Lender" means a Person and his assigns or successors in interest who hold any interest in a security interest in a Lease for non-residential property operated for a profit on the Reservation. This definition includes any subsequent holder, whether by assignment, succession or otherwise, of the original lender's right, title or interest in, and to, the Mortgage.

d. "Commercial Space" means any non-residential property used for commercial profit-making purposes. Commercial Space includes, without limitation, stores, malls, food outlets, office buildings, and industrial parks.

e. "Court" shall mean the Mashantucket Pequot (Western) Tribal Court.

f. "Days" means business days.

g. "Foreclosure Proceeding" means a proceeding brought by a Commercial Lender in the Mashantucket Pequot Tribal Court to foreclose on a Mortgage.

h. "Improvements" means structures, buildings, and other development intended as permanent enhancements to the value, beauty, or unit of real property.

- i. "Lease" means the lease or other agreement for use of Tribal land as to which a Mortgage has or will be given.
- j. "Leasehold Interest" means an interest established pursuant to a lease or sublease between the Lessee/Sublessee and Lessor/Sublessor.
- k. "Lessee" means the Person who leases or lets property from another; a tenant.
- l. "Lessor" means the Person who leases or lets property to another; a landlord.
- m. "Mortgage" means an Occupant's pledge of its Leasehold Interest as security for a debt to a Commercial Lender or other mortgagee, whether denominated as a mortgage or deed of trust, and all documents evidencing the debt secured by the Mortgage or other documents or agreements related to the Mortgage, including without limitation, any Assignment of Leases and Rents, consents or estoppels, or any agreements of the Tribe or Landlord related to the Lease or Mortgage (the "Related Mortgage Documents").
- n. "Occupant" means a Person who has certain legal rights to or control over the premises occupied; a tenant or owner.
- o. "Person" means any individual, association of individuals; partnership; private, public, tribal, or municipal corporation; lending entity; tribal enterprise; company; business enterprise; or tribal governmental entity.
- p. "Reservation" means land, or any interest therein, held by the United States in trust for, or for the use and benefit of the Tribe, and includes land held by the Tribe that is subject to federal restrictions against alienation.
- q. "Sublessee" means a Lessee who leases or lets property to a Sublessor.
- r. "Sublessor" means the Person who leases or lets property from a Sublessee.
- s. "Subordinate Lienholder" means the holder of any lien, including a Mortgage, perfected subsequent to the recording of a Mortgage under this title.
- t. "Tribe" means the Mashantucket Pequot (Western) Tribal Nation.
- u. "Tribal Clerk's Office" means the Office where the Mashantucket Pequot Tribal Clerk maintains records of real estate transactions on the Reservation which office is currently located at the Community Center, 2 Matt's Path, Mashantucket, Connecticut.

CHAPTER 3. PRIORITY AND RECORDING

42 M.P.T.L. ch. 3 § 1

§ 1. Priority

Mortgages recorded in accordance with this chapter, including, without limitation,

those evidencing a loan made, guaranteed, insured or held by the Tribe or a federal government agency, have priority over any lien not perfected at the time of recording and any subsequent lien or claim.

42 M.P.T.L. ch. 3 § 2

§ 2. Recording

a. A Commercial Lender holding a Mortgage or Assignment of Leases and Rents for Commercial Space on the Reservation shall record the Mortgage and/or Assignment of Leases and Rents in the Tribal Clerk's Office within thirty (30) days of closing on the Mortgage; provided, however that the Commercial Lender need not record the Related Mortgage Documents.

b. The Tribal Clerk's Office shall provide file-stamped copies of the date and time of the filing of the Mortgage and Assignment of Leases and Rents to the Commercial Lender evidencing such submittal to and recording with the Tribal Clerk's Office. Additionally, if the Mortgage or Assignment of Leases and Rents relates to a Lease for Commercial Space on the Reservation and no Notice of Lease has been recorded with the Tribal Clerk's Office for such Lease, upon request, the Tribal Clerk's Office shall also record and provide file-stamped copies of the date and time of filing such Notice of Lease evidencing such submittal and recording with the Tribal Clerk's Office of such Lease.

c. Upon satisfaction of a Mortgage, the holder thereof shall record in the Tribal Clerk's Office, in addition to the recording office of any other governmental authority, an instrument evidencing satisfaction of the debt and release of the security interest. The satisfaction and release shall be filed with the Tribal Clerk's Office within thirty (30) days of actual receipt of full payment under the Mortgage.

CHAPTER 4. FORECLOSURE

42 M.P.T.L. ch. 4 § 1

§ 1. Foreclosure Remedy

The remedy of foreclosure described in this chapter is available and may be exercised only pursuant to and in accordance with security instruments providing for such action.

42 M.P.T.L. ch. 4 § 2

§ 2. Jurisdiction

The Mashantucket Pequot Tribal Court has jurisdiction over foreclosure and eviction (i) where so provided and in conformity with the consent to jurisdiction provisions of a Mortgage; or (ii) where a state or federal court has in a final order declined jurisdiction over such foreclosure proceeding; or (iii) where a Borrower and a

Commercial Lender have expressly agreed in writing to such jurisdiction for a foreclosure proceeding.

42 M.P.T.L. ch. 4 § 3

§ 3. Tribe May Intervene

The Tribe may petition the Mashantucket Pequot Tribal Court to intervene at any time in any Mortgage Foreclosure Proceeding. In all cases, the Court shall grant such a petition. Neither the filing of a petition to intervene by the Tribe, nor the granting of the petition by the Mashantucket Pequot Tribal Court, shall operate as a waiver of the sovereign immunity of the Tribe, except where the Tribe has expressly waived its sovereign immunity or as the, Tribe may expressly authorize.

42 M.P.T.L. ch. 4 § 4

§ 4. Notice of Foreclosure Proceeding

a. Upon default (as defined in a respective Mortgage) and failure to cure after notice of default, if and as applicable under the Mortgage, a Commercial Lender holding a Mortgage may file a foreclosure action with the Mashantucket Pequot Tribal Court. A foreclosure action shall be commenced upon (i) the filing of a summons and complaint and lis pendens with the Mashantucket Pequot Tribal Court; and (ii) the filing of a lis pendens in the Tribal Clerk's office.

b. After filing with the Court, the Commercial Lender or its agent shall serve the summons and complaint upon each party entitled to notice under this title. Each party served with notice shall have twenty (20) days after service to file a responsive pleading. Once all response deadlines have expired or all responses to the complaint have been received by the Commercial Lender, the Commercial Lender may file a motion for a default judgment or summary judgment with the Court. The notice of the motion shall be served and proof of service shall be made in any manner provided by the Mashantucket Pequot Rules of Civil Procedure. The Court shall hold a hearing on the motion for default judgment or motion for summary judgment. If the Court denies the motion, the parties must complete discovery and an evidentiary hearing must be held to resolve all issues within thirty (30) days after the hearing on the motion for default or summary judgment.

c. If any party is not served or is not timely served before any motion or evidentiary hearing date, the Court shall order the hearing continued to a date and time certain, not less than ten (10) days from the date scheduled for the original hearing. All notices already timely served remain effective. The Commercial Lender shall satisfy the notice requirement of this section with respect to those parties not served or not timely served with respect to the original hearing. Any party timely served, who has not received actual notice of the date to which the hearing has been continued, shall be sent the order of continuance by first-class mail at his last known address unless he has filed an appearance in which case notice shall be provided in accordance with the Rules of Court.

d. The summons and complaint shall be served on the following:

1. Any Borrower, Lessee, Sublessee or Sublessor of the Leasehold Interest;
 2. All Persons to whom the security instrument itself directs notice to be sent in case of default;
 3. All properly recorded lienholders of the Leasehold Interest with liens properly recorded prior to the recording of a lis pendens in the Tribal Clerk's Office; and
 4. The General Counsel of the Tribe and the Tribal Clerk.
- e. A complaint shall be in writing and shall clearly identify the following:
1. The particular property interest being foreclosed, with such a description as is necessary to identify the property, including the date, original amount, original holder, and the date and time of recordation of the security instrument with the Tribal Clerk's Office.
 2. The name and address of the holder of the security instrument at the time that the notice of hearing is filed.
 3. The nature of the default claimed.
 4. The fact, if appropriate, that the secured creditor has accelerated the maturity of the debt.
 5. Any right of the Borrower to pay the indebtedness or cure the default, if such is permitted under the Mortgage.
 6. That if the foreclosure sale is consummated, the purchaser will be entitled to possession of the Commercial Space as of the date of the assignment of the Lease to purchaser, and that the Occupant, if still in possession of the Commercial Space, can then be evicted.
 7. The name, address, and telephone number of Borrower.
 8. That the hearing may be held on a date later than that stated in the notice and that the party will be notified of any change in the hearing date.

42 M.P.T.L. ch. 4 § 5

§ 5. Foreclosure Hearing

a. At any motion or evidentiary hearing, the Court shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. An order of foreclosure shall be issued if the Person presiding finds the existence of the following:

1. An unpaid debt in which the party seeking to foreclose is the holder;

2. Default (as defined in a respective Mortgage);
3. Right to foreclose under the instrument;
4. The fair market value of the Leasehold Interest based on appraisals or other proof acceptable to the Court in its sole discretion; and
5. Service of the complaint on those entitled to notice under Chapter 4 § 4(d). If the Court issues an order of foreclosure, the Court shall authorize the Commercial Lender to proceed under the instrument, and the Commercial Lender shall give notice of and conduct a sale pursuant to the provisions of this Title. Such order shall specify the date, time and place of the sale and deposit requirements and may include direction as to advertising and other matters relating to the sale.

Any party named as a party in the Complaint or that has intervened as a party in the foreclosure action shall be permitted at any motion or evidentiary hearing to present evidence to challenge the right of the Commercial Lender to foreclosure.

b. A copy of the foreclosure order issued by the Court after a motion or evidentiary hearing shall be filed in the Tribal Clerk's Office before the Commercial Lender may proceed to advertise and sell.

c. A Commercial Lender shall not be required to provide a deposit in order to bid at sale and may bid its indebtedness at the sale. A Commercial Lender who is the successful bidder may apply all or part of the indebtedness as a credit in purchasing the property auctioned provided sufficient funds are paid into the Court to cover all costs.

d. A Commercial Lender may conduct the auction sale through counsel or an auctioneer retained and paid for by the Commercial Lender with such costs to be added to the indebtedness due under the Mortgage and related loan or lease documents.

42 M.P.T.L. ch. 4 § 6

§ 6. Appeal

Within ten (10) days of the Court's final order of foreclosure or finding for the defendant, it may be appealed to the Mashantucket Pequot Appellate Court. Appeals shall be limited to the trial court record in addition to briefs and oral argument presented by the parties. If an appeal is taken, the trial court may require the appealing party to post a bond with sufficient surety as the Court deems adequate to protect the opposing party from any probable loss by reason of appeal; and upon posting of the bond, if one was required by the Court, the Court shall stay the foreclosure pending appeal.

CHAPTER 5. SALE

42 M.P.T.L. ch. 5 § 1

§ 1. Notice of Sale

The notice of sale in a foreclosure action brought pursuant to this chapter shall include the following:

1. A description of the instrument pursuant to which the sale is held, identifying the original mortgagors and recording data. If the record owner of the Leasehold Interest is different from the original Borrower, the notice shall also list the Borrower, as reflected on the records maintained by the Tribal Clerk's Office, not more than ten (10) days prior to publishing the notice. The notice may also reflect the owner not reflected on the records if known. The notice must specify that the sale is not subject to any contingencies including without limitation contingencies for financing or inspection;
2. The date, hour and place of sale consistent with the provisions of the instrument and this chapter;
3. A description of the property interest to be sold in such a manner as is reasonably calculated to inform the public as to what is being sold, which description may be in general terms and may incorporate the description as used in the instrument containing the power of sale by reference thereto. Any property interest described in the Mortgage or Related Mortgage Documents which is not being offered for sale should also be described in such a manner as to enable prospective purchasers to determine what is and what is not being offered for sale;
4. The terms of the sale provided for by the instrument pursuant to which the sale is held, including the amount of the cash or bank check deposit, if any, to be made by the highest bidder at the sale;
5. Any other provisions required by the instrument or the Court to be included therein;
6. Whether the property interest is being sold subject to, together with or free and clear of any subordinate rights or interests provided those rights and interests are sufficiently identified;
7. Whether the property interest is subject to limitations regarding possession and transfer under federal and Tribal law; and
8. The successful bidder shall be required to enter into a purchase and sale agreement with the Person conducting the sale subject only to Court approval of the sale.

42 M.P.T.L. ch. 5 § 2

§ 2. Mailing and Publishing of Notice

a. In addition to complying with the provisions for mailing or publishing notice of sale as are expressed in the security instrument. the Court in its discretion may direct such advertisement as in the opinion of the Court will serve the interest of the parties, and permit the charges for such advertisement to be taxed as a part of the costs of the foreclosure.

b. The notice of sale shall also be mailed by first-class mail, at least twenty (20) days prior to the date of sale, to each party entitled to notice of the hearing whose address is known to the Commercial Lender and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has notified in writing the Lender of their desire. Such notice shall contain the information required by § 2, describing the notice of sale.

42 M.P.T.L. ch. 5 § 3

§ 3. Satisfaction of Debt Prior to Sale; Report of Sale

a. A foreclosure is terminated if, before the time fixed for a sale, payment is made or tendered by the Borrower of all accelerated obligations including the entire principal, interest and penalties secured by the Mortgage including costs and expenses permitted under the Mortgage and incurred with respect to the proceeding. Borrower shall have no equitable right of redemption.

b. The Person who conducts the foreclosure sale, shall, within seven (7) days after the date of the sale, file a report of sale with the Court.

c. The report shall be signed by the Person authorized to hold the sale, or by his agent or attorney, and shall include:

1. The authority under which the Person making the sale acted;
2. The name of the Borrower;
3. The name of the Lender;
4. The date, time and place of the sale,
5. A description of the property sold, sufficient to identify it, and, if sold in parts, a description of each part so sold;
6. The name or names of the Person or Persons to whom the property was sold;
7. The price at which the property, or each part thereof, was sold, and that such price was the highest qualified bid;
8. The name of the Person making the report; and
9. The date of the report.

d. The Court shall schedule a hearing within ten (10) days after receipt of the report to approve or disapprove such sale, approve the deed or other instrument of conveyance or assignment to the buyer and issue such other orders as the Commercial Lender may request. The Court shall sign the deed or other instrument of conveyance or assignment as the transferor. The only grounds for disapproving a sale shall be the failure of the Commercial Lender to comply with the provisions of Title 42 of the M.P.T.L or the gross inadequacy of the bid. Once the Court approves the sale,

the prevailing buyer at the foreclosure sale shall take title to the Leasehold Interest free and clear of any liens recorded by any lienholder after the Mortgage was recorded so long as such lienholder (i) received notice of the Foreclosure Proceeding in accordance with 42 M.P.T.L. ch. 4 § 4, or (ii) recorded its lien after the lis pendens was recorded in the Tribal Clerk's Office in accordance with 42 M.P.T.L. ch. 4 § 4. The buyer shall also take title to the Leasehold Interest free and clear of any assignment approval right or purchase option of the Tribe.

42 M.P.T.L. ch. 5 § 4

§ 4. Orders for Possession

a. Orders for possession of property sold pursuant to this chapter in favor of the purchaser and against any party or parties in possession at the time application for possession is made, may be issued by the Court when:

1. The property has been sold as provided herein;
2. The sale has been consummated, and the purchase price has been paid;
3. The purchaser has acquired the applicable interest and is entitled to possession of the property sold;
4. The Court has certified the sale pursuant to ch. 5 § 3; and
5. Application for possession is made by petition to the Court by the Commercial Lender, the purchaser of the property, or their authorized representative.

b. An order for possession issued pursuant to this section shall be directed to the Mashantucket Pequot Police Department and shall authorize officers of that department to remove all Occupants and their personal property from the premises and to put the purchaser in possession.

1. The Tribal Police shall, at least forty-eight (48) hours prior to the date and time specified in the Order of Possession, use reasonable efforts to locate and notify the Occupant of the date and time such possession is to be relinquished.
2. The order shall be served upon each Occupant as provided in the order.

42 M.P.T.L. ch. 5 § 5

§ 5. Failure of Bidder to Make Cash Deposit or to Comply With Bid; Resale

a. If the terms of the sale of property require the highest bidder to make a cash or other deposit at the sale, and he fails to make the required deposit, the Person holding the sale shall at the same time and place again offer the property for sale.

b. When the highest bidder at a sale fails to comply with the terms of the sale, the Court may, upon motion, enter an order authorizing a resale of the property. The procedure for such resale shall be the same as is provided by this chapter in

the case of an original sale of property except that the sections addressing the notice of hearing, the hearing, and appeal do not apply to the resale.

c. A defaulting bidder at any sale is bound by his bid, and in case a resale is had because of the bidder's default, the bidder shall remain liable to the extent that the final sale price is less than his bid plus all the costs of the resale. Any deposit or compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for which the defaulting bidder remains liable under this section.

d. Nothing in this section deprives any person of any other remedy against the defaulting bidder.

42 M.P.T.L. ch. 5 § 6

§ 6. Disposition of Proceeds of a Sale

a. The Court shall order that the Person making the sale apply the proceeds of any sale in the following order:

1. Costs and expenses of the sale and a reasonable auctioneer's fee if such expense has been incurred and approved by the Court;

2. The obligations secured by the Mortgage.

b. Any surplus remaining after the application of the proceeds of the sale as set out in subsection (a) shall be paid to the Person or Persons entitled thereto, if the Person who made the sale knows who is entitled thereto. Otherwise, the surplus shall be paid to the Court.

c. The Court shall order any such funds paid to the party or parties entitled thereto.

42 M.P.T.L. ch. 5 § 7

§ 7. Special Proceeding to Determine Ownership of Surplus

A special proceeding may be instituted in the Court by any Person claiming any money, or part thereof, paid into to the Court under Section 9, to determine who is entitled thereto.

42 M.P.T.L. ch. 5 § 8

§ 8. Proceeds Do Not Satisfy the Debt

If the proceeds of the sale are not sufficient to pay in full the amount secured by the Mortgage including allowable expenses, the deficiency shall be determined, and the Court shall render judgment against any party liable to pay the deficiency. The deficiency shall be calculated as the difference between the indebtedness and foreclosure sale proceeds of the property.

42 M.P.T.L. ch. 5 § 9

§ 9. Self-Help Possession

a. A Commercial Lender holding a Mortgage may enter into possession and assume the Borrower's interest in the Lease without instituting a foreclosure action if:

1. The Mortgage permits such action; and
2. The Borrower is in default and such default has continued for no less than ten (10) days after written notice thereof; and
3. The Commercial Lender is able to assume possession without a breach of peace occurring; and
4. The Premises have not been open for business for a period of at least ten (10) days prior to entry.

b. A Commercial Lender is permitted to demand that tenants or subtenants pay all rents directly to the Commercial Lender pursuant to an Assignment of Leases and Rents, and tenants or subtenants must comply with the demand or be subject to an eviction proceeding commenced by the Commercial Lender against the tenant or subtenant in the Court.

42 M.P.T.L. ch. 5 § 10

§ 10. Appointment and Powers of a Temporary Receiver

a. Upon motion of a Commercial Lender, a temporary receiver of rents and the Leasehold Interest may be appointed at any time upon the terms set forth in Mortgage, Related Mortgage Documents or Assignment of Leases and Rents or upon a showing of cause. If permitted under the Mortgage, Related Mortgage Documents or Assignment of Leases and Rents, the receiver may be appointed *ex parte* without notice to Lessor without regard to (i) any defenses to a Lease default of Lessor, (ii) the value of the Leasehold Interest, or (iii) the solvency or insolvency of any Person liable for payments under the Lease.

b. The receiver may be any person requested by the Commercial Lender and approved by the Court.

c. The receiver may be authorized to take and hold the Leasehold Interests and all rents, manage the property subject to the Leasehold Interest and pay expenses of the Leasehold Interest. The receiver may also be granted authority to perform other duties requested by the Commercial Lender and approved by the Court, *provided that* the receiver shall not manage any property where such management would violate federal law.

d. No bond shall be posted by the receiver absent a provision in the Mortgage, Related Mortgage Documents or Assignment of Leases and Rents.

e. The receivership shall terminate upon the closing and transfer of title through a foreclosure sale unless otherwise ordered by the Court.

CHAPTER 6. EFFECTIVE DATE

42 M.P.T.L. ch. 6 § 1

§ 1. Effectiveness

This Commercial Foreclosure law takes effect as of the date of enactment.

TITLE 43. GOOD SAMARITAN AND LIMITED LIABILITY LAW

CHAPTER 1. GOOD SAMARITAN

43 M.P.T.L. ch. 1 § 1

§ 1. Good Samaritan

A person licensed to practice medicine, surgery, or dentistry in any state of the United States, a person licensed as a registered nurse or certified as a licensed practical nurse in any state in the United States, and a medical technician or any person operating a cardiopulmonary resuscitator or a person trained in cardiopulmonary resuscitation in accordance with the standards set forth by the American Red Cross or American Heart Association, who, voluntarily and gratuitously and other than in the ordinary course of his employment or practice, renders emergency medical or professional assistance to a person in need thereof, shall not be liable to such person assisted for civil damages for any personal injuries which result from acts or omissions by such person in rendering the emergency care, which may constitute ordinary negligence. The immunity provided in this subsection does not apply to acts or omissions constituting gross, willful or wanton negligence.

CHAPTER 2. LIMITED LIABILITY

43 M.P.T.L. ch. 2 § 1

§ 1. Immunity Regarding Opioid Antagonists

a. For purposes of this section, "opioid antagonist" means naloxone hydrochloride or any other similarly acting and equally safe drug approved by the federal Food and Drug Administration for the treatment of drug overdose.

b. A licensed health care professional who is permitted by law to prescribe an opioid antagonist may, if acting with reasonable care, prescribe, dispense or administer an opioid antagonist to treat or prevent a drug overdose without being liable for

damages in a civil action or subject to criminal prosecution for prescribing, dispensing or administering such opioid antagonist or for any subsequent use of such opioid antagonist. For purposes of this section, "opioid antagonist" means naloxone hydrochloride or any other similarly acting and equally safe drug approved by the federal Food and Drug Administration for the treatment of drug overdose.

c. Any person who, in good faith, believes that another person is experiencing an opioid-related drug overdose may, if acting with reasonable care, administer an opioid antagonist to such other person. Any person, other than a licensed health care professional acting in the ordinary course of such person's employment, who administers an opioid antagonist in accordance with this subsection shall not be liable for damages in a civil action or subject to criminal prosecution with respect to the administration of such opioid antagonist.

MASHANTUCKET PEQUOT RULES OF COURT

RULES OF CIVIL PROCEDURE

M.P.R.C.P. 4

Rule 4. Process

a. Summons: Form. The summons shall bear the signature or facsimile signature of the Clerk, be under the seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, and the time within which these Rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

b. Same: Issuance. The summons may be procured in blank from the Clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (a) of this Rule. The plaintiff's attorney shall deliver to the person who is to make service the original summons upon which to make return of service and a copy of the summons and of the complaint for service upon the defendant.

c. Service. Service of the summons and complaint may be made as follows:

(1) By a Tribal police officer within the Mashantucket Pequot Reservation.

(2) By a marshal or a deputy within the marshal's county, or other person authorized by law, or by some person specially appointed by the Court for that purpose. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(3) By any other method permitted or required by this Rule or by Tribal law.

d. Summons: Personal Service. The summons and complaint shall be served together. Personal service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made by leaving a copy of the summons and of the complaint at the defendant's dwelling house or usual place of abode; or to be made by mail pursuant to subdivision (f) of this Rule or by publication pursuant to subdivision (g) of this Rule.

(2) Upon an infant, by delivering a copy of the summons and of the complaint personally:

(a) to the infant; and

(b) also to the infant's guardian, if known to the plaintiff, and if not, then to the infant's father or mother or other person having the infant's care or control, or with whom the infant resides, or if service cannot be made upon any of them, then as provided by order of the Court.

(3) Upon an incompetent person, by delivering a copy of the summons and of the complaint personally:

(a) to the guardian of the incompetent person or competent adult member of the incompetent person's family with whom the incompetent person resides, or if the incompetent person is living in an institution then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, unless as provided by order of the Court; and

(b) unless the Court otherwise orders, also to the incompetent person.

(4) Upon an Indian nation or tribe, by delivering a copy of the summons and of the complaint to the Tribal chairperson, chief, governor or other Tribal official designated by Tribal law to accept service.

(5) Upon a town, by delivering a copy of the summons and of the complaint to the town clerk or one of the selectmen or assessors.

(6) Upon a city, by delivering a copy of the summons and of the complaint to the city clerk, treasurer, manager or other city official authorized by law.

(7) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district of Connecticut or to an assistant United States attorney or clerical employee designated by the United States in a writing filed with the Clerk of the United States District Court for the district of Connecticut and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington,

District of Columbia, and in any action challenging the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency provided that any further notice required by statute or regulation shall also be given. Upon an office or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency, provided that any further notice required by statute or regulation shall also be given. If the agency is a corporation the copy shall be delivered as provided in paragraph (8) or (9) of this subdivision of this Rule. Upon any other public corporation of the United States, by delivering a copy of the summons and of the complaint to any officer, director, or manager thereof and upon any public body, agency or authority by delivering a copy of the summons and the complaint to any member thereof.

(8) Upon a corporation established under the laws of any other state or country:

(a) by delivering a copy of the summons and of the complaint to any officer, director or agent, or by leaving such copies at an office or place of business of the corporation within the state; or

(b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(9) Upon a partnership subject to suit in the partnership's name in any action, and upon all partners in any action on a claim arising out of partnership business:

(a) by delivering a copy of the summons and of the complaint to any general partner or any managing or general agent of the partnership, or by leaving such copies at an office or place of business of the partnership; or

(b) by delivering a copy of the summons and of the complaint to any agent, attorney in fact, or other person authorized by appointment or by statute of any state to receive or accept service on behalf of the partnership, provided that any further notice required by the statute shall also be given.

(10) Unless otherwise provided by Tribal law or by these Rules, upon the Mashantucket Pequot Tribe by delivering a copy of the summons and of the complaint to the Chairperson of the Mashantucket Pequot Tribal Council, either (a) personally or (b) by registered or certified mail, return receipt requested; and in any action challenging the validity of an order of an office, department or agency of the Mashantucket Pequot Tribe, by also sending a copy of the summons and of the complaint by ordinary mail to such office or agency.

(11) Upon an office, department or agency by also sending a copy of the summons to the person in charge of the department, office or agency of the Mashantucket Pequot Tribe.

(12) Upon a state of the United States by the method prescribed by the law of that state for service of process upon it.

e. Personal Service Outside Tribal Territory. A person who is subject to the jurisdiction of the courts of the Mashantucket Pequot Tribe may be served with the summons and complaint outside the territorial jurisdiction of the Tribe, in the same manner as if such service were made within the territorial jurisdiction of the Tribe, by any person authorized to serve civil process by the laws of the place of service or by a person specially appointed to serve it. An affidavit of the person making service shall be filed with the court stating the time, manner, and place of service. Such service has the same force and effect as personal service within the territorial jurisdiction of the Tribe.

f. Service Outside Tribal Territory by Mail in Certain Actions. Where service cannot, with due diligence, be made personally within the territorial jurisdiction of the Tribe, service of the summons and complaint may be made upon a person who is subject to the jurisdiction of the courts of the Tribe by delivery to that person outside Tribal territory by registered or certified mail, return receipt requested, postage pre-paid, to the person's last known address in the following cases:

- (1) Where the pleading demands a judgment for a debt owed to the Mashantucket Pequot Gaming Enterprise evidenced by a credit instrument.
- (2) Where the pleading demands a judgment for dissolution of marriage or annulment.
- (3) Where the action concerns a petition for protective care or guardianship of a minor child.
- (4) Where otherwise permitted by Tribal law.

Service by registered or certified mail shall be complete when the registered or certified mail is delivered and the return receipt signed. The plaintiff shall file with the Court the return receipt and an affidavit by the person effecting service attesting that service was made, the person on whom and the manner in which service was made, including the date and time of service, and the fees of such service, if any.

g. Service by Publication.

(1) When Service May Be Made. The Court, on motion upon a showing that service cannot with due diligence be made by another prescribed method, shall order service by publication.

(2) Contents of Order. An order for service by publication shall include:

- (a) a brief statement of the object of the action;
- (b) that the action may affect any rights and responsibilities of the person to be served;
- (c) the time of the hearing, the date of the hearing and the address of the location of the hearing;
- (d) that the person to be served has the right to be represented by counsel at the person's own expense, to introduce evidence, and to examine witnesses; and

(e) the possible consequences of the proceeding.

The order shall also direct its publication no less than three (3) separate times, the last date of which is to be at least ten (10) days before the date of the hearing in such action in a newspaper of general circulation in the place of the last-known address of the person to be notified, or if no such address is known, in a newspaper of general circulation in the region where the Court is located.

(3) Time of Publication; When Service Complete. Service by publication is complete on the 10th day after the final publication date. The plaintiff shall file with the Court an affidavit that publication has been made.

h. Return of Service. The person serving the process shall make proof of service thereof on the original process or a paper attached thereto for that purpose, and shall forthwith return it to the plaintiff's attorney. The plaintiff's attorney shall, within the time during which the person served must respond to the process, file the proof of service with the court. If service is made under paragraph (c) (1) of this Rule, return shall be made by the plaintiff's attorney filing with the Court the acknowledgment received pursuant to that paragraph. The attorney filing such proof of service with the Court shall constitute a representation by the attorney, subject to the obligations of Rule 11, that the copy of the complaint mailed to the person served or delivered to the officer for service was a true copy. If service is made by a person other than a tribal police officer, a marshal or the marshal's deputy or another person authorized by law, that person shall make proof thereof by affidavit. The officer or other person serving the process shall endorse the date of service upon the copy left with the defendant or other person. Failure to endorse the date of service shall not affect the validity of service.

i. Amendment. At any time in its discretion and upon such terms as it deems just, the Court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

M.P.R.C.P. 68

Rule 68. Offer of Judgment

a. Making an Offer; Accepted Offer. At least twenty (20) days before the date set for trial, either party may serve upon the other party an offer to allow judgment to be taken for or against the offering party for the money or property or to the effect specified in the offer, with costs then accrued. If within ten (10) days after the service of the offer the other party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof. The party that made the offer shall file a withdrawal of the action with the clerk and the clerk shall record the withdrawal of the action accordingly.

b. Unaccepted Offer. An unaccepted offer shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs.

c. Paying Costs After An Unaccepted Offer. If the judgment finally obtained by the plaintiff is equal to or greater than plaintiff's offer of judgment the court shall add to the amount so recovered 5% annual interest on said amount computed from the date of filing of the offer of judgment and may award reasonable attorney's fees not to exceed Five Hundred (\$500.00) Dollars and shall render judgment accordingly. If the judgment finally obtained by the plaintiff is less than the amount of the offer, the plaintiff shall pay the defendant's cost accrued after the offer was made. Such cost may include reasonable attorney's fees in an amount not to exceed Five Hundred (\$500.00) Dollars.

M.P.R.C.P. 90

Rule 90. Schedule of Tribal Court Fees

The fees of the Tribal Court shall be as follows:

Entry of any action, except as provided by tribal law, \$125.00;

Entry of a Title 8 (Employee Review Code) administrative appeal, \$50.00;

Application or motion to open or modify final judgment, \$75.00;

Notice of appeal to the Court of Appeals, \$125.00;

Pro hac vice admission, \$50.00;

Copies, \$1.00 for first page or part thereof and \$.50 for each additional page or part thereof;

Registration of foreign judgment, \$50.00;

Writ of execution, \$10.00;

Requests for transcription of court proceedings, \$15.00 per audio copy (tape or CD) plus "actual costs of transcription" - \$2.50 per page; \$3.25 per page for expedited services;

Attesting copies, \$2.00;

Certification of any document, \$15.00 in addition to cost of copying;

Exemplifying copies, \$25.00;

Service of any document within the Mashantucket Pequot Reservation, except as otherwise provided by tribal law, \$5.00;

Service of any document without the Mashantucket Pequot Reservation, except as otherwise provided by tribal law, \$5.00 in addition to \$.55 per mile.

Probate Court. There shall be no entry fee for any proceedings in the Probate Court.

Fees for recordings, notices, service of process and certified copies (other than accountings) shall be \$5.00 per page. There shall be a \$125.00 fee for each accounting filed.

Exemptions. Notwithstanding all of the above provisions, neither the Tribal Court, the Court of Appeals, the Office of the Tribal Prosecutor, the Office of Legal Counsel nor counsel appointed by the Tribal Court shall be required to pay any fee.

MASHANTUCKET PEQUOT RULES OF EVIDENCE

M.P.R.A.P. 11

Rule 11. Costs, Fees, Appointment of Counsel in Criminal Cases

a. At the time of filing the notice of appeal, the appellant shall pay to the Tribal Court Clerk the sum of \$125 as a filing fee.

b. If a party is indigent and desires to appeal, that party may file a notice of appeal accompanied by a statement under oath reciting facts demonstrating the inability to pay the filing fee. Under these circumstances, the filing fee will be waived.

c. In criminal cases, an indigent party may also file a motion for an order from an appellate court judge that the necessary expenses of prosecuting the appeal be paid by the Mashantucket Pequot Tribe and for appointment of appellate counsel.