

Sokaogon Chippewa Community Ordinances

Section 6.5 TRIBAL SMALL DOLLAR LENDING ORDINANCE.

6.5.1 Purpose.

With this Ordinance, the Sokaogon Chippewa Community permits licensees to offer three loan products: (i) Small Dollar, Single Payment Loans; (ii) Small Dollar Installment Loans; and (iii) Small Dollar Open-End Lines of Credit. This Chapter shall be construed in conformity with the laws and regulations of the Sokaogon Chippewa Community and the United States of America.

6.5.2 Definitions. As used in this Article unless the context requires otherwise:

- (a) **Small Dollar Lender.** A lender in the business of making (i) Small Dollar, Single Payment Loans; (ii) Small Dollar Installment Loans; or (iii) Small Dollar Open-End Lines of Credit that are secured by a borrower's promise to repay a loan from income deposited into the borrower's checking account. The term "Small Dollar Lender" shall also include a person or entity that takes an assignment of or becomes the successor in interest to a Small Dollar Loan from a Small Dollar Lender.
- (b) **Small Dollar Loan.** A loan that is a (i) Small Dollar, Single Payment Loans; (ii) Small Dollar Installment Loans; or (iii) Small Dollar Open-End Lines of Credit
- (c) **Small Dollar, Single Payment Loan.** A loan that requires the borrower to repay the loan in a single installment on the maturity date of the loan.
- (d) **Small Dollar Installment Loan.** A loan that requires the borrower to repay the loan in installment payments of principal and interest until the maturity date of the loan.
- (e) **Small Dollar Open-End Line of Credit.** Credit extended to the borrower during the term of the plan (up to any limit set r) and that is generally made available to the extent that any outstanding balance is repaid.

- (f) **Borrower.** A consumer who is a natural person who receives a Small Dollar Loan or Small Dollar Open-End Line of Credit.
- (g) **Cancel.** To annul the Small Dollar Loan agreement in accordance with this Ordinance and, with respect to the Small Dollar Loan agreement returning the borrower and the Small Dollar Lender to their financial condition prior to the origination date of the Small Dollar Loan.
- (h) **Tribal Council.** The Tribal Council of the Sokaogon Chippewa Community.
- (i) **Tribal Court.** The Tribal Court of the Sokaogon Chippewa Community.

6.5.3 License required.

- (a) Within 60 days of the effective date of the ordinance enacting this Article, any Small Dollar Lender operating on the Reservation of the Sokaogon Chippewa Community shall apply for and obtain a License to operate as a Small Dollar Lender. The license and fee paid for the license shall be in addition to any business license required by Tribal law. A person or entity that acquires the interest of a Small Dollar Lender in a Small Dollar Loan shall not be required to obtain a license unless that person or entity acquires the rights to Small Dollar Loans that originate on the Sokaogon Chippewa Community Reservation on a regular basis.
- (b) A separate license shall be required for each location a Small Dollar Lender operates on the Reservation and each license must be renewed annually.
- (c) The license application shall be in a form to be determined by the Tribal Council.
- (d) The Tribal Council shall require the Small Dollar Lender to report its fee schedule in the Small Dollar Lender's license application for each type of Small Dollar Loan it originates.

- (e) No person shall operate a Small Dollar lending business or loan any funds as a Small Dollar Loan without a current license to do business issued by the Sokaogon Chippewa Community Tribal Council.
- (f) The amount of the license fee shall be set by Council resolution.

6.5.4 Administrative Authority.

- (a) The Tribal Council is authorized and directed to enforce all provisions of this Article. The Tribal Council shall have the power to investigate any and all complaints regarding alleged violations of this Article. The Tribal Council may delegate any or all authority granted under this Section to a designee.
- (b) The Tribal Council is authorized to adopt and enforce administrative rules interpreting and applying this Article. The Tribal Council or designee shall make written findings of fact and conclusions of law to support all administrative rules.
- (c) Prior to adoption of a new administrative rule, the Tribal Council shall give public notice of the terms of the proposed rule, and shall conduct a public hearing to consider public comment. Public notice shall be given when administrative rules have been adopted. At the public hearing, the Tribal Council or designee shall hear oral and written testimony concerning the proposed rule. The Tribal Council shall have the power to establish and limit the matters to be considered at the hearing, to prescribe procedures for the conduct of the hearings, to hear evidence, and to preserve order.
- (d) The Tribal Council shall adopt, modify or reject the proposed rule after considering testimony received during the public hearing.
- (e) Unless otherwise stated, all rules shall be effective upon adoption by the Tribal Council. Copies of all current rules shall be available to the public upon request.
- (f) Notwithstanding any other provision of this section, the Tribal Council may adopt an interim rule without prior public notice upon a finding that failure to act promptly may result in serious prejudice to the public interest or the interest of the

affected parties. Such interim rules shall detail the specific reasons for such prejudice. Any interim rule adopted pursuant to this paragraph shall be effective for a period not to exceed 180 days.

- (g) **Inspection of Records.** The Sokaogon Chippewa Community has the right to review and/or copy the records of any Small Dollar Lender for purposes of auditing or complaint resolution. Such records shall be made available for inspection during normal business hours within 24 hours of written notice by the Tribal Council or its designee.

6.5.5 Limitations on Refinance and Renewal.

A Small Dollar Lender may not refinance or renew a Small Dollar, Single Payment Loan more than five (5) times unless the Borrower pays at least 10% of the principal of the original Small Dollar Single Payment Loan by the payment due date. The Small Dollar Lender shall disclose this requirement to the Borrower in a minimum of bold 12 point type before the Borrower becomes obligated on the Small Dollar Single Payment Loan.

6.5.6 Cancellation of Small Dollar Loan.

- (a) A Small Dollar Lender shall cancel a Small Dollar Loan without any charge to the Borrower if, before midnight of the next business day, the Borrower:
 - (1) Informs the Small Dollar Lender by telephone or in writing that the Borrower wishes to cancel the Small Dollar Loan and any future payment obligations; and
 - (2) Returns to the Small Dollar Lender the uncashed check or proceeds given to the Borrower by the Small Dollar Lender or cash in an amount equal to the principal amount of the Small Dollar Loan.
- (b) A Small Dollar Lender shall conspicuously disclose to each Borrower the right to cancel a Small Dollar Loan as described in this section is available to the Borrower. The Small Dollar Lender shall disclose this requirement to the

Borrower in a minimum of bold 12 point type before the Borrower becomes obligated on the Small Dollar Loan.

6.5.7 Payment Plan for a Small Dollar, Single Payment Loan.

- (a) A Small Dollar Lender and a Borrower may agree to convert a Small Dollar Single Payment Loan into a Small Dollar Installment Loan at any time. The Small Dollar Installment Loan shall not require the Borrower to pay a greater amount of interest than provided by the lending agreement, or allowed by Tribal Law or federal law, whichever is less. Each payment plan shall be in writing and acknowledged by both the Small Dollar Lender and the Borrower.
- (b) After a Small Dollar Single Payment Loan has been renewed to the maximum number of times allowed by Tribal Law, this article or otherwise applicable federal law, whichever is less, and prior to default on the Small Dollar, Single Payment Loan, a Small Dollar Lender shall allow a Borrower to convert the Borrower's Small Dollar Loan into a Small Dollar Installment Loan. The Small Dollar Installment Loan shall not require the Borrower to pay a greater amount of interest than allowed by the lending agreement, Tribal Law, or federal law, whichever is less. Each Small Dollar Installment Loan shall be in writing and acknowledged by both the Small Dollar Lender and the Borrower.
- (c) A Small Dollar Lender shall disclose to each Borrower that conversion to a Small Dollar Installment Loan described in this section is available to the Borrower after the Small Dollar, Single Payment Loan has been renewed the number times allowed by Tribal Law or federal law, whichever is less. The Small Dollar Lender shall disclose this requirement to the Borrower in a minimum of bold 12 point type before the borrower becomes obligated on the Small Dollar, Single Payment Loan.
- (d) The Small Dollar Lender shall not assess any fee, interest charge or other charge to the Borrower as a result of converting the Small Dollar, Single Payment Loan into a Small Dollar Installment Loan.

- (e) Any Small Dollar Installment Loan that is entered into pursuant to this provision must provide for the payment of the total of payments due over a period of no fewer than 60 days in three or more payments. The Borrower may pay the total of payments due on the payment plan at any time. Small Dollar Installment Loans that are not originated pursuant to this section are not subject to the term and payment limitations in this paragraph. The Small Dollar Lender may not assess any penalty, fee or other charge to the Borrower for prepayment of the amount then owed under the payment plan.
- (f) A Small Dollar Lender's violation of the terms of a Small Dollar Installment Loan entered into with a Borrower under this section constitutes a violation of this Article. If a Small Dollar Lender enters into a Small Dollar Installment Loan with a Borrower through a third party that is representing the Borrower, the Small Dollar Lender's failure to comply with the terms of that payment plan constitutes a violation of this Section.
- (g) The Small Dollar Lender may transfer or assign its interest in the Small Dollar loan to a third party.

6.5.7 Payment Plan for Small Dollar Installment Loan

The Small Dollar Lender may offer Small Dollar Installment Loans with a term of not more than one year. A Small Dollar Installment Loan may not be renewed but a Small Dollar Lender may refinance a Small Dollar Installment Loan into another Small Dollar Installment Loan.

6.4.8 Finance Charges.

- (a) **Small Dollar Lines of Credit.** With respect to Small Dollar Lines of Credit, a Small Dollar Lender and Borrower may contract for and receive any finance charge agreed to by the parties.
- (b) **Small Dollar, Single Payment Loans and Small Dollar Installment Loans.** With respect to a Small Dollar Single Payment Loan or a Small Dollar Installment

Loan, a Small Dollar Lender and Borrower may contract for and receive any finance charge agreed to by the parties.

6.5.9 Other Charges.

A creditor also may contract for and receive charges for official fees and taxes, and insurance, provided all such charges are bona fide, reasonable in amount if not otherwise set by law, and not for the purpose of circumvention of this Chapter. A delinquency charge may also be collected on any installment not paid within ten (10) days after its due date in an amount not to exceed five dollars (\$5.00) or five percent (5%) of the unpaid installment, whichever is less. A delinquency charge may be collected only once on an installment.

6.5.10 Agreements and Practices.

- (a) The following federal consumer financial laws and regulations, as implemented and enforced by the Consumer Finance Protection Bureau, are incorporated by reference and adopted into this Ordinance:
1. **The Truth in Lending Act (TILA)** and its implementing regulation, **Regulation Z**, 12 C.F.R Part 1026, as amended, which requires lenders to disclose loan terms and Annual Percentage Rates. Regulation Z also requires lenders to provide advertising disclosures, credit payments properly, process credit balances in accordance with its requirements, and provide periodic statements. The Regulation includes different requirements for open- and closed-end loans;
 2. **The Electronic Fund Transfer Act (EFTA)** and its implementing regulation, **Regulation E**, 12 C.F.R. Part 1005, as amended, which protects consumers engaging in electronic fund transfers. Among other things, Regulation E prohibits lenders from requiring, as a condition of loan approval, a customer's authorization for loan repayment through a recurring electronic funds transfer (EFT), except in limited circumstances;
 3. **The Fair Debt Collection Practices Act (FDCPA)**, and its implementing regulation, **Regulation F**, 12 C.F.R. Part 1006, which governs collection

activities conducted by: (1) third-party collection agencies collecting on behalf of lenders; (2) lenders collecting their own debt using an assumed name, to suggest that a third person is collecting or attempting to collect such debt; and (3) any collection agency that acquires the debt if the collector acquired the debt when it already was in default;

4. **The Fair Credit Reporting Act (FCRA)** and its implementing regulation, **Regulation V**, 12 C.F.R. Part 1022, which requires that furnishers of information to consumer reporting agencies ensure the accuracy of data placed in the consumer reporting system. Additionally, the FCRA prohibits the use of consumer reports for impermissible purposes, and it requires users of consumer reports to provide certain disclosures to consumers. The FCRA also limits certain information sharing between affiliated companies;
5. **The Gramm-Leach-Bliley Act (GLBA)** and its implementing regulation, **Regulation P**, 16 C.F.R. Part 1016, which prevents financial institutions from impermissibly sharing a consumer's nonpublic personal information with third parties, and it requires that financial institutions disclose their privacy policies;
6. **The Equal Credit Opportunity Act (ECOA)** and its implementing regulation, **Regulation B**, 12 C.F.R. Part 1002, which set forth requirements for accepting applications and providing notice of any adverse action, and they prohibit discrimination against any borrower with respect to any aspect of a credit transaction: (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract), (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.
7. **Military Lending Act.**

- (b) Lenders shall not engage in potentially unfair, deceptive, or abusive acts or practices with respect to Lenders' interactions with Consumers. The standards used in assessing whether a practice or activity of Lender is unfair, deceptive, or abusive are:
1. A representation, omission, act, or practice is deceptive when:
 - A. the representation, omission, act, or practice misleads or is likely to mislead the consumer;
 - B. the consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
 - C. the misleading representation, omission, act, or practice is material.
 2. An act or practice is unfair when:
 - A. it causes or is likely to cause substantial injury to consumers;
 - B. the injury is not reasonably avoidable by consumers; and
 - C. the injury is not outweighed by countervailing benefits to consumers or to competition.
 3. An act or practice is abusive which:
 - A. materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
 - B. takes unreasonable advantage of:
 - (1) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - (2) the inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
 - (3) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.
- (c) **Truth in Lending.** With respect to Lender's disclosures to the consumer or borrower of the terms of the Small Dollar Loan Transaction, lending practices shall be governed by the provisions set forth in Federal Reserve Board Regulation Z, 12 C.F.R Part 1026, as amended, which is adopted herein by reference. In case

of conflict, the provisions of this Small Dollar Lending Ordinance shall apply to the extent that the provisions of this Ordinance are more restrictive than the federal counterpart.

- (d) **Notice to Consumer.** The Small Dollar Lender shall give to the consumer a copy of any writing evidencing a consumer credit transaction. The writing shall contain a clear and conspicuous notice informing the consumer that he should not sign before reading it, that she/he is entitled to a copy of it, and that she/he is entitled to prepay the unpaid balance at any time without penalty and may be entitled to a refund of unearned charges in accordance with law. The following notice, if clear and conspicuous, complies with this Section.

NOTICE TO CONSUMER:

1. Do not sign this paper before you read it.
2. You are entitled to a copy of this paper.
3. You may prepay the unpaid balance at any time without penalty and may be entitled to a refund of unearned charges in accordance with law.

- (e) **Changes in Small Dollar Open End Lines of Credit.** Changes in the terms or conditions or method of determining the balance of a Small Dollar Open End Line of Credit are effective only if Small Dollar Lender provides the notice required under Regulation Z.
- (f) **Receipts for Payment.** A Small Dollar Lender shall provide a written receipt upon each payment or a periodic statement as required by Regulation Z, which receipt or statement may be in electronic form.
- (g) **Co-Signers.** A person is not obligated as a co-signer with respect to a consumer transaction unless, before or at the time of signing, he receives a notice substantially similar to the following:

NOTICE

You agree to pay the debt identified below although you may not personally receive any property, services, or money. You may be sued for payment although the person who receives the property, services, or money is able to pay. This Notice is not the contract that obligates you to pay. Read the contract for the exact terms of the debt.

Identification of Debt You May Have to Pay_____

Name of Debtor_____

Name of Creditor_____

Kind of Debt_____

I have received a copy of this Notice.

Date: _____ Signed:_____

A co-signer shall also receive a copy of the writing setting forth the terms of the debtor's obligation.

6.5.11 Limitations on Agreements and Practice.

Security Interest. In a Small Dollar Loan transaction, a Small Dollar Lender may take a security interest in the consumer's authorization for bank account withdrawal. A security interest taken in violation of this Section is void.

6.5.12 Limitations on Consumer's Liabilities.

- (a) **Limitation on Default Charges.** Except for expenses incurred in seeking the possession of a security interest and delinquency charges provided in Section 6.5.8 and 6.5.9, a Small Dollar Lender may not require any other charges as a result of the default of the consumer.
- (b) **Assignee Subject to Claims and Defenses.** With respect to a Small Dollar Loan, an assignee of the rights of the lender is subject to all claims and defenses of the consumer against the Small Dollar Lender arising from the transaction,

notwithstanding that the assignee is a holder in due course of a negotiable instrument.

6.5.13. Limitations on Creditor's Remedies.

- (a) **Pre-Judgment Garnishment Prohibited.** Before entry of judgment in an action against a consumer for a debt arising from a Small Dollar Loan transaction, the Small Dollar Lender may not garnish property or wages of the consumer.
- (b) **Limitation on Garnishment.** After entry of judgment in an action against a consumer for a debt arising from a Small Dollar Loan transaction, a creditor must comply with all terms, conditions, and limitations of Tribal Law in garnishing the property of the consumer, including the limitations on property subject to garnishment.
- (c) **Extortionate Extensions of Credit.** If it is the understanding of the Small Dollar Lender and the consumer at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial process against the consumer. There is prima facie evidence that the extension of credit was extortionate if the finance charge or annual percentage rate exceeds one thousand two hundred percent (1200%) and the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish nonpayment.
- (d) **Unconscionable Transactions.** Where the court finds that, having regard to the risk and to all the circumstances, the cost of the loan is excessive and that the transaction is harsh and unconscionable, the court may:
 - 1. reopen the transaction and take account between the creditor and the debtor;

2. set aside either wholly or in part or revise contract made in respect of the money lent.

(e) **Unconscionable Debt Collection.** If a creditor or a person on his behalf engages in or is likely to engage in unconscionable conduct in collecting a debt arising from a Small Dollar Loan transaction, the Court may grant an injunction and award the consumer any actual damages she/he has sustained. In applying this Section, consideration shall be given to the following:

1. using or threatening to use force, violence, or criminal prosecution against the consumer or members of her/his family;
2. communicating with the consumer or a member of his family at frequent intervals or at unusual hours or under other circumstances so that it is a reasonable inference that the primary purpose of the communication was to harass the consumer;
3. using fraudulent, deceptive, or misleading representations such as a communication which simulates legal process or which gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law when it is not or threatening or attempting to enforce a right with knowledge or reason to know that the right does not exist; and
4. causing or threatening to cause injury to the consumer's reputation or economic status by disclosing information affecting the consumer's reputation for creditworthiness with knowledge or reason to know that the information is false, communicating with the consumer's employer before obtaining a final judgment against the consumer, disclosing information affecting the consumer's credit or other reputation to a person with knowledge that the person does not have a legitimate business need for the information, or disclosing information concerning the existence of a debt known to be disputed by the consumer without disclosing that fact.

- (f) **Hearing to Determine Unconscionability.** If it is claimed or appears to the Tribal Court that the agreement or transaction may be unconscionable, or that a person has engaged in or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the claim. If the Tribal Court finds unconscionability under this Section, the Tribal Court may award reasonable fees to the attorney for the consumer. If the Tribal Court does not find unconscionability, and the consumer or debtor knew his claim to be groundless, the Court may award reasonable fees to the attorney for the party against whom the claim was made.
- (g) **Default.** An agreement of the parties to a Small Dollar Loan transaction with respect to default on the part of the consumer is enforceable only to the extent that the consumer fails to make a payment as required by the agreement. If the consumer has been in default for ten (10) days, the creditor shall give written notice, electronic or by mail, or in person to the consumer, notification of the consumer's right to cure, the amount of payment and date by which payment must be made to cure the default.
- (h) **Right to Cure.** After Default, a Small Dollar Lender may accelerate maturity of the unpaid balance of the obligation, take possession of or enforce a security interest in collateral after notice of the consumer's right to cure is given, but in no case shall the creditor take possession of collateral or proceed against the consumer except in conformity with tribal law. At any time the consumer may cure the default by paying the amount of all unpaid sums due, plus any unpaid delinquency. For Small Dollar Open End Lines of Credit, the obligation is the unpaid balance of the account. Cure restores the consumer to his rights under the agreement as though the default had not occurred. With respect to subsequent defaults on the same obligation which occur within twelve (12) months after an earlier default as to which a creditor has given a notice of the consumer's right to cure, this provision gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or collateral, but the

creditor may not proceed against the consumer or collateral except in accordance with tribal law.

6.5.14. Consumer's Remedies.

- (a) **Effect of Violations.** If a Small Dollar Lender violates any provisions of this Chapter, the consumer has a cause of action to recover actual damages and a right to recover from the person violating this Chapter a civil penalty in an amount determined by the Court. No action may be brought more than two (2) years after the scheduled or accelerated maturity of the debt. Violations of this Chapter shall not impair rights on a debt except as otherwise noted.
- (b) **Limitations on Liability of Creditor.** A creditor is not liable for a civil penalty if he corrects the violation, pays any refund due, and notifies the consumer within forty-five (45) days of its occurrence.
- (c) **Costs and Fees.** In an action in which it is found that a creditor has violated this Chapter, the Court shall award to the consumer the costs of the action and to his attorneys, their reasonable fees.

6.5.15 Remedies.

- (a) Failure to comply with any provision of the Sokaogon Chippewa Community Ordinances, Chapter 6, Section 6.5, or the administrative rules, is a civil infraction. Each separate violation is a separate civil infraction; and each day that a violation continues to exist constitutes a separate civil infraction.
- (b) Civil penalties shall be payable to the Sokaogon Chippewa Community.
- (c) In addition to other remedies, any violation of Code Section 6.5 is declared to be a nuisance and may be enjoined or abated by any process available to the Sokaogon Chippewa Community or any aggrieved private citizen by law.
- (d) **Civil remedies.** Nothing in this Section is intended to prevent any person from pursuing any available legal remedies.

- (e) Consumers may file a complaint for civil infractions in the Sokaogon Chippewa Community Tribal Court, which shall have jurisdiction to enforce the provisions of this Ordinance. Upon a finding that the Small Dollar Lender violated any provision of this Ordinance, the Tribal Court may require, in addition to the civil penalties available by law, the Small Dollar Lender to pay the Tribe's or private party's actual costs in bringing the case, including a reasonable attorney's fee.
- (f) Upon finding that a Small Dollar Lender violated this Ordinance or any regulation adopted thereunder, the Small Dollar Lender's license shall be revoked. Such revocation may be made by the Tribal Court or by the Tribal Council. The Small Dollar Lender may reapply for licensure in thirty (30) days.

6.5.16 Appeals.

Appeals of the orders of the Tribal Court or other court where an action to enforce this code is filed may be taken in the manner provided by Tribal Law. The Small Dollar Lender may petition the Appellate Court to stay license revocation pending the appeal.

6.5.17 Complaints.

The Tribal Council or designee shall have the authority to investigate any and all complaints alleging violation of this Chapter or administrative rules adopted hereunder.

6.5.18 Severability.

If any provision of this ordinance or its application to any person or circumstance is declared invalid or unenforceable, the remainder of the Ordinance and its application to other persons and circumstances, other than that which has been held invalid or unenforceable, shall not be affected, and the affected provision of the ordinance shall be severed.

History: Chapter 6 of the Sokaogon Chippewa Ordinances amended by enactment of Section 6.5 "Tribal Small dollar Lending Ordinance" on October 24, 2013 by Resolution No 1025A2013.