

Preface to Oglala Sioux Tribe Business Codes:

Chapter 44 of the Oglala Sioux Tribe Law and Order Code previously contained only the business license provisions now contained in Part 1. No substantive changes were made to the existing law – it was merely re-codified in Part 1. Business filings are now being accepted at the OST Department of Revenue, POB 363, Pine Ridge, SD 57770; 605-867-5821, ext. 249 or 226.

Chapter 44 is now a modernized business law (the “OST Business Code”) that is attractive to domestic and foreign businesses. Provisions have been added to foster local employment of attorney and lay advocates who are members of the Bar of the Oglala Sioux Tribe. Provisions have also been added to empower Lakota entrepreneurs and business owners at minimal cost reducing barriers to entry for Lakota business start-ups. Drafting notes have been added where appropriate to identify any underlying laws and to highlight drafting and/or interpretation issues. Editorial notes have also been added to the Table of Contents and where appropriate summaries and/or flow charts have been added for ease of reference.

This modernized OST Business Code is drafted for ease of use and interpretation by business owners and lawyers from all jurisdictions. It is based on a selection of underlying codes from a variety of jurisdictions, including uniform laws. Where relevant to interpretation, original references in underlying uniform laws have been preserved. The following uniform laws have been incorporated in this Chapter 44: Model Entity Transactions Act, Uniform Partnership Act of 1997, Uniform Limited Partnership Act of 2001, Uniform Limited Liability Company Act of 1996, Uniform Trade Secret Act, Uniform Transfer to Minors Act, Uniform Trust Code of 2000, Uniform Securities Act of 2005, and Uniform Electronic Transactions Act.

The following is a list of the underlying laws used as a basis to draft the OST Business Code: Blackfeet Tribal Code Consumer Protection and Truth in Lending Acts; California Corporations Code (Unincorporated Associations, Business Rights, Contracts and Obligations, Trademark Act, Fictitious Business Names, Real Estate Investment Trusts and Professional Corporations and Entities,

Preface to Chapter 44 of the Oglala Sioux Tribe Law and Order Code

Unfair Business Practices), Colorado Corporations Code (Art. 90 re: Definitions, Filing, Entity Names, Registered Agent, Service of Process, Foreign Entities, Delinquency and Dissolution) and Cooperative Law; Hoopa Valley Tribal Code for Corporations, Nonprofit Corporations, Business Code and Tribal Entities Code; and the South Dakota Business Trust Act and Foreign Business Trust Act.

The OST Business Code is divided into 9 Parts. The American Bar Association has cited Colorado and Texas as having two of the most modern corporate laws in the United States – using a “hub & spoke” architecture. Colorado’s Article 90 was chosen as a basis for the OST Business Code because Colorado is relatively close to the Reservation and Art. 90 is easier to understand than Texas corporate law.

As a result of this “hub & spoke” architecture, the OST Business Code has centralized general provisions regarding definitions, mergers, filing, names, registered agent, service of process, foreign entities and delinquency/dissolution in Part 2. The “organic statutes” (e.g., Business Corporations Act, limited liability company act, etc.) contain cross-references to these centralized general provisions so that they need not be repeated in those acts unless there are specifics that are not covered by the centralized general provisions.

A note on filing. Most states have a Secretary of State that serves as a centralized filing office for many organic statutes (such as UCC filings and corporate filings). Since the Clerk of the Tribal Court maintains the most reliable legal filing system on the Reservation, the Clerk has been assigned the filing duties often performed by the Secretary of State of a state. Further, under the Uniform Securities Act, the Clerk will be the “Administrator” unless the Tribal Council appoints another officer to be the Administrator.

The OST Business Code contains a voluntary program to encourage businesses to promote Lakota language and culture under Section 44-2-1.10. This gives companies doing business on the Reservation and companies formed under OST law a chance to give back to the community.

Preface to Chapter 44 of the Oglala Sioux Tribe Law and Order Code

The OST Business Code contains provisions to stimulate employment on the Reservation. For example, foreign entities must maintain a registered agent who is a member of the Bar of the Oglala Sioux Tribe (attorney or lay advocate). In addition, under Section 44-6-1.02(a), a party to a contract that involves a person who is resident on the Reservation, or a domestic entity or a registered foreign entity may maintain an action to enforce the contract in the Tribal Court. Under Section 44-6-1.03.3(l), unless the contract expressly provides otherwise, the law of the Oglala Sioux Tribe will apply to any contract if a party to the contract is a resident of the Reservation, a domestic entity or a registered foreign entity. Section 44-6-1.03.3(m) provides that any contract involving more than \$100,000 or which is evidenced by a document written in the Lakota language can specify the law of the Oglala Sioux Tribe as its governing law. Under Section 44-6-1.02(b), a party to a contract that is governed by the laws of the Oglala Sioux Tribe under Section 44-6-1.03.3(m) may maintain an action in the Tribal Court to enforce such contract provided that such party registers as a foreign entity prior to filing such action. These provisions are intended to promote the use of the Tribal Court system for the efficient resolution of business contract disputes. A positive effect of this would be to increase fee revenues to the Tribal Court as well as the caseload of members of the Bar of the Oglala Sioux Tribe.

A note on service of process. In most states, the Secretary of State is appointed as a “back-up” agent for service of process in the event that the registered agent resigns and is not replaced or for any other reason, the entity cannot be served through traditional means. In such cases, the OST Business Code provides that the Tribal Secretary may accept service of process.

A note on section references. Since the OST Business Code is based on the laws of several different jurisdictions, it contains a variety of internal section references and terms such as “Act”, “Article”, “Division”, “Ordinance”, “Paragraph”, “Part”, “Subdivision”, “Subparagraph”, “Subpart”, “Subsection” and “Title.” Such terms should be interpreted consistently.

Part 1 is the codification of existing law regarding business licenses. A Business License is required in addition to filing a business charter in order to form an OST entity.

Preface to Chapter 44 of the Oglala Sioux Tribe Law and Order Code

Part 2 contains the Comprehensive Business Code. The Subparts of Part 2 are based on the Hoopa Tribal Business Policy Act (Subparts 2.1 and 2.2), the Model Entity Transactions Act (Subpart 2.3), and Colorado’s Article 90 (Subparts 2.4, 2.5, 2.6, 2.7 and 2.8).

Part 3 contains the Tribal Entities Code which is based on Title 52 of the Hoopa Valley Tribal Code.

Part 4 contains the Business Corporations Act (Subparts 4.1 to 4.5) which is based on Title 53 of the Hoopa Valley Tribal Code; the Cooperative Act (Subpart 4.6.1) which is based on Colorado’s Cooperative Act (title 7, Article 56); **the Unincorporated Associations Act** (Subpart 4.6.2) which is based on Title 3 of the California Corporations Code; **the Business Trust Act** (Subpart 4.6.3) which is based on South Dakota’s Business Trust Act and Foreign Business Trust Act (Title 47, Chapters 14A and 14B); **the Nonprofit Corporations Act** (Subpart 4.7) based on Title 54 of the Hoopa Valley Tribal Code; and **the Professional Corporations and Entities Act** (Subpart 4.8) which is based on California’s “Moscone-Knox Professional Corporation Act” (California Corporations Code Sections 13400 et seq.)

Part 5 contains the Revised Uniform Partnership Act (Subpart 5.1), **the Uniform Limited Partnership Act** (Subpart 5.2), and **the Uniform Limited Liability Company Act** (Subpart 5.3). The OST LLC Act includes “Low Profit Limited Liability Companies” (L3Cs).

Part 6 contains provisions for the protection of Business Rights and Goodwill (Section 44-6-1.01) which is based on Section 14100 et seq. of the California Business and Professions Code; **Access to Tribal Court** (Section 44-6-1.02) which is based on Section 1646.5 of the California Civil Code and which provides for a Business Arbitration Panel; **Contracts** (Section 44-6-1.03) which is based on Section 1549 et seq. of the California Civil Code; **Trademarks** (Subpart 6.1.2) which is based on Sections 14200 et seq. of the California Business and Professions Code. Section 44-6-1.25 provides for names other than tradenames including “Lakota Names” which are defined as names of people or places that are of significance to the Lakota people, culture or history and gives the Tribal Council a right to enjoin any use of any Lakota Name which dishonors the person or place whose name is being used. Section

Preface to Chapter 44 of the Oglala Sioux Tribe Law and Order Code

44-6-1.26 provides a **Fictitious Business Name act** based on Section 17900 et seq. of the California Business and Professions Code. Subpart 6.1.3 is the **Uniform Trade Secret Act**. Subpart 6.2 provides protection against **Unfair Business Practices**. Section 44-6-2.01 deals with **Cyber Piracy** and is based on Section 17525 et seq. of the California Business and Professions Code. Subpart 6.2 also contains protections against use of a person's name, voice or likeness in advertising without their permission and against **false advertising**, based on Section 17500 et seq. of the California Business and Professions Code. Section 44-6-2.03 provides protections against **contracts in restraint of trade** and is based on Section 16600 of the California Business and Professions Code. Subpart 6.3 contains **the Uniform Trust Code**. Subpart 6.4 contains **the Uniform Transfers to Minors Act**.

Part 7 contains the Uniform Securities Act of 2005.

Part 8 contains consumer protection laws, based in large part on the Ordinance #81 of the Blackfeet Tribal Consumer Protection Law.

Part 9 contains the Secured Transactions Act which is based on the Model Tribal Secured Transactions Act. Part 9 has been drafted to allow for flexibility concerning the centralized filing system. Until the OST has its own computerized centralized filing system, this law and the implementing ordinance provides for the "filing office" under the OST Secured Transactions Act to be the Secretary of State of the State of South Dakota under a Joint Sovereign Memorandum of Understanding ("MOU") between the OST and the State of South Dakota. The SD Secretary of State website currently accepts online filings under the OST Secured Transactions Act at http://www.sdsos.gov/businesservices/ucc_sdapprovedforms.shtm#oglalaforms. A financing statement filed with the SD Secretary of State, on or after July 30, 2008, may be filed on any of a South Dakota form, or an OST form or on a national UCC form, with the same effect to perfect a security interest under the OST Act as to the collateral described therein regardless of whether the form is filed by mail, in person, or through the webpage designated for filings under the OST Act or through the webpage designated for filings under South Dakota UCC Revised Article 9.