

TRIBAL CODE
CHAPTER 36
CHILD SUPPORT

CONTENTS:

36.101 Purpose.

36.102 Definitions.

36.103 Jurisdiction.

36.104 Authority.

36.201 Adoption of Wisconsin State Law by Reference.

History Notes:

Adopted August 24, 1998, Resolution No. 393(98), Secretarial approval March 15, 1999.

Section 36.201 amended to add section 36.201(2) June 21, 2005, Resolution No. 131(05).

TRIBAL CODE

CHAPTER 36

CHILD SUPPORT

36.101 Purpose

- (1) This code shall be interpreted to effectuate the following purposes:
 - (a) To exercise the broadest possible jurisdiction over tribal children, whether within or without the coverage of the Indian Child Welfare Act.
 - (b) To preserve, protect and provide for the support of the tribe's most precious resource--its children.
- (2) This Code shall be liberally construed to the end that each tribal child shall receive such care and support as will be conducive to the child's welfare and the best interest of the tribe and the tribal community.

36.102 Definitions.

The definitions used in Chapter 31 are to be used in interpreting this code.

36.103 Jurisdiction

- (1) Jurisdiction is hereby vested in the court over all matters pertaining to this Code and all proceedings instituted hereunder.
- (2) The jurisdiction of the tribe and the court shall be exclusive over any matter for which exclusive jurisdiction is authorized under federal law, including without limitation those matters falling within Section 101(a) of the Indian Child Welfare Act. The Tribe and tribal court shall have concurrent jurisdiction over all other matters related to this Code.
- (3) The court shall have jurisdiction over adults in aid of its powers under this Code, and may make such orders respecting adults and children as are necessary for the welfare of a child.

36.104 Authority

This ordinance is adopted pursuant to authority granted to the Tribal Council

in Article VI, Section 1(a), (c), (l), (n), (q), and (u) of the Tribal Constitution.

36.201 Adoption of Wisconsin State Law by Reference

(1) This code incorporates and applies state law in effect at the time of adoption of this ordinance. Any changes in state law shall automatically be incorporated and applied in this Code. It is contemplated that the governing body of the Tribe shall periodically review any changes in state law and reject any changes in the state law that do not further the purposes of this Code.

Any interpretation of these laws requires substitution of the Lac du Flambeau Tribe and the Lac du Flambeau Tribal Court where authority is given to the State of Wisconsin or its courts or agencies.

In adopting these statutes by reference, specific mention is made of the following statutes:

31.410
46.10
46.25
46.253
48.025
48.355(2)(b)(4)
49.19
49.45
49.53
49.90
Chapter 767
Chapter 769
779.48
Chapter 785
867.03
891.39
891.395
891.40
891.405
891.41
893.88

This referencing is done to assist in interpreting what statutes may apply, but should not be construed as the exclusive listing of statutes that have been adopted by reference. All statutes pertaining to child support are adopted by reference and may be enforced or applied in the Lac du Flambeau Tribal Court under this code.

(2) Clarification of Ambiguities in State Law for Tribal Application

Because the Tribe is allowed some flexibility in governing child support that is not addressed in the adopted Wisconsin statutes the following clarifications are made:

- 1.). Non-cash payments are permitted to satisfy support obligations with the exception that such payments will not be permitted to satisfy assigned support obligations; and,
- 2.). For the purposes of income withholding the Tribe excludes “per capita”, trust and IIM payments from the definition of income; and,
- 3.). Income shall not be subject to withholding in any case where: Either the custodial or non-custodial parent demonstrates, and, the tribunal enters a finding that there is good cause not to require income withholding; and,
- 4.). The Tribal IV-D agency is responsible for receiving and processing income withholding orders from states, tribes and other entities and ensuring orders are properly and promptly served on employers within the tribe’s jurisdiction.