

**OMAHA TRIBAL CODE (2013)**

**TITLE 35. BUSINESS PERMITS**

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## TITLE 35. BUSINESS PERMITS

Source: Omaha Tribal Council Resolution No. 94-46 (12-3-93).

### CHAPTER 1. GENERAL PROVISIONS

#### SECTION 35-1-1. Title.

This Title shall be known as the Omaha Tribe of Nebraska Business Permits Title.

#### SECTION 35-1-2. Authority.

This Title is enacted by the Tribal Council under the authority vested in said Tribal Council by Article IV of the Constitution and Bylaws of the Omaha Tribe of Nebraska, as amended. The Tribal Council reserves the right to repeal or amend the provisions of this Title provided that such action to repeal or amend is approved upon a finding by the Tribal Council on all action for declaratory judgement that such amendment or repeal is in the best interest of the Tribe. A business issued a Business permit under and governed by this Title is subject to this reserved right.

#### SECTION 35-1-3. Defined Terms.

As used in this Title, unless the context otherwise requires:

- (a) "*Business Permit*" shall mean a permit to do business on the Reservation, issued pursuant to this Title 35.
- (b) "*domestic corporation*" shall mean any corporation for profit or not for profit organized under and subject to Title 33 or Title 34.
- (c) "*Enterprise Board*" shall have the meaning set forth in Title 32.
- (d) "*foreign corporation*" shall mean a corporation, profit or not for profit, organized under laws other than the laws of the Tribe.
- (e) "*General Counsel*" shall mean the general counsel to the Tribe.
- (f) "*Title*" shall mean the Omaha Tribe of Nebraska Business Permit Title.
- (g) "*Reservation*" shall mean the territory within the exterior boundaries of the Omaha Indian Reservation (including the Blackbird Bend and other tribal land located east of the Missouri River) as set forth in the Omaha Treaty of March 16, 1854, as amended by the treaty of March 6, 1865, and to such other lands without these boundaries as may have been or may hereafter be added to the Reservation or held in trust for the Tribe under any law of the United States or otherwise.
- (h) "*Tribe*" shall mean the Omaha Tribe of Nebraska.

#### SECTION 35-1-4. Fees.

Each application shall be accompanied by a \$100 payment, which shall constitute the Business Permit fee.

**HISTORY:** Section 19-1-4 was amended by Resolution 94-275 (9/19/94) to change the filing fee to \$100.

### CHAPTER 2. APPLICABILITY

#### SECTION 35-2-1. Entities Required To Obtain Permit; Exemptions.

The following shall be required to apply for a Business Permit pursuant to the provisions of this Title:

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(a) Every entity, including, but not limited to, an individual, a group of individuals, a sole proprietorship, partnership, association or joint venture which, prior to the effective date of this code, was engaged in a trade, business or profession, or commercial activity of any sort on the Reservation shall prior to January 3, 1994 (30 days after the effective date) and prior to December 1 each calendar year thereafter, file with the Enterprise Board an application for a Business Permit which, upon issuance, shall entitle such entity to engage in the kind(s) of business activity at the location(s) listed in the application.

(b) Every entity, including, but not limited to, an individual, group of individuals, sole proprietorship, partnership, association or joint venture, intending to engage in a trade, business, profession or commercial activity of any sort on the Reservation, that was not engaged in such activity prior to January 3, 1994, shall prior to commencing business on the Reservation and prior to December 1 of each calendar year thereafter file with the Enterprise Board an application for a Business Permit which, upon issuance, shall entitle said entity to engage in the kind(s) of business activity at the location(s) listed in the application.

(c) No Business Permit shall be required:

- (1) of any person engaged in the ministry of healing by purely spiritual means or other religious activity;
- (2) to be filled in by the tribe if there are any other exemptions it wishes to grant, e.g., to persons selling handicrafts made by them or family members

(d) No officer or employee of any government and no individual in private or public employment who is compensated for services performed by him or her as an employee by his or her employer shall, for such employment, be required to obtain a Business Permit, in the case of a partnership, association or joint venture, no Business Permit shall be required of any partner, associate or joint venturer who does not, apart from such partnership or joint venture, individually engage in or conduct a trade, business or professional activity of the partnership, association or joint venture on the Reservation.

### CHAPTER 3. APPLICATION FOR BUSINESS PERMIT

#### SECTION 35-3-1. Contents; Proof of Compliance .

(a) Within 10 working days after receipt of an application, the fee, and proof of compliance with Tribal requirements established as conditions of commencing business on the reservation, the Enterprise Board shall issue to said applicant a Business Permit to engage in business activity on the Reservation. Said Business Permit shall indicate the kind(s) and location(s) of business activity for which the entity has been licensed.

(b) Notwithstanding subsection (a) above, no Business Permit shall be granted to any entity until it has presented proof to the Enterprise Board that it has complied with all Tribal requirements established as conditions of commencing business on the Reservation, including, but not limited to, the following:

**HISTORY:** Section 35-3-1(b) was amended by Resolution 94-275 (9/19/94) to add “proof of compliance with Tribal requirements established as conditions of commencing business on the reservation” after “fee.”

- (1) Pursuant to any contract and employment preference codes, evidence that the entity has submitted to the appropriate Tribal enforcing agency the compliance plans, if any, required by those Titles and has had such plans approved by the enforcing agency(s).
- (2) Is in compliance with any applicable Tribal, State, or Federal laws or regulations applicable to the particular industry.

*Source:* Section 35-3-1(b)(2) was amended by Resolution 94-275 (9/19/94) to add “(b) is in compliance with any applicable Tribal, State, or federal laws or regulations applicable to the particular industry.”

- (1) Proof of insurance, evidenced by a certificate of insurance, sufficient to cover goods, wares and merchandise in the possession of the applicant.

*Source:* Section 19-3-1(b)(3) was amended by Resolution 94-275 (9/19/94) to add “(c) Proof of insurance,

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evidenced by a certificate of insurance, sufficient to cover goods, wares and merchandise in the possession of the applicant.”

(c) The applicant for a Business Permit may appeal any denial of such Business Permit to the Tribal Council by giving written notice of its intention to appeal to the Tribal Council within 10 days after the date the application was denied.

### CHAPTER 4. NONCOMPLIANCE, SANCTIONS; REMEDIES

#### SECTION 35-4-1. Failure To Apply for Permit.

An entity doing business on the Reservation which fails to obtain a Business Permit as provided in this Title shall:

- (a) immediately obtain such a Business Permit and pay the requisite fee and
- (b) be fined \$50 per day for each day it operated on the Reservation without a Business Permit, unless good cause is shown to the Enterprise Board as to why such a Business Permit had not been, obtained in a timely manner.

#### SECTION 35-4-2. Sanction.

(a) Any entity doing business on the Reservation without a Business Permit which fails to obtain a Business Permit within the time period required by the Enterprise Board as provided for in Section 35-3-1 above, or any entity whose Business Permit has been revoked by any court or agency of competent jurisdiction pursuant to any provision of this Title or any other Tribal Title, shall immediately cease to carry out business on the Reservation, provided that upon a showing of good cause, the Enterprise Board or the Tribal Court may grant the entity a reasonable period during which to conclude its business so long as during that time, the continuation of such business does not endanger the health, safety, welfare or morals of the Tribal members.

(b) If the Enterprise Board becomes aware that an entity is conducting business on the Reservation without a Business Permit, it shall deliver, by hand or posting at the place of business and/or certified mail, notice to the entity informing it that it is operating on the Reservation in violation of this Title and that such entity shall within ten days, apply for such a Business Permit and pay such fines as are indicated in the notice. However, where the Enterprise Board has reason to believe that the health, safety, welfare or morals of residents of the Reservation is endangered by the continuation of such business activity, the Enterprise Board may order such business to terminate all business activity until it has obtained a Business Permit.

HISTORY: Section 35-4-2(b) was amended by Resolution 94-275 (9/19/94) to add “by hand or posting at the place of business and/or certified mail” after “it shall deliver”

Section 35-4-2(c) was amended by Resolution 94-275 (9/19/94) to change “within two days” to “within ten days”

(c) Notwithstanding subsection (1) of this Section, where the Enterprise Board has good faith belief that an entity applying for a Business Permit, pursuant to Section 35-3-1, shall, if permitted to commence business on the Reservation, present a danger to the health, safety, welfare or morals of residents of the Reservation, the Enterprise Board shall, within 10 working days, provide said entity with a written notice setting out the reasons it believes the entity presents such a danger and noticing a date for a hearing, such hearing to be held not later than 10 days after the delivery of said notice. At such hearing, the entity shall be given an opportunity to demonstrate that its business activity does not present a danger to the health, safety, welfare or morals of the residents or the Reservation. The Enterprise Board shall establish necessary procedures for such hearing that comply with the requirements of due process. However, the formal rules of evidence shall not apply. If the Enterprise Board finds, by a preponderance of the evidence, that a danger does exist, it shall, within two days, so notify such entity, in writing, stating the reasons for such finding. Said entity may appeal the Enterprise Board's decision to the Tribal Court and shall be entitled to an expedited hearing on the matter. If the Enterprise Board finds there is no danger, it shall cause to be issued;

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within two days and upon payment of all required fees, a Business Permit to said entity.

(d) If an entity doing business on the Reservation that has been directed by the Enterprise Board or the Tribal Court to cease doing business on the Reservation, either pursuant to Section 35-4-2(a), above or pursuant to the revocation of its Business Permit under any other Tribal Title, fails to comply, the Enterprise Board shall petition the Tribal Court for, or the Tribal Court on its own Motion shall issue, a show cause order as to why said business shall not be excluded from the Reservation. Where the Enterprise Board alleges that the business presents a danger to the health safety, welfare and morals of residents of the Reservation, the Tribal Court shall hold an expedited hearing. If said entity fails to appear or fails to show a good cause, the Tribal Court shall order the Tribal police to take appropriate action:

(1) Where the person or persons engaging in business are not members of the Tribe, the court shall order the police to physically remove all such persons from the Reservation along with any personal property used in the conduct of said business that can be removed without causing permanent damage to it. For property which cannot be feasibly removed, such as causing permanent building damage, the court shall order, and the police shall implement, the incapacitation of said property by padlocking or other non-destructive means so that it can no longer be used to carry out business.

(2) Where the person or persons doing business in violation of this Title are Tribal members, they shall be prosecuted for criminal contempt of court, and all personal property used in the conduct of said business shall be impounded, padlocked or otherwise incapacitated by non-destructive means so that it cannot be used to carry out any further business on the Reservation. A corporation, partnership or other entity shall be considered a Tribal "member" for purposes of this section only if 51% or more of the entity is owned by Tribal members.

(e) An entity may recover all such property incapacitated or impounded under this Title by paying to the Tribe the costs incurred by the Tribe in carrying out these legal proceedings as well as a fine of \$500 per day for each day that has passed since it was ordered by the Enterprise Board or the Tribal Court to obtain the Business Permit or to cease business activities.

(f) An entity excluded or incapacitated under this provision shall be granted a new Business Permit to engage in business activity on the Reservation only if:

- (1) no less than six months has passed since the date of the exclusion order;
- (2) the entity has paid all costs incurred by the Tribe in carrying out the exclusion or incapacitation order and has paid such fine as the court deems appropriate, but not to exceed \$50,000; and
- (3) notwithstanding the provisions of subsections (1) and (2), above, the Enterprise Board or the Tribal Court may, for good cause, grant such an entity a new Business Permit, may attach such conditions as are appropriate upon the granting of a Business Permit or may waive or mitigate the provisions of subsections (1) and (2) above.

### CHAPTER 5. MISCELLANEOUS

#### SECTION 35-5-1. Posting of Business Permits.

Every entity issued a Business Permit pursuant to this Title shall post it in a conspicuous place at the business location listed on the Business Permit, or, if it lists more than one location, shall post a notice indicating the location at which the Business Permit is posted.

#### SECTION 35-5-2. Expiration of Business Permit.

All Business Permits issued under this Title shall remain in effect for the duration of the calendar year for which issued unless revoked as provided in this Title or under the provisions of any other Tribal Title and shall expire at midnight on the thirty-first day of December of each year. No Business Permit may be transferred to any other party.

#### SECTION 35-5-3. Delivery of Notice.

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Where notice to cease business is issued by the Enterprise Board, it shall be hand-delivered to the business entity by an employee or other agent of the Enterprise Board.

### SECTION 35-5-4. Application Form.

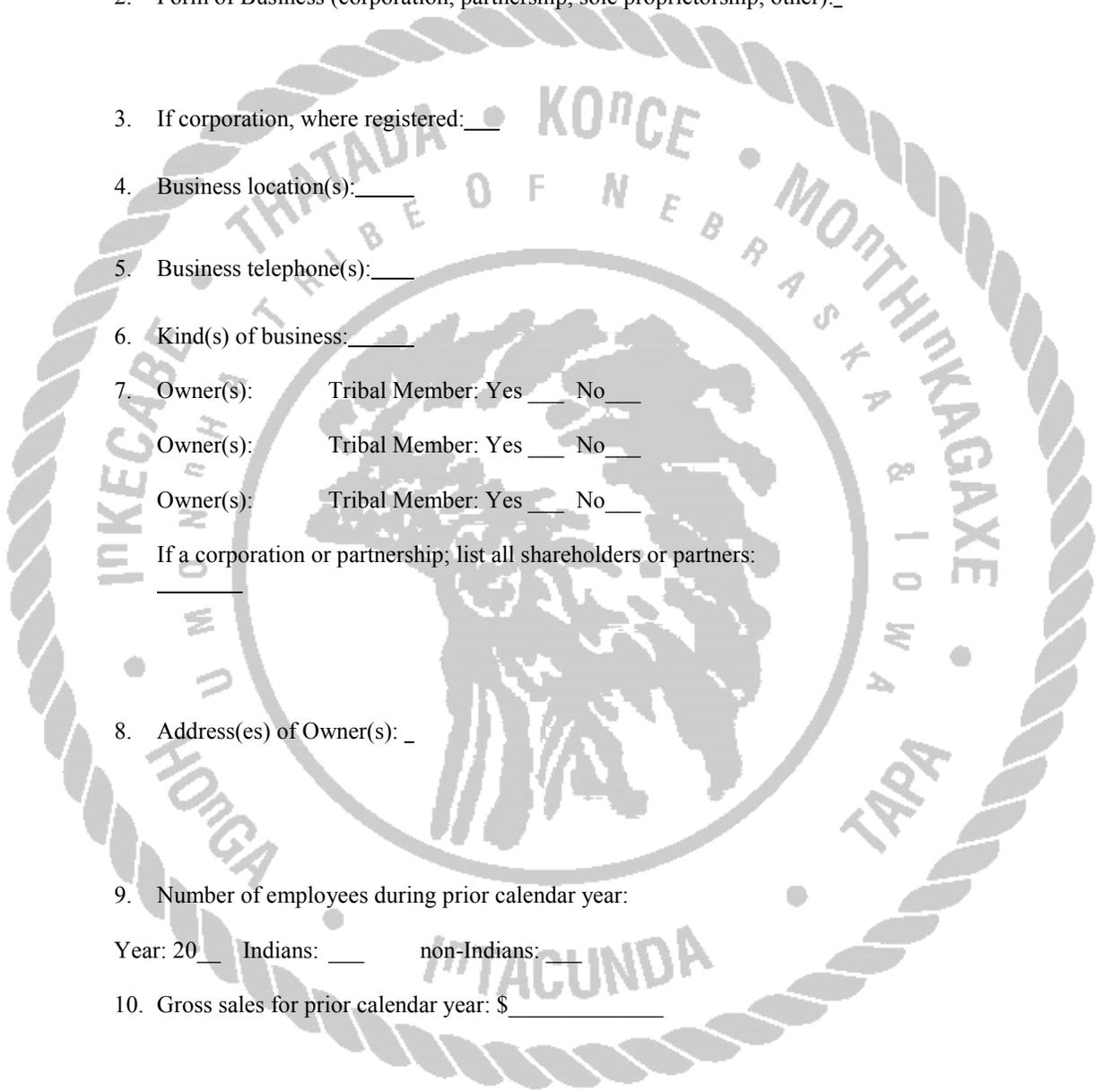
A copy of the Business Permit application form may be obtained during regular business hours at the office of the Enterprise Board. The Business Permit required to be obtained under the provisions of this subsection shall be in addition to all other permit fees and permits required by law.



**APPLICATION FOR A PERMIT  
TO DO BUSINESS ON THE OMAHA RESERVATION**

For Calendar Year 20\_\_

1. Name of Business: \_\_\_\_\_
2. Form of Business (corporation, partnership, sole proprietorship, other):\_
3. If corporation, where registered: \_\_\_\_\_
4. Business location(s): \_\_\_\_\_
5. Business telephone(s): \_\_\_\_\_
6. Kind(s) of business: \_\_\_\_\_
7. Owner(s): Tribal Member: Yes \_\_\_ No \_\_\_  
Owner(s): Tribal Member: Yes \_\_\_ No \_\_\_  
Owner(s): Tribal Member: Yes \_\_\_ No \_\_\_  
If a corporation or partnership; list all shareholders or partners:  
\_\_\_\_\_
8. Address(es) of Owner(s): \_
9. Number of employees during prior calendar year:  
Year: 20\_\_ Indians: \_\_\_ non-Indians: \_\_\_
10. Gross sales for prior calendar year: \$ \_\_\_\_\_



11. If a Foreign Corporation, name of statutory agent on the Reservation (statutory agent shall be a resident of the Reservation):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

12. If the applicant will engage in any contracting or subcontracting activity, has a contractor, subcontractor Indian preference plan for complying with the Tribe's contract preference Title been submitted to the preference enforcement agency?

Yes \_\_\_\_\_ No \_\_\_\_\_

Has it been approved? (No Business Permit will be granted until a plan has been submitted and approved. Such proof of approval should be submitted with this application.)

Yes \_\_\_\_\_ (approval attached) No \_\_\_\_\_ NA \_\_\_\_\_

13. Has the applicant submitted a plan to the tribal employment Rights Office for complying with the tribe's Indian employment preference Title?

Yes \_\_\_\_\_ No \_\_\_\_\_

Has it been approved? (No Business Permit will be granted unless the plan has been submitted and approved. Such proof of approval should be submitted with this application.)

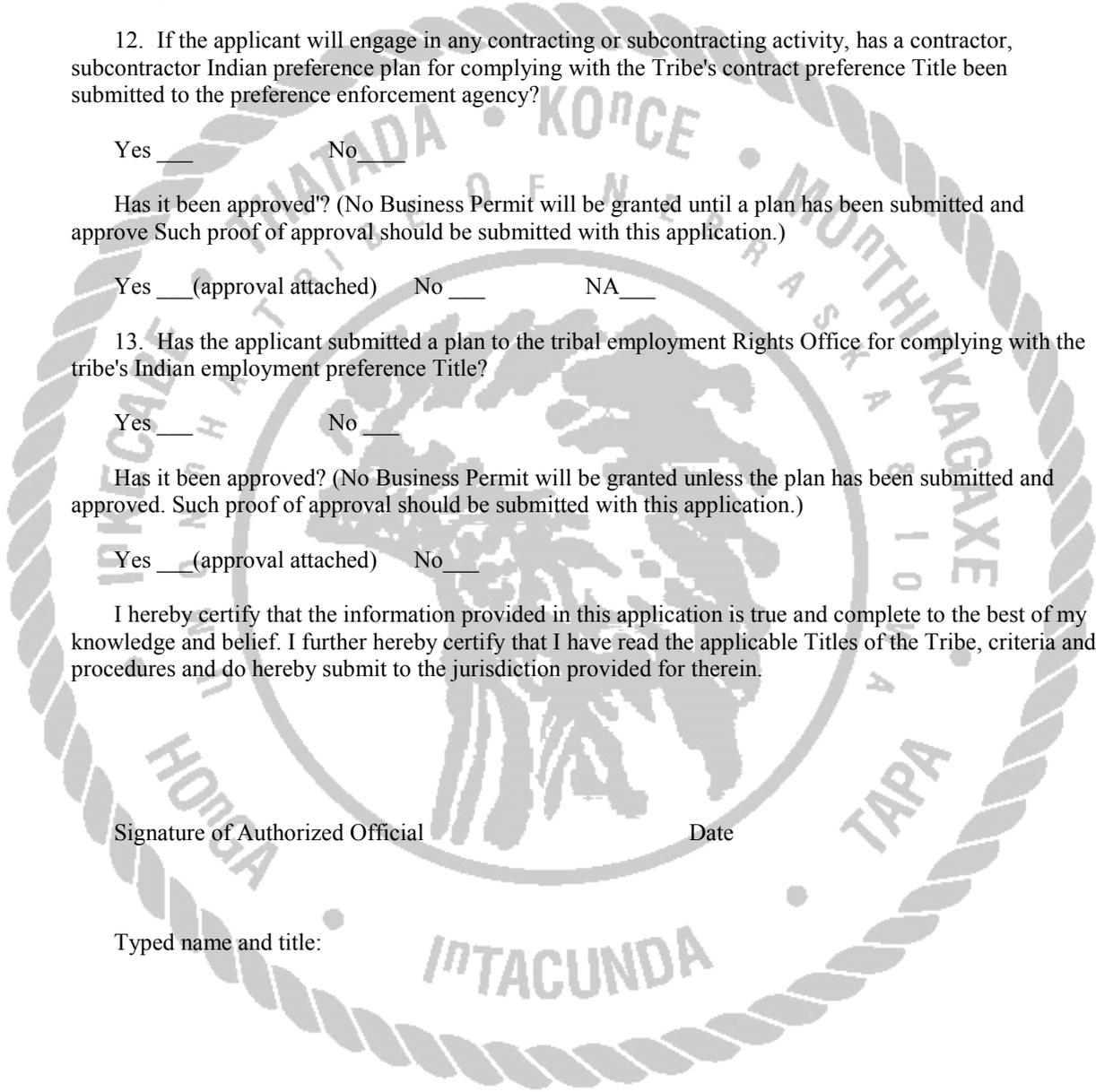
Yes \_\_\_\_\_ (approval attached) No \_\_\_\_\_

I hereby certify that the information provided in this application is true and complete to the best of my knowledge and belief. I further hereby certify that I have read the applicable Titles of the Tribe, criteria and procedures and do hereby submit to the jurisdiction provided for therein.

Signature of Authorized Official

Date

Typed name and title:



## **CHAPTER 6. PAWNBROKERS, JUNK DEALERS AND MONEY LENDERS**

### **SECTION 35-6-1. Pawnbroker, Defined.**

Any person engaged in the business of lending money upon chattel property for security and requiring possession of the property so mortgaged on condition of returning the same upon payment of a stipulated amount of money, or purchasing property on condition of selling it back at a stipulated price, is declared to be a pawnbroker for the purposes of this Article.

### **SECTION 35-6-2. Permit Required; Fees; Application, Contents; Issuance; Bond.**

Every person engaged in the business of pawnbroking within the boundaries of the Omaha Reservation shall pay to the Tribal Enterprise Board for a permit to carry on business the sum of one hundred (100) dollars per year. Such permit shall be obtained by filing an application with and having such application approved by the Enterprise Board or an officer thereof designated by such board for such purpose.

The application shall contain the following information:

- (a) The name and address of the owner and the manager of the business;
- (b) If the applicant is a corporation, a copy of the articles of incorporation and the names of its officers and shareholders.
- (c) The exact location where the business is to be conducted; and
- (d) The exact location where any goods, wares, or merchandise may be stored or kept if other than the business location.

When reviewing the applications for a permit required by this section, the delegated officer shall take into consideration the criminal record, if any, of the applicant and, if the applicant is a corporation, of its officers and shareholders. No permit shall be issued to any applicant who has been convicted of a felony or any degree of theft and, if the applicant is a corporation, no permit shall be issued when any officer or shareholder has been convicted of a felony or any degree of theft.

Such person shall also give bond to the Tribe, in which he, she, or it is to do business, in the sum of five thousand dollars with surety to be approved by the Enterprise Commissioner of Business Affairs, conditioned for the faithful performance by the principle, of each and all of the trusts imposed by law or by usage attached to pawnbrokers.

### **SECTION 35-6-3. Permit; Business Location; Prohibited Activities.**

No persons shall be allowed to do business in more than one location under one permit. Each permit shall state the place where such business is to be carried on, and shall not be assigned. Goods, wares and merchandise shall be kept or stored only at those locations specifically listed in the permit application.

It shall be unlawful for any person not having a permit as required in section 35-6-2 to display any sign or advertisement stating that money is lent on goods or the goods are purchased as described in section 35-6-1.

### **SECTION 35-6-4. Records Required; Inspection; Stolen Property; Procedures.**

All persons who shall be engaged in the business of pawnbrokers, dealers in secondhand goods, or junk dealers shall keep a ledger and complete a card, to be furnished by the Enterprise Board, on which shall be legibly written in ink, at the time of any loan or purchase, the following information:

- (a) The date of the loan or purchase;
- (b) The name of the person from whom the property is purchased or received, his or her signature,

date of birth, and driver's license number or other means of identification;

- (c) A full and accurate description of the property purchased or received, including any manufacturer's identifying insignia or serial number;
- (d) The time when any loan becomes due;
- (e) The amount of purchase money, or the amount lent and any loan charges for each item; and
- (f) The identification and signature of the clerk or agent for the business who handled the transaction.

Entries shall not in any manner be erased, obliterated, or defaced. The person receiving a loan or selling property shall receive at no charge a plain written or printed ticket for the loan, or a plain written or printed receipt for the articles sold, containing a copy of the entries required by this section.

Every pawnbroker, or employee of a pawnbroker, shall admit to the pawnbroker's premises at any reasonable time during normal business hours any law enforcement officer for the purpose of examining any property and records on the premises, and shall allow such officer to place restrictions on the disposition of any property for which a reasonable belief exists that it has been stolen. Any person claiming an ownership interest in property received by a pawnbroker for which a reasonable belief exists that such property has been stolen may recover such property as provided under Title 2.

**SECTION 35-6-5. Reports to Police; When Required.**

It shall be the duty of every such pawnbroker, dealer in secondhand goods, or junk dealer, every day except Sunday before the hour of 12 noon, to deliver to the tribal police department, a legible and correct copy of each card or ledger entry required by section 35-6-4 for the transactions of the previous day. Transactions occurring on Saturday shall be reported on the following Monday. No card shall be required for goods purchased from manufacturers or wholesale dealers having an established place of business, or goods purchased at open sale from any bankrupt stock or from any other person doing business and having an established place of business on the reservation, but such goods must be accompanied by a bill of sale or other evidence of open and legitimate purchase, and must be shown to the Commissioner of Business Affairs or any law enforcement officer when demanded. Dealers in scrap metals, except gold and silver, shall not be included in the provisions of this section.

**SECTION 35-6-6. Pawned or Secondhand Goods; Restrictions on Disposition; Jewelry Defined.**

No personal property received or purchased by any pawnbroker, dealer in secondhand goods, or junk dealer, shall be sold or permitted to be taken from the place of business of such person for fourteen days or in the case of secondhand jewelry, for five days, after the copy of the card or ledger entry required to be delivered to the police department shall have been delivered as required by section 35-6-5. Secondhand jewelry shall not be destroyed, damaged, or in any manner defaced for a period of seventy-two hours after the time of its purchase or receipt. For purposes of this section, jewelry shall mean any ornament which is intended to be worn on or about the body and which is made in whole or in part of any precious metal, including gold, silver, platinum, copper, brass, or pewter. All property accepted as collateral security or purchased by a pawnbroker shall be kept segregated from all other property in a separate area for a period of forty-eight hours after its receipt or purchase, except that valuable articles may be kept in a safe with other property if grouped according to the day of purchase or receipt. Notwithstanding the provisions of this section, a pawnbroker may return any property to the person pawning the same after the expiration of such forty-eight-hour period or when permitted by the chief of police, or other authorized law enforcement officer.

**SECTION 35-6-7. Violation; Penalty; Permit; Suspension or Revocation; Procedure.**

Every broker, agent, or dealer mentioned in sections 35-6-1 to 35-6-9 who shall violate any of the provisions thereof, shall be fined up to One Hundred (100) dollars for each violation of this chapter.

In addition, any permit issued pursuant to section Section 35-6-2 may be revoked or suspended if the holder of such permit violates any provision of Tribal law classified as a misdemeanor or felony. Before any permit may be revoked or suspended the holder shall be given notice of the date and time for a hearing before the governing body or delegated officer or agency which issued the permit to show cause why the permit should not be revoked or suspended. Such hearing shall be held within seven days of the date of the notice.

**SECTION 35-6-8. Pawnbroker; Limitation on Sale of Goods.**

It shall be unlawful for any pawnbroker to sell any goods purchased or received as described in Section 35-6-1, during the period of four months from the date of purchasing or receiving such goods.

**SECTION 35-6-9. Pawnbrokers; Customer Fingerprint Required; Restrictions on Property Accepted.**

(a) All persons who shall be engaged in the business of pawnbroker shall, in addition to the requirements of Section 35-6-4, obtain and keep a single legible fingerprint of each person pawning, pledging, mortgaging, or selling any goods or articles. The fingerprint shall be taken from the right index finger or, if the right index finger is missing, from the left index finger. Each pawnbroker shall display a notice to customers, in a prominent location, stating that such pawnbroker is required by Tribal law to fingerprint every person pawning or selling an item.

(b) No pawnbroker shall accept as collateral security or purchase any property:

- (1) From any person who is under eighteen years of age, or who appears to be under the influence of alcohol, narcotic drug, stimulant, or depressant, or who appears to be mentally incompetent; or
- (2) On which the serial numbers or other identifying insignia have been destroyed, removed, altered, covered, or defaced.

## BUSINESS LICENSE APPLICATION FOR MONEYLENDERS AND PAWNBROKERS

Exact Location of the Place of Business:

The location of the place where goods, wares and merchandise\collateral will be stored, if other than the above named place of business.

Has the necessary bond(\$5000.00) with surety, conditioned for the faithful performance by the principal of each and all of the trusts imposed by law or by usage attached to pawnbrokers, been obtained, and has the same been approved by the Commissioner of Business Affairs and the Enterprise Board? (Please attach a photocopy of same if it has been obtained).

3. The criminal history of the applicant(s) particularly if the applicant or any of its officers or shareholders, if it is a corporation, has ever been convicted of a felony or any degree of theft.

4. What rate of interest will be charged on loans?

5. Are the terms of the loan agreement in compliance with the Federal Truth in Lending Act, specifically with regard to the required disclosures?

(a) Please attach copies of the Loan forms and the Disclosure statements.

6. Are procedures in place for the fingerprinting of persons who seek to pawn merchandise?

NOTE IF THIS APPLICATION IS GRANTED IT DOES NOT GRANT A LICENSE TO TRADE IN FIREARMS UNLESS AND UNTIL YOU PROVE THAT YOU MEET ALL THE REQUIREMENTS PROMULGATED BY THE BUREAU OF ALCOHOL TOBACCO AND FIREARMS.

## PAWNBROKER TRANSACTION REPORT

1. Date of loan or purchase,

2. Name of person from whom property is purchased or received,

Signature of person from whom property purchased or received

Date of Birth of person from whom property purchased or received

Drivers license number or other identification

3. Full and accurate description of property purchased or received, including manufacturer's identifying insignia or serial number.

4. Time when any loan becomes due,

5. The amount of purchase money, or the amount lent and any loan charges, for each item.

6. Identification of clerk/agent of business

Signature of clerk/agent of business

4851-6165-4804, v. 1

