

TITLE 14

LIQUOR

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TITLE 14

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Chapter 14.01 Finding And Purpose

14.01.01 Finding - Exclusive Jurisdiction

The introduction, possession and sale of liquor on Indian reservations have, since treaty time, been clearly recognized as matters of special concern to Indian Tribes and to the United States Federal Government. The control of liquor on reservations remains exclusively subject to their legislative enactments.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.01.02 Findings - Historical Basis

Beginning with the Treaty of Point No Point, 1855, to which the ancestors of the Port Gamble S'Klallam Tribe were parties, the Federal Government has respected this Tribe's determinations and activities on the Port Gamble S'Klallam Reservation. At treaty time, this Tribe's ancestors desired to exclude "ardent spirits" from their reservation; and federal law currently prohibits the introduction of liquor into Indian country (18 U.S.C. § 1154), leaving Tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C. § 1161).

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.01.03 Findings - Need for Tribal Regulation

Present day circumstances make a complete ban of liquor within the Port Gamble S'Klallam Reservation ineffective and unrealistic. At the same time, the need still exists for strict tribal regulation and control over liquor distribution.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.01.04 Purpose - Generally

The enactment of tribal law governing liquor sales on the reservation and providing for exclusive purchase and sale through the tribal enterprise will increase the ability of the tribal government to control reservation liquor distribution and possession, and at the same time, will provide an important source of revenue for the continued operation of the tribal government and delivery of tribal governmental services.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.01.05 Repealer

All prior titles and resolutions of Port Gamble S'Klallam Tribe regulating, authorizing, prohibiting or in any way dealing with the sale of liquor are hereby repealed and of no further force and effect and no tribal business licensing law or other tribal law shall be applied in a manner inconsistent with the provisions of the title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

Chapter 14.02 Definitions

14.02.01 Definitions

As used in this chapter, the following definitions shall apply unless the context clearly indicates otherwise:

- a) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilution and mixtures of this substance.
- b) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor or otherwise intoxicating; and every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.
- c) "Sale" and "Sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt, or brewed liquor or wine, by any person to any person.
- d) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural products containing sugar, to which any saccharin substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such a port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.
- e) "Package" means any container or receptacle used for holding liquor.

- f) "Tribal Council" shall mean the Port Gamble S'Klallam Tribal Council, duly elected under tribal law.
- g) "Reservation" means the Port Gamble S'Klallam Indian Reservation.
- h) "Tribe" means the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

Chapter 14.03 General Provisions

14.03.01 Prohibitions

The introduction, purchase, and sale and dealing in liquor other than when done by the Port Gamble S'Klallam Tribal government through a tribally owned and operated enterprise as provided in this title, is prohibited within the exterior boundaries of the Port Gamble S'Klallam Reservation and is hereby declared an offense under tribal law. The federal Indian liquor laws are intended to remain applicable to any act or transaction which is not authorized by this title and violators of this title shall be subject to federal prosecution as well as to legal action in accordance with law. It is intended that possession of liquor by any person now prohibited by federal law from possessing liquor shall be lawful so long as the possession is in conformity with this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.03.02 Conformity with State Law

Tribally authorized liquor transactions shall comply with Washington State liquor law standards to the extent required by 18 U.S.C. § 1161.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.03.03 Sovereign Immunity Preserved

Nothing in this chapter is intended or shall be construed as a waiver of the sovereign immunity of the Port Gamble S'Klallam Tribe. No manager or employee of the Agency shall be authorized, nor shall he/she attempt, to waive the immunity of the Tribe.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

Chapter 14.04 Port Gamble S'Klallam Liquor Distribution Agency

14.04.01 Creation

There is hereby created a Liquor Distribution Agency. The Port Gamble S'Klallam Tribal Council shall decide upon its formal designated name and whether it is to operate either independently or as a subdivision of

another tribal division. This Agency shall be constituted in function as part of the Port Gamble S'Klallam Tribal Government.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.04.02 Manager - Powers

A manager of the Port Gamble S'Klallam Liquor Distribution Agency shall be appointed by and shall serve at the sole discretion of the Port Gamble S'Klallam Tribal Council. The manager of this Agency shall have the following powers and duties in regard to this agency:

- a) To manage this Liquor Agency for the benefit of the Tribe.
- b) To purchase, in the name of the Tribe, liquor products from wholesale distributors and distribute them to such tribal enterprise outlets as he/she deems appropriate.
- c) To establish, with the Tribal Council and subject to its approval, such administrative procedures that are necessary to govern the operation of the Agency.
- d) To report and account to the Tribal Council at least twice a year regarding the operation and financial status of the Agency. The Tribal Council and the manager shall establish the dates on which such accounting shall take place. The Tribal Council may require more frequent accounting if deemed necessary. The manager reports all written reports, accounts and records to the Council's proceedings in regard to the Liquor Agency shall be available for inspection to any Port Gamble S'Klallam Tribal member, upon demand.
- e) To hire and set salaries of additional personnel, subject to Tribal Council approval, as he/she deems necessary to the successful operation of the Agency provided that such employees shall be considered employees of the Tribe for all purposes.
- f) To supervise all Agency employees.
- g) To purchase, with Tribal Council approval, and maintain the Agency's real and personal property.
- h) To collect the Port Gamble S'Klallam liquor excise taxes.
- i) To transfer all tax revenues for deposit in the tribal tax fund, and to transfer for deposit in the Tribe's general fund all other revenue not reasonably foreseen as being required for the operation of the Agency.
- j) To maintain all other Agency revenues in a tribal tax fund under direction from the Tribe's Accounting Department. With the written

approval of at least one Tribal Council person, funds may be withdrawn from this account by the manager for the wholesale purchase of liquor products to be sold pursuant to this chapter for payment of salaries and business expenses of employees of the Agency, and for the purchase and upkeep of real and personal property required for the Agency's operation.

- k) To set the retail price for liquor products, in cooperation with the Tribal Council.
- l) To obtain and maintain in full force and effect a policy of general liability insurance covering any owned or leased liquor outlet premises in an amount set by the Tribal Council. The policy shall contain the stipulation that the Port Gamble S'Klallam Tribe shall be given ten days notice of the proposed cancellation or expiration of such policy. The manager shall submit to the Tribal Council a Certification of Insurance from such policy and shall have available for inspection a complete copy of such policy.
- m) The manager shall be bonded for such additional amount and for such additional purposes as the Tribal Council shall determine to be appropriate in managing the Liquor Distribution Agency.
- n) Performing all matters and things incidental and necessary to conduct its business and carry out its duties and functions.
- o) Promulgating rules and regulations governing the time, place and manner of sale.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

Chapter 14.05 Sale Of Liquor

14.05.01 Sales - Cash Only

All sales at tribal liquor sales outlets shall be on a cash only basis and no credit shall be extended to any person, organization, or entity.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.05.02 Resale At Profit Prohibited

All sales shall be for the personal use of the purchaser and resale for profit of any liquor purchased at a tribal liquor outlet is prohibited within the Port Gamble Indian Reservation. Any person who purchases liquor at a tribal store and resells that beverage for profit, whether in the original container or not, shall be subject to the penalties of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.05.03 Liquor Is Tribal Property Until Sold

The entire stock of liquor sold under this title shall remain tribal property owned by the Port Gamble S'Klallam Indian Tribe until sold.

[HIST: Resolution No. 80 A 52, passed 11/19/80.]

14.05.04 Liquor Distribution-Tribally Owned Outlets Only

No liquor shall be distributed to any tribal enterprise outlet unless such outlet is owned operated and controlled by the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

Chapter 14.06 Excise Tax Levy

14.06.01 Excise Tax- Generally

There is hereby levied and shall be collected an excise tax upon each retail sale of liquor, except beer and wine, and whatever packages or container, in the amount of three (3) cents per fluid ounce or fraction thereof contained in such package or container. There is hereby levied and shall be collected an excise tax upon each retail sale of beer and wine in the original package in the amount of five percent (5%) of the selling price. Said taxes shall be added to the sales price of the liquor sold and shall be paid by the buyer to the Port Gamble S'Klallam Liquor Distribution Agency (or whatever name it shall be known) who shall collect the same and hold them in trust for the Port Gamble S'Klallam Tribe until deposited as provided in section 14.04.02 (i) of this title. The taxes provided for herein shall be only taxes applicable to activities of the Port Gamble S'Klallam Liquor Distribution Agency.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.06.02 Excise Tax- Appropriation

These taxes which shall be deposited, as provided in section 14.04.02 (i), and shall be used for the benefit of the Reservation and tribal community. In appropriating these tax revenues, the Tribal Council shall give the priority to:

- a) Strengthening tribal government, which shall include but not be limited to strengthening Tribal Court and Law Enforcement systems and the system for administering and enforcing this title.
- b) Health, education, and other social services, and land acquisition and development needs.

- c) Enhancing equal business opportunities for tribal members and the Tribal Enterprise Division.
- d) Providing other reasonable and necessary services to tribal members.

The Tribal Council shall have the discretion to determine which of the above priorities shall receive an appropriation and the amount of the appropriation for a given priority.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.06.03 Records

The manager shall keep such records as shall be sufficient for the tribal tax administration to determine the amount of tax owing and shall complete tax returns in accordance with instruction from the tribal tax administrator.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.06.04 Amendments

Amendments to the amounts and type of taxes levied on Reservation liquor dealings may be made from time to time by approval of the Port Gamble S'Klallam Tribal Council, after consultation with the Liquor Distribution Agency manager.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

Chapter 14.07 Illegal Activities

14.07.01 Liquor Stamps

No liquor shall be sold on the Reservation unless there shall be affixed a stamp of the Liquor Distribution Agency. Any sales made in violation of this provision shall be a violation of this title which shall be remedied as set out in chapter 14.08. All liquor which is sold or held for sale on the Reservation without a stamp is hereby declared contraband and, in addition to any penalties imposed by the Tribal Court for violation of this section, it may be confiscated and forfeited in accordance with the procedures set out in chapter 14.09 Beer, wine, and malt liquor shall be excluded from this section.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.02 Proof of Unlawful Sale- Intent

In any proceeding under this title, proof of one unlawful sale of liquor shall suffice to establish *prima facie* the intent or purpose of unlawfully keeping liquor for sale in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.03 Use of Seal

No person other than an employee of the Tribe shall keep or have in his or her possession any legal seal prescribed under this title unless the same is attached to a package which has been purchased from a tribal liquor outlet, nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title or calculated to deceive by its resemblance to any official seal, or any paper upon which such design is stamped, engraved, lithographed, printed or otherwise marked. Any person violating this provision shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.04 Illegal Transportation Still or Sale Without Permit

Any person who shall sell or offer for sale or transport in any manner, any liquor in violation of this title, or who shall operate or have in his or her possession without a permit, any mash capable of being distilled into liquor, shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.05 Illegal Sale of Liquor By Drink Or Bottle

Except as otherwise provided in this title, any person who sells any liquor by the drink or bottle, shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.06 Illegal Purchase of Liquor

Any person within the boundaries of the reservation who buys liquor from any person other than at a properly authorized tribal liquor outlet shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.07 Illegal Possession of Liquor- Intent To Sell

Any person who keeps or possesses liquor on his or her person or in any place or on premises conducted or maintained by him or her as a principal or agent with intent to sell it contrary to the provisions of this title, shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.08 Sale to Persons Apparently Intoxicated

Any person who sells liquor to a person apparently under the influence of liquor shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.09 Drinking in a Public Conveyance

Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person who shall knowingly permit any person to drink any liquor in any public conveyance shall be in violation of this title. Any person who shall drink any liquor in a public conveyance shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.10 Furnishing Liquor to Minors

No person under the age of twenty-one (21) shall consume, acquire, or have in his or her possession any alcoholic beverages. No person shall give or otherwise supply liquor to any person under the age of twenty-one (21) nor shall he or she permit any person under the age of twenty-one (21) to consume liquor on his or her premises or on any premises under his or her control. Any person violating this section shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80, amended by Resolution 10-A-065 passed on 06/08/2010 to remove the exceptions allowing a parent to give his or her minor children liquor for beverage or medicinal purposes.]

14.07.11 Sales of Liquor To Minors

Any person who shall sell any liquor to any person under the age of twenty-one (21) years of age shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.12 Unlawful Transfer of Identification

Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be in violation of this title; provided, that corroborative testimony of a witness other than the minor shall be a requirement for judgment against the defendant.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.13 Possessing False or Altered Identification

Any person who attempts to purchase liquor through the use of false or altered identification which falsely purports to show the individual to be over the age of twenty-one (21) years of age shall be in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.14 Identification - Proof of Minimum Age

Where there may be a question of person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following officially issued cards of identification which shows correct age and bears his or her signature and photograph:

- a) Liquor Control Authority Card of Identification;
- b) Driver's License of any state or "Identi-Card";
- c) United States Active Duty Military Identification;
- d) Passport; or
- e) Tribal Identification or Enrollment Card.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.07.15 Defense to Action For Sale to Minors

It shall be a defense to a suit for serving liquor to a person under twenty-one (21) years of age if such person has presented a card of identification:

- a) In addition to the presentation by the holder and verification by the server of such card of identification, the server shall require the person whose age may be in question to sign a card and place a date and number of his card of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the server at or before the close of business on the day on which the statement is executed. The file box containing suitable alphabetical index and the card shall be subject to examination by any tribal peace officer.
- b) Such card in the possession of a server may be offered as a defense in any hearing held by the Tribal Court for serving liquor to the person who signed the card and may be considered by the Court as evidence that the person acted in good faith.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

Chapter 14.08 Penalties

14.08.01 Penalty - Civil Fine

If any person is found to have violated this title or any lawful regulation or rule made pursuant thereto for which no penalty has been specifically provided, he or she shall be liable for a civil penalty of not more than five hundred dollars (\$500.00) plus costs per violation

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.08.02 Jurisdiction Vested in Tribal Court

The Tribal Court shall have jurisdiction over any case brought by the Tribe for violations of this title. The Tribal Court may, in addition to the above penalty, grant to the Tribe such other relief as is necessary and proper for the enforcement of this title, including but not limited to injunctive relief against acts in violation of this title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

Chapter 4.09 Seizure And Forfeiture Of Contraband

14.09.01 Seizure of Contraband

All liquor within this reservation held, owned, or possessed by any person or liquor outlet operating in violation of this title are hereby declared to be contraband and subject to forfeiture to the Tribe. Upon application of the Tribe, the Tribal Judge shall issue an order directing the Tribal Law Enforcement Officer to seize contraband liquor within this reservation and deliver it to the Tribal Council. A copy of the court order shall be delivered to the person from whom the property was seized.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.09.02 Hearing

Within two weeks following the seizure of the contraband a hearing shall be held in Tribal Court, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.09.03 Notice of Hearing

Adequate notice of the hearing shall be given to the person from whom the property was seized if known. If the person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at some other public place. The notice shall describe the property seized,

and the time, place, and cause of seizure and give the name and place of residence, if know, of the person from whom the property was seized.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.09.04 Judgment of Forfeiture

If upon the hearing, the evidence warrants, or if no person appears as claimant, the Tribal Court shall thereupon enter a judgment of forfeiture, and order such articles destroyed forthwith.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

Chapter 14.10 Abatement

14.10.01 Declaration of Nuisance

Any room, house, building, boat, vessel, vehicle, structure, or other place where liquor is sold, manufactured, given away, furnished, or otherwise disposed of in violation of the provisions of this title or any lawful regulations made pursuant thereto, or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such a place, are hereby declared to be a common nuisance.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.10.02 Institution of Action

The Tribe may institute an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this title. The Tribe shall not be required to give bond in this action. Restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant, the Court may also order the room, house, building, boat, vessel, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient surety to be approved by the Court in the penal sum of not less than one thousand dollars (\$1,000.00), payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, given away, furnished, or otherwise disposed of there of in violation of the provisions in this title or of any other applicable tribal law, and that he or she will pay all fines, costs, and damages assessed against him or her for any violation of this title or other tribal liquor laws. If any condition of the bond is violated, the whole amount may be recovered as a penalty for the use of the Tribe. Any action taken under this section shall be in addition to any other penalties provided in the title.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]

14.10.03 Abatement

In all cases where any person has been found by the Tribal Court to have violated this title, applicable tribal regulations or tribal laws relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought in Tribal Court by the Tribe to abate as a nuisance any real estate and other property involved in the commission of the offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and *prima facie* evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

[HIST: Source - Resolution No. 80 A 52, passed 11/19/80.]