



HO-CHUNK NATION CODE (HCC)
TITLE 7 – CULTURAL AND NATURAL RESOURCES CODE
SECTION 2 – TRIBAL PROPERTY RIGHTS OF REPATRIATED
ITEMS ACT

ENACTED BY LEGISLATURE: NOVEMBER 4, 2002

CITE AS: 7 HCC § 2

1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct and imposing penalties upon all persons within the jurisdiction of the Nation.

c. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands or other assets.

d. Article V, Section 2(m) of the Constitution grants the Legislature the power to enact laws to prevent the sale, disposition, or encumbrance of Ho-Chunk lands or other Ho-Chunk assets.

e. Article V, Section 2(p) of the Constitution grants the Legislature the power to enact laws and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise.

f. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

g. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

2. Purpose. This Act establishes the Nation's property rights to protect repatriated items from alienation from the Nation.

3. Definitions.

a. "Custodian" means any person having care, custody and control of property as defined herein.

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b. "Interfere" means to take, possess, seize, impound or otherwise take actual or constructive control of Nation property, without a Tribal Court order or permission of the owner.

c. "Owner" means the person having title to any property.

d. "Nation" means the Ho-Chunk Nation.

e. "Property" or "Nation Property" includes any real or personal property owned by the Nation or members thereof and any property under the care, custody and control of a Nation member, which is owned by the Nation.

f. "Nation Lands" mean any land owned in fee by the Ho-Chunk Nation and land held in trust for the Nation or individual members of the Nation by the United States government.

4. **Policy.** Any item or object repatriated to the Ho-Chunk Nation shall be considered property of the Nation and shall be inalienable from the Nation.

5. Interference Prohibited.

a. Any person who interferes with Nation property located on Nation lands without a court order of the Nation's Tribal Court shall be guilty of an offense and such interference is hereby prohibited.

b. A violation of this Section shall be punishable to the furthest extent of Wisconsin Criminal Law and Ho-Chunk Nation law.

c. In addition to the above remedies, duly authorized or designated Nation Repatriation Officer or other law enforcement officer may take immediate possession of any property taken, seized, possessed or impounded by any person without proper Tribal Court order and return same immediately to the owner or custodian thereof.

d. In addition to any other remedies provided herein or in the procedures for exclusion under this Act, any Nation law enforcement officer may immediately exclude and remove from Nation lands any person attempting to possess Nation property without a valid order of the Tribal Court as provided in this Section, upon such attempted possession having taken place in the presence of such Nation law enforcement official or such official having reasonable cause to believe that such attempt at possession has taken place. Before any such exclusion shall become final, however, compliance with the exclusion provisions of this Act must be met. Emergency procedures provided for herein may be complied with, anything in the exclusion provisions of this Act notwithstanding.

6. **Procedure for Possession of Property.** Any person who wishes to take, possess, seize or impound any Nation property may do so only pursuant to a duly issued order of the Tribal Court or Traditional Court upon application made as provided herein.

a. Application. Any person wishing to possess Nation property shall apply for an order to the Tribal Court stating the reasons and authority for such possession in writing, identifying the property, its location and owner or custodian of the property to the best of applicant's knowledge. Such application may be ex parte and the Tribal Court may grant or deny the application or set the matter for hearing as provided by this Section.

b. Summary Issuance of Order.

(1) The Tribal Court may summarily grant the application and issue an order allowing possession of the property only when the nature of the claim, the amount thereof, the grounds relied upon for issuance of the order, and the need for immediate possession clearly appear from specific facts shown by verified petition or separate affidavit of the petitioner, his counsel or agent. The Court in its discretion may require security for the payment of damages to the owner if the order has been wrongfully obtained.

(2) In the event that an order is issued, notice thereof shall be given by the petitioner to the owner and custodian of the property pursuant to Ho-Chunk Nation Rules of Civil Procedure.

c. Issuance Upon Hearing. If it appears to the Court that an immediate order is not necessary without an opportunity for the owner and custodian of the property to be heard, the Court shall order a hearing on the matter and the petitioner shall give at reasonable notice thereof to the owner and custodian of the property.

d. Summary Denial of Order. If the application is summarily denied, the applicant may request a hearing at which the facts and reasons for the requested possession may more fully be set forth. Upon such request the Tribal Court shall set such a hearing providing reasonable notice of such hearing to the owner or custodian of the property in question.

e. Production of Court Order. Any person attempting to possess any Nation property as provided herein shall show the owner or custodian of such property, or any Nation law enforcement officer, the order of the Tribal Court allowing such action before attempting such possession.

f. Court Decisions Final. The decision of the Tribal Court as to the issuance of the order permitting taking or possession shall be final, except that further appeal to the Ho-Chunk Nation Supreme Court and applicable federal courts.

7. Representation. In any hearing set by the Tribal Court in a matter covered by this Act, any party may be represented by a spokesman provided such person comply with the applicable provisions of this Act.

Legislative History:

11/4/02 Enacted by Legislative Resolution 11/04/02B.