



**HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 15 – LONG ARM ORDINANCE**

ENACTED BY LEGISLATURE: JULY 20, 2005

CITE AS: 2 HCC § 15

This Act supersedes the Long-Arm Statute enacted by Legislative Resolution 4/11/00C.

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

2. **Declaration.** In order to protect the interests of the Ho-Chunk Nation (“Nation”), the Legislature has determined that facilitating the extension of jurisdiction over legal persons and entities, who have consented to jurisdiction or by their presence within the territory acquiescence to the government’s protection, is a necessary and legitimate function of the government.

3. **Definitions.**

a. “Defendant” means the person named as defendant in a civil action, and where in this Act acts of the defendant are referred to, the reference attributes to the defendant any person’s acts for which acts the defendant is legally responsible. In determining for jurisdiction purposes the defendant’s legal responsibility for the acts of another, the substantive liability of the defendant is irrelevant.

b. “Person” means any natural person, partnership, association, and body politic and corporate.

c. “Plaintiff” means the person named as plaintiff in a civil action, and where in this Act acts of the plaintiff are referred to, the reference attributes to the plaintiff the acts of an agent within the scope of the agent’s authority.

d. "Subject Matter Jurisdiction" means the power of a court to hear the kind of action brought. Subject matter jurisdiction is conferred by the Constitution and laws of the Nation and by statutes of the United States.

4. Jurisdictional Requirements for Judgments.

a. Subject Matter Jurisdiction. The Ho-Chunk Nation Trial Court is a court of general jurisdiction. A court of this Nation may entertain a civil action only when it has subject matter jurisdiction.

b. Personal Jurisdiction. A court of this Nation having subject matter jurisdiction may render a judgment against a party personally only if there exists one or more of the jurisdictional grounds:

- (1) A summons is served upon the person; or
- (2) Service of Summons is dispensed.

c. Jurisdiction In Rem or Quasi In Rem. A court of the Nation having subject matter jurisdiction may render judgment in rem or quasi in rem upon a status or upon a property or other thing and the judgment in such action may affect the interests in the status, property or thing of all persons served with a summons and complaint of notice of object of action as the case requires.

5. Personal Jurisdiction, Grounds for Generally. A court of the Nation having jurisdiction over the subject matter of an action has jurisdiction over a person served in that action pursuant to Section 6 under any of the following circumstances.

a. Local Presence or Status. In any action whether arising on or off the lands of the Ho-Chunk Nation, against a defendant who, when the action is commenced:

- (1) Is a natural person present on the lands of the Nation when served; or
- (2) Is a natural person domiciled on the lands of the Nation; or
- (3) Is engaged in substantial and not isolated activities on the lands of the Nation, whether such activities are wholly interstate, intrastate or otherwise; or
- (4) Is an enrolled member of the Ho-Chunk Nation.

b. Special Jurisdiction. In any action, which may be brought under the laws of the Nation, that specifically confers grounds for personal jurisdiction over the defendant.

c. Local Act or Omission. In any action claiming injury to person or property on or off of the lands of the Nation arising out of an act or omission on the lands of the Nation by the defendant.

d. Local Injury; Foreign Act. In any action claiming injury to person or property on the lands of the Nation arising out of an act or omission outside the lands of the Nation by the defendant, provided in addition that at the time of the injury, either:

(1) Solicitation or service activities were engaged in on the lands of the Nation by or on behalf of the defendant; or

(2) Products, materials or things processed, serviced or manufactured by the defendant were used or consumed on the lands of the Nation in the ordinary course of trade.

e. Local Services, Goods or Contracts. In any action which:

(1) Arises out of a promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit by the defendant to perform services on the lands of the Nation or to pay for services to be performed on the lands of the Nation by the plaintiff; or

(2) Arises out of services actually performed for the plaintiff by the defendant on the lands of the Nation, or services actually performed for the defendant by the plaintiff on the lands of the Nation if such performance on the lands of the Nation was authorized or ratified by the defendant; or

(3) Arises out of a promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit by the defendant to deliver or receive on the lands of the Nation or to ship from this state goods, documents of title, or other things of value; or

(4) Relates to goods, documents of title, or other things of value shipped from the lands of the Nation by the plaintiff to the defendant on the defendant's order or direction; or

(5) Relates to goods, documents of title, or other things of value actually received by the plaintiff on the lands of the Nation from the defendant without regard to where delivery to carrier occurred.

f. Local Property. In any action which arises out of:

(1) A promise made anywhere to the plaintiff or to some third party for the plaintiff's benefit by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated on the lands of the Nation; or

(2) A claim to recover any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated on the lands of the Nation either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

(3) A claim that the defendant returns, restores, or accounts to the plaintiff for any asset or thing of value, which was on the lands of the nation at the time the defendant acquired possession or control over it.

g. Deficiency Judgment on Local Foreclosure or Resale. In any action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other security agreement executed by the defendant or predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

(1) In any action in the Nation courts to foreclose upon real property situated on the lands of the Nation; or

(2) Following sale of real property on the lands of the Nation by the plaintiff; or

(3) Following resale of tangible property on the lands of the Nation by the plaintiff.

h. Insurance or Insurers. In any action which arises out of a promise made anywhere to the plaintiff or to some third party by the defendant to insure upon or against the happening of an event and in addition either:

(1) The person insured was an enrolled Ho-Chunk Tribal member when the event out of which the cause of action is claimed to arise occurred; or

(2) The event out of which the cause of action is claimed to arise occurred on the lands of the Nation, regardless of where the person insured arises.

i. Personal Representative. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in paragraphs b through h, above, would have furnished a basis for jurisdiction over the deceased had the deceased been living and it is immaterial under this section whether the action had been commenced during the lifetime of the deceased.

j. Joinder of Claims in same Action. In any action brought in reliance upon jurisdictional grounds in paragraphs b through h, above, there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to claim or cause to be joined.

6. Service of Summons. A court of the Nation having jurisdiction as provided in Section 5 may exercise personal jurisdiction over a defendant by service of a summons as follows:

a. Natural Person.

(1) By personally serving the summons upon the defendant either within or without the Nation.

(2) If with reasonable diligence the defendant cannot be served under paragraph (1), above, then by leaving a copy of the summons at the defendant's usual place of abode:

(a) In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

(b) In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

(c) Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

(3) If with reasonable diligence the defendant cannot be served under paragraphs (1) or (2), above, service may be made by publication of the summons in a newspaper which has been regularly and continuously published and by mailing. If the defendant's post office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately before the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post office address cannot be ascertained with reasonable diligence.

(4) In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept services of the summons for the defendant.

b. Natural Person Under Disability. Upon a natural person under disability by serving the summons in any manner prescribed in paragraph (1), below, upon such person under disability and, in addition, where required by this paragraph or paragraph a, above, upon a person therein designated. A minor 14 years of age or older who is not mentally incompetent and not otherwise under guardianship is not a person under disability for purposes of this subsection.

(1) Where the person under disability is a minor under the age of 14 years, summons shall be served separately in any manner prescribed in paragraph a(1), above, upon a parent or guardian having custody of the child, or if there is none, upon any other person having the care and control of the child. If there is no parent, guardian or other person having care and control of the child when the service is made upon the child, then service of the summons shall be made upon the guardian ad litem after appointment.

(2) Where the person under disability is known by the plaintiff to be under guardianship of any kind, a summons shall be served separately upon the guardian in any manner prescribed in paragraphs a, above. If no guardian has been appointed when

service is made upon a person known to the plaintiff to be incompetent to have charge of the person's affairs, then service of the summons shall be made upon the guardian ad litem after appointment.

c. Nation. Upon the Nation, by delivering a copy of the summons and of the complaint to the Attorney General or leaving them at the Attorney General's office with an assistant or clerk.

d. Other Political Corporations or Bodies Politic.

(1) Upon a political corporation or other body politic, by personally serving any of the specified officers, directors, or agents.

(2) Instead of delivering the copy of the summons to the person specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

e. Domestic or Foreign Corporations or Limited Liability Companies, General. Upon a domestic or foreign corporation or domestic or foreign limited liability company:

(1) By personally serving the summons upon an officer, director or managing agents of the corporation or limited liability company. Instead of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(2) If with reasonable diligence the defendant cannot be served under paragraph (1), above, then the summons may be served upon an officer, director or managing agent of the corporation or limited liability company by publication and mailing as provided in paragraph (1), above.

(3) By serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(4) If against any insurer, to any agent of the insurer. Service upon an agent of the insurer is not valid unless a copy of the summons and proof of service is sent by registered mail to the principal place of business of the insurer within five (5) days after service upon the agent. Service upon any insurer may also be made under paragraph a, above.

f. Partners and Partnerships. A summons shall be served individually upon each general partner known to the plaintiff by service in any manner prescribed in paragraphs e(1) or e(2) where the claim sued upon arises of or relates to partnership activities sufficient to subject a defendant to personal jurisdiction under Section 5. A judgment rendered under such circumstances is a binding adjudication individually against each

partner so served and is binding adjudication against the partnership as to its assets anywhere.

7. Severability. Any part of this Ordinance found to be unconstitutional by the Nation's Courts shall not affect the validity of the remaining parts of this statute.

Legislative History:

4/20/00 Adopted by Legislative Resolution 4/11/00B.
11/24/04 Legislature places Long Arm Statute out for Executive Review and Coordination as a Proposed Bill.
5/17/05 Legislature places Draft Long Arm Ordinance (2 HCC § 15) out for 45-Day Public Review.
7/8/05 45-Day Public Review period ends without comments.
7/20/05 Enacted by Legislative Resolution 7/20/05J.