

1 **Bill No. 19-03-XX-21**

2
3 A Bill repealing Chapter 4 of Title 2 of Mille Lacs Band Statutes, repealing Section 8 of Title 23
4 of Mille Lacs Band Statutes, enacting Chapter 4 of Title 2 of Mille Lacs Band Statutes,
5 amending and re-enacting Section 603 of Subchapter 7 of Chapter 1 of Title 10, amending and
6 re-enacting Section 10 of Chapter 1 of Title 18, and amending and re-enacting Section 102 of
7 Chapter 2 of Title 21.

8
9 The District I Representative introduced this bill on the XX day of December, 2021.

10
11 **BE IT ENACTED BY THE BAND ASSEMBLY OF THE NON-REMOVABLE MILLE**
12 **LACS BAND OF OJIBWE:**

13
14
15 **Section 1. Repealing Chapter 4 of Title 2 of Mille Lacs Band Statutes.**

16 Chapter 4 of Title 2 of Mille Lacs Band Statutes is hereby repealed.

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19
20 **Section 2. Repealing Section 8 of Title 23 of Mille Lacs Band Statutes.**

21 Section 8 of Title 23 of Mille Lacs Band Statutes is hereby repealed.

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24
25 **Section 3. Enacting Chapter 4 of Title 2 of Mille Lacs Band Statutes.**

26
27 **CHAPTER 4**

28
29 **EXCLUSION AND REMOVAL**

30
31 **Section**

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- 78 **3047. Severability**

79
80 **§ 3001. Findings and Determinations.**

- 81
- 82 (a) Under established law, the Band retains the inherent sovereignty to control and
- 83 regulate lands under its civil jurisdiction; and
- 84
- 85 (b) in order to protect and promote the health, safety, morals, and general welfare of the
- 86 Band, its members, and non-members residing in Band territory, it is necessary to
- 87 provide a means to exclude and remove certain persons from Band territory in the
- 88 event that such persons commit certain acts determined to be detrimental to the
- 89 community.
- 90
- 91

92 **§ 3002. Definitions.**

93
94 The following terms are defined for the purposes of this chapter:

- 95
96 (a) “Band” means the Non-Removable Mille Lacs Band of Ojibwe.
- 97
98 (b) “Band territory” means all lands under the civil jurisdiction of the Band, including
99 trust land and fee land owned by the Band.
- 100
101 (c) “Court of Appeals” means the Court of Appeals of the Court of Central Jurisdiction
102 of the Band.
- 103
104 (d) “District court” means the district court of the Court of Central Jurisdiction of the
105 Band.
- 106
107 (e) “Exclusion” means a non-criminal penalty by which the Band exercises its inherent
108 sovereignty to declare a person to be unwelcome in Band territory and shall not be
109 construed to be a banishment.
- 110
111 (f) “Felony” means any crime under state or federal law that is classified as a felony.
- 112
113 (g) “Gross misdemeanor” means any crime under state or federal law that is classified
114 as a gross misdemeanor, or an equivalent offense from any other state that is
115 identified with different words, such as Class A or other similar language.
- 116
117 (h) “Individual” means a human being.
- 118
119 (i) “Member” means an individual who is an enrolled member of the Band.
- 120
121 (j) “Non-member” means any person who is not a member.
- 122
123 (k) “Person” means an individual, foreign or domestic association, business trust,
124 corporation, enterprise, estate, joint venture, limited liability company, limited
125 liability partnership, limited partnership, partnership, trust, or any other legal or
126 commercial entity.
- 127
128 (l) “Prominent public locations” includes, without limitation, the Band’s official
129 website, government buildings, and such other public locations in Band territory that
130 the Solicitor General deems necessary to provide adequate notice of the existence and
131 contents of the list.
- 132
133 (m) “Removal” means the act of escorting an excluded person from Band territory.
- 134
135 (n) “Respondent” means a person against whom a complaint for exclusion and removal
136 has been brought.
- 137

138 (o) “Secretary” means the United States Secretary of the Interior.

139

140 (p) “Tribe” means the Minnesota Chippewa Tribe.

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143 **§ 3003. Exclusion and Removal; Generally.**

144

145 All persons, except those authorized by federal law to be present on Band territory, may be
146 subject to exclusion and removal from all or any portion of Band territory.

147

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149 **§ 3004. Exclusion and Removal; Members.**

150

151 Members may be excluded and removed from Band territory for any of the following:

152

153 (a) intentional conduct that substantially threatens the life, physical health, or safety of
154 any individual residing on lands under the jurisdiction of the Band;

155

156 (b) conviction for at least three (3) felonies or three (3) gross misdemeanors, or any
157 combination thereof, that:

158

159 (1) involve acts of violence against an individual; and

160

161 (2) occurred within five (5) years preceding the filing of the petition; or

162

163 (c) conviction for any of the following:

164

165 (1) a federal crime involving the possession or sale of illicit drugs, except
166 convictions for possession of less than 42.5 grams of marijuana;

167

168 (2) a state first, second, third, or fourth-degree controlled substance crime, except
169 convictions for possession of less than 42.5 grams of marijuana; or

170

171 (3) any other crime for the sale of an illicit drug.

172

173

174 **§ 3005. Exclusion and Removal; Non-Members**

175

176 Non-members may be excluded and removed from Band territory for any of the following:

177

178 (a) conviction for a felony that involved an act of violence against an individual;

179

180 (b) conviction for a felony and a gross misdemeanor that:

181

182 (1) involve acts of violence against an individual; and

183

- 184 (2) occurred within five (5) years preceding the filing of the petition;
185
- 186 (c) conviction for at least two (2) gross misdemeanors that involved acts of violence
187 against an individual, the conviction for which occurred within the span of five (5)
188 years;
189
- 190 (d) conviction for any of the following:
191
- 192 (1) a federal crime involving the possession or sale of illicit drugs, except a
193 conviction for possession of less than 42.5 grams of marijuana;
194
- 195 (2) a state first, second, third, or fourth-degree controlled substance crime, except
196 a conviction for possession of less than 42.5 grams of marijuana; or
197
- 198 (3) any other crime for the sale of an illicit drug;
199
- 200 (e) obstructing the performance of governmental functions by any elected official,
201 officer, agent, or employee of the Band through the use or threat of force or violence,
202 bribery, deception, or other unlawful means;
203
- 204 (f) resisting arrest by a law enforcement officer through the use or threat of force or
205 violence, bribery, deception, or other unlawful means;
206
- 207 (g) rendering criminal assistance by doing one of the following acts for the purpose of
208 hindering the apprehension, prosecution, conviction, or punishment of a person
209 known to have committed a crime, to be sought by law enforcement officers for the
210 commission of a crime, or to have escaped from a detention facility:
211
- 212 (1) harboring or concealing such person;
213
- 214 (2) providing to such person a weapon, money, transportation, disguise, or other
215 means of avoiding discovery or apprehension;
216
- 217 (3) concealing, altering, or destroying any physical evidence that might aid in the
218 discovery or apprehension of such person;
219
- 220 (4) warning such person of impending discovery or apprehension, except where
221 such warning is given in an attempt to persuade the person to comply with the
222 law; or
223
- 224 (5) obstructing by force, threat, bribery, or deception any person from performing
225 an act that might aid in the discovery, apprehension, prosecution, or
226 conviction of such person;
227
- 228 (h) mining, cutting timber or vegetation, or other use, abuse, or damage to property of the
229 Band or Tribe without authorization from the Band, the Tribe, or the Secretary;

- 230
231 (i) prospecting in Band territory without authority from the Band or the Secretary; or
232
233 (j) exploring or excavating items, sites, or locations of historic, religious, or scientific
234 significance without authority from the Band, or in violation of federal or Band law.
235
236

237 **§ 3006. Complaints for Exclusion and Removal; Generally.**

238
239 Any member, officer, agent, or employee of the Band may make a complaint for exclusion and
240 removal.
241
242

243 **§ 3007. Complaints for Exclusion and Removal; Forms of Complaint.**

244
245 The Clerk of Court shall maintain forms of complaint. The Clerk of Court may provide forms of
246 complaint to the Solicitor General upon request by the Solicitor General.
247
248

249 **§ 3008. Complaints for Exclusion and Removal; Signature.**

250
251 All forms of complaint must be signed by the complainant prior to filing, which must be
252 witnessed by a law enforcement officer, a notary public, the Clerk of Court, or a judge and
253 signed by the witness.
254
255

256 **§ 3009. Complaints for Exclusion and Removal; Perjury.**

257
258 Any complaint shall be considered a sworn statement or affidavit for the purposes of
259 24 MLBS § 1204.
260
261

262 **§ 3010. Complaints for Exclusion and Removal; Filing.**

263
264 The complainant shall file the signed complaint with the Office of the Solicitor General.
265
266

267 **§ 3011. Complaints for Exclusion and Removal; Solicitor General.**

- 268
269 (a) The Solicitor General shall file with the district court any complaint that, in the
270 professional judgment of the Solicitor General, meets the requirements of § 3004 or
271 § 3005, whichever is applicable, and is in the best interests of the people under the
272 civil jurisdiction of the Band.
273
274 (b) The Solicitor General shall have thirty (30) calendar days from the date of receipt of
275 the complaint to file the case with the district court.

- 276
277 (c) If the Solicitor General declines to file with the district court any complaint for
278 exclusion and removal, the Solicitor General shall, within ten (10) calendar days of
279 the expiration of the filing period, issue to the complainant a letter, memorandum, or
280 other correspondence detailing the Solicitor General's reasoning not to pursue
281 exclusion and removal of the person proposed for exclusion and removal.
282
283 (d) The Solicitor General shall act as prosecutor for all exclusion and removal actions.
284

285
286 **§ 3012. Notice; Generally.**
287

288 The district court shall cause notice to be served upon the respondent.
289
290

291 **§ 3013. Notice; Method.**
292

293 Notice shall be served personally. If personal service is not reasonably possible, notice may be
294 served by registered mail.
295
296

297 **§ 3014. Notice; Contents.**
298

299 Notice must state the following:
300

- 301 (a) the reason for the proposed exclusion and removal; and
302
303 (b) the time and place at which the exclusion hearing will be held.
304
305

306 **§ 3015. Notice; Timeframe.**
307

308 The exclusion hearing may not be held less than three (3) business days after the time of service,
309 if notice is served personally. If notice is mailed, the exclusion hearing may not be held less than
310 three (3) business days after the date on which the notice was mailed.
311
312

313 **§ 3016. Exclusion Hearing; Generally.**
314

315 The district court shall hold a hearing to determine whether the respondent will be excluded and
316 removed from Band territory.
317
318

319 **§ 3017. Exclusion Hearing; Respondent.**
320

321 Any respondent may:

- 322
323 (a) present evidence and argument at the exclusion hearing;
324
325 (b) cross-examine opposing witnesses; and
326
327 (c) be represented by counsel at his or her expense.
328
329

330 **§ 3018. Exclusion Hearing; Continuance.**

331
332 The district court may, in its discretion, grant a continuance of the exclusion hearing on request
333 by the respondent or sua sponte.
334
335

336 **§ 3019. Exclusion Hearing; Rules of Procedure.**

337
338 All exclusion hearings shall be conducted in accordance with rules of procedure adopted by the
339 judicial branch.
340
341

342 **§ 3020. Exclusion Hearing; Standard of Proof.**

- 343
344 (a) A respondent may only be excluded upon the court's finding that there is clear and
345 convincing evidence that the exclusion and removal meets the requirements of this
346 chapter.
347
348 (b) The Solicitor General shall bear the burden of proving any case for exclusion and
349 removal.
350
351

352 **§ 3021. Exclusion Orders; Generally.**

353
354 The district court may order the respondent excluded and removed from Band territory, or any
355 part thereof, or may permit the respondent to remain on Band territory on such conditions the
356 district court sees fit to impose.
357
358

359 **§ 3022. Exclusion Orders; Timeframe.**

360
361 The district court may only issue an exclusion order after the completion of the exclusion
362 hearing. If the respondent fails to appear for the exclusion hearing at the specified time, the
363 district court may declare the exclusion hearing closed.
364
365

366 **§ 3023. Exclusion Orders; Conditions.**

367

368 Conditions that the district court may impose in an order of exclusion may include, but shall not
369 be limited to, payment of money by the person to be excluded as restitution for damages caused
370 by the person and payment of a civil penalty.

371
372

373 **§ 3024. Exclusion Orders; Notice.**

374

375 Notice of the issuance of an exclusion order shall be given in the same manner as is prescribed
376 under § 3013.

377
378

379 **§ 3025. Exclusion Orders; Civil Penalty.**

380

381 Any civil penalty imposed by the district court in an order of exclusion shall be deemed a civil
382 forfeiture, not a criminal fine, and shall be for the purpose of recovering, in part or in whole, the
383 costs of enforcement of exclusion and removal.

384
385

386 **§ 3026. Exclusion Orders; Expiration.**

387

388 An exclusion order shall remain in effect for the duration of the period specified in the order or,
389 if no period was specified, until revoked by the district court.

390
391

392 **§ 3027. Exclusion Orders; Enforcement.**

393

394 If any person ordered excluded and removed from Band territory does not promptly comply with
395 the exclusion order, the district court shall order the person's removal from Band territory at the
396 person's expense or the prevention of the person's entry into Band territory.

397
398

399 **§ 3028. Exclusion Orders; Violation.**

400

401 If any person subject to an exclusion order or emergency exclusion order enters Band territory in
402 violation of said order, such person shall be subject to a \$500 fine in the form of a civil penalty.
403 Said fine shall be assessed for each violation of the exclusion order and shall accrue each
404 calendar day that the person is illegally within Band territory. This shall not preclude imposition
405 of further penalties resulting from additional civil or criminal proceedings relating to the
406 violation of the exclusion order.

407
408

409 **§ 3029. Emergency Exclusion Order; Generally.**

410

411 The district court may issue an emergency exclusion order if:

412

- 413 (a) the presence of the respondent presents an immediate damage to the life, health,
414 morals, or property of the Band, the members, or non-members residing in Band
415 territory;
416
417 (b) a delay would cause irreparable harm; and
418
419 (c) the complaint presents a prima facie case under § 3004 or § 3005, whichever is
420 relevant.
421

422
423 **§ 3030. Emergency Exclusion Order; Prior Notice and Hearing Not Required.**
424

425 No prior notice or hearing shall be required for issuance of an emergency exclusion order.
426
427

428 **§ 3031. Emergency Exclusion Order; Service.**
429

430 The district court shall cause any emergency exclusion order to be served upon the respondent in
431 the most expeditious manner available under the circumstances.
432
433

434 **§ 3032. Emergency Exclusion Order; Enforcement.**
435

436 An emergency exclusion order may, in addition to ordering the exclusion of a person, direct any
437 law enforcement officer to remove the person from Band territory. Said law enforcement
438 officers, in effecting the order, shall serve a copy of the order upon the person at the time of
439 removal or as soon thereafter as is possible.
440
441

442 **§ 3033. Emergency Exclusion Order; Authorized Force.**
443

444 Law enforcement officers executing an emergency exclusion order may only use such force as is
445 necessary to effect the removal.
446
447

448 **§ 3034. Emergency Exclusion Order; Expiration.**
449

450 An emergency exclusion order shall remain in effect for the duration of the period specified in
451 the order or, if no period was specified, until revoked by the district court.
452
453

454 **§ 3035. Emergency Exclusion Order; Authorized Entry.**
455

456 An emergency exclusion order must contain notice to the respondent of the time at which the
457 person may enter Band territory for the purpose of attending an exclusion hearing. The

458 respondent must be accompanied by a law enforcement officer at all times during the person's
459 presence in Band territory unless the order specifically provides otherwise.

460

461

462 **§ 3036. Appeals; Jurisdiction.**

463

464 The court of appeals shall have exclusive jurisdiction to hear appeals from orders of exclusion.

465

466

467 **§ 3037. Appeals; Limitation.**

468

469 No appeal may be taken from an exclusion order if the respondent failed without good cause to
470 appear at the exclusion hearing.

471

472

473 **§ 3038. Appeals; Entry to Band Territory.**

474

475 An excluded person may enter Band territory in the presence of a law enforcement officer for the
476 purpose of presenting arguments to the court of appeals. The excluded person must be
477 accompanied by a law enforcement officer at all times during the person's presence in Band
478 territory unless the exclusion order specifically provides otherwise.

479

480

481 **§ 3039. Appeals; Stays.**

482

483 The court of appeals may stay an exclusion order upon condition of security as it deems just if:

484

485 (a) all prior hearing remedies have been exhausted; and

486

487 (b) no substantial interest of the Band, its members, and non-members residing in Band
488 territory will be adversely affected by the stay.

489

490

491 **§ 3040. Appeals; Exclusion Orders Pending Appeal.**

492

493 All exclusion orders shall remain in full force and effect pending appeal unless stayed under
494 § 3038.

495

496

497 **§ 3041. Petition to Lift Exclusion; Generally.**

498

499 Every 180 days, any person excluded or removed may petition the district court to lift the
500 exclusion order.

501

502

503 **§ 3042. Petition to Lift Exclusion; Hearing.**

504
505 The district court judge shall, on receipt of a petition to lift exclusion and in accordance with the
506 rules of procedure established under § 3019, convene a hearing to determine whether the
507 exclusion order should be lifted.

508
509
510 **§ 3043. Public Posting; Generally.**

511
512 The Solicitor General shall cause to be posted in prominent public locations a list of all persons
513 excluded and removed from Band territory.

514
515
516 **§ 3044. Public Posting; List Contents.**

517
518 The list of persons excluded and removed must include the following:

- 519
- 520 (a) language notifying the public of the duty to report imposed on all persons within
521 Band territory and the consequences of failure to report the presence of any person
522 who was excluded or removed;
 - 523
 - 524 (b) the identity of each person excluded and removed;
 - 525
 - 526 (c) the date on which the exclusion and removal order was issued;
 - 527
 - 528 (d) the date on which the exclusion and removal order expires, if any.
- 529

530
531 **§ 3045. Public Posting; Duty to Report.**

532
533 Any person who has actual knowledge of the presence in Band territory of a person who was
534 excluded and removed shall have a duty to report the presence of said person to the tribal police.
535 Failure to report said presence shall constitute obstruction of justice.

536
537
538 **§ 3046. No Retroactive Application.**

539
540 This chapter shall not apply retroactively to any conviction for any crime.

541
542
543 **§ 3047. Severability.**

544
545 If any portion of this chapter should be declared unconstitutional by a court of competent
546 jurisdiction, the offending provision shall be deemed to be severed from the chapter and the
547 remaining provisions shall remain in full effect.

548
549

550 **Section 4. Amending and Re-Enacting Section 603 of Subchapter 7 of Chapter 1 of Title 10.**

551

552 **§ 603. Civil Penalties.**

553

554 The Mille Lacs Band may bring an action for a civil penalty against any person who is alleged to
555 have engaged in an activity which is violative of this chapter, including any person who is not
556 subject to Band criminal jurisdiction. The Band also may bring an action for forfeiture of any
557 articles possessed in violation of this chapter. Such civil penalty and forfeiture actions shall be
558 brought under the procedures established in the Civil Law Statute. Any person violating the
559 provisions of this chapter shall be subject to exclusion from the Reservation under Title 22
560 ~~MLBS § 201 [Digitizer's note: section not in digital copy] et seq.~~ Such relief as may be fashioned
561 by the Court shall be intended to be remedial in nature and not punitive and should compensate
562 the Band for the damage done to the archaeological or historic resources of the Reservation and
563 its archaeological and historic resources. Such relief shall also be intended to coerce the
564 individuals into obeying this chapter and regulations promulgated hereto and not to punish such
565 individuals for violation of this chapter and such regulations. Search, seizure and forfeiture of
566 articles possessed in violation of this chapter shall be pursuant to 1 MLBS § 1 et seq. The Court
567 may also order the forfeiture of any bond, the revocation of any permits, the return of any
568 property which has been removed from the Reservation or the restoration of any archaeological
569 resources or historic property to its former or customary condition. In assessing civil penalties,
570 the court may consider as factors the archaeological or commercial value of the resources
571 involved, or the cost of restoration and repair of the resource and the archaeological or historic
572 site involved.

573

574

575 **Section 5. Amending and Re-enacting Section 10 of Chapter 1 of Title 18.**

576

577 **§ 10. Violations.**

578

579 Any person who shall fail to comply with the licensing provisions of Chapters 1 to 4 of this title,
580 ~~or~~ any lawful Commissioner's Order, or any order of the Court of Central Jurisdiction shall be
581 deemed guilty of the offense of obstruction of the lawful process, and upon conviction thereof,
582 shall be sentenced to a suspension or revocation of the privilege to conduct commercial
583 enterprise on lands subject to the jurisdiction of the Band for a period not to exceed one hundred
584 eighty days or exclusion from said lands pursuant to Title 2 ~~provisions of 2 MLBS § 201 et seq.~~

585

586

587 **Section 6. Amending and Re-enacting Section 102 of Chapter 2 of Title 21.**

588

589 **§ 102. Life Estate in Spouse or Children.**

590

591 Any enrolled member of the Non-Removable Mille Lacs Band of Chippewa Indians who dies
592 intestate leaving a surviving spouse and/or children who are nonmembers of any constituent
593 Band of the Non-Removable Mille Lacs Band of Chippewa Indians, or who are non-Indians, the
594 surviving spouse or children shall be entitled to life-time estate on the trust or restricted property
595 of the decedent Band member in lieu of the restriction imposed in 21 MLBS § 101, provided,

596 that any said surviving spouse or children not be excluded or removed from said lands for cause
597 after hearing pursuant to Title 22 MLBS § 201.

598

599

600 **EFFECTIVE DATE.** This bill shall take effect immediately upon signature by the Chief
601 Executive, or lack of a veto, as provided in 3 MLBS § 17.

Ordinance XX-XX
(Band Assembly Bill XX-XX-XX-XX)

Introduced to the Band Assembly on this
XX day of December in the year
Two thousand twenty-one.

Passed by the Band Assembly on this
XX day of December in the year
Two thousand twenty-one.

Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: _____

Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND