

AN ACT RELATING TO
TORT CLAIMS ON SNOQUALMIE TRIBAL LANDS
BE IT ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL

SECTION 1.0 – TITLE AND CODIFICATION

This Chapter shall be known as the Snoqualmie Tribal Tort Claims Act and shall be codified as Title 8, Chapter 7 of the Snoqualmie Tribal Code.

SECTION 2.0 – STATUTORY AUTHORIZATION

The aboriginal and inherent sovereign power to govern the Snoqualmie Indian Tribe is vested in the Snoqualmie Tribal Council. The Snoqualmie Tribal Council has the authority to safeguard and promote the peace, safety, moral, and general welfare of the members of the Tribe by regulating the behavior of all persons within the jurisdiction of the Tribe, and by providing for the enactment and enforcement of laws of the Tribe. Snoq. Tr. Const. Art. VIII, Sec. 1(j).

SECTION 3.0 – PURPOSE; SCOPE; FINDINGS OF FACT

The purpose of this Chapter is to outline and define the scope of the Snoqualmie Indian Tribe's civil tort liability for tort claims that may arise due to actions and incidents on Snoqualmie Tribal lands, or actions and incidents associated with the delivery of services by the Snoqualmie Indian Tribe. This Chapter also sets forth the exclusive manner in which tort claims involving the Snoqualmie Indian Tribe shall be filed, administered and adjudicated.

This Chapter establishes a limited waiver of the Tribe's sovereign immunity for tort claims filed against the Tribe in accordance with the provisions of this Chapter. This Chapter is not intended to be a general waiver of the Tribe's sovereign immunity, and it shall be narrowly and strictly construed. The limited waiver of sovereign immunity is expressly conditioned upon the claimant's full and complete compliance with all of the procedures set forth in this Chapter.

This Chapter shall apply to any and all tort claims in which the named defendant is the Snoqualmie Indian Tribe, or a person acting in an official capacity as an agent, employee, or officer of the Snoqualmie Indian Tribe.

The Snoqualmie Tribal Council makes the following findings of fact:

- (a) The Snoqualmie Indian Tribe is immune from suit, except to the extent that the Tribal Council expressly and unambiguously waives its sovereign immunity;
- (b) Persons who are injured by the negligent and wrongful acts and/or omissions of Tribal officers, agents, or employees can be provided a legal remedy that is consistent with the Tribal Council's constitutional obligation to protect Tribal assets and resources that are vital to the continued operation of Tribal governmental operations and programs; and

- (c) An administrative review of all tort claims prior to the initiation of costly and expensive lawsuits may lead to speedier and less expensive resolutions of the claims, thereby providing a benefit to all parties.

SECTION 4.0 – DEFINITIONS

AGENT means any person, whether paid or unpaid, when acting during the course of and within the scope of actual authority expressly granted to them by the Tribe.

AWARD means money damages which the Tribal Court may determine are payable to compensate for any injury recognized under this Chapter.

EMPLOYEE means a part or full-time employee or agent of the Snoqualmie Indian Tribe, when acting during the course of and within the scope of their employment. The term includes officers and directors of the Tribe when they are acting to fulfill their duties to the Tribe. This term does not include agents or representatives of the United States or the State of Washington, or any of their political subdivisions.

GAMING FACILITY or **GAMING FACILITIES** means any room or rooms in which Class II Gaming or Class III Gaming is conducted on Snoqualmie Tribal lands.

GAMING OPERATION means any Class II or Class III Gaming conducted by the Snoqualmie Indian Tribe pursuant to Tribal law.

INJURY means death, harm to a person, or damage to or loss of property of whatever kind, which if caused by the negligent or wrongful act or omission of a person, would be a tort claim under Tribal law, applicable Federal law, or to the extent consistent with Tribal law, laws of the State of Washington, and which is expressly covered by the Tribe's liability insurance, without regard to any deductible amount contained in the insurance policy.

OFFICER means an officer, whether elected or appointed, whether paid or unpaid, when acting during the course of and within the scope of their authority granted by the Tribe.

SNOQUALMIE TRIBAL FACILITIES include all facilities that house Snoqualmie Tribal offices, departments, businesses, entities and employees of any kind whatsoever, whether or not the facilities are located on fee or trust land, including Snoqualmie Casino.

SNOQUALMIE TRIBAL LANDS OR TRIBAL LANDS include lands over which the Snoqualmie Tribe exercises jurisdiction, including but not limited to, the initial reservation, trust lands (Tribal and individual), lands subject to treaty-reserved rights, and lands within the federal definition of "Indian Country" set forth in 18 U.S.C. § 1151.

TORT CLAIMS means any and all legal claims for occurrences of bodily injury, property damage and personal injury suffered by persons on Snoqualmie Tribal lands.

TRIBAL COUNCIL means the Snoqualmie Tribal Council, the governing body of the Snoqualmie Indian Tribe duly elected by the General Membership in accordance with the Snoqualmie Tribal Constitution.

TRIBAL COURT means the Snoqualmie Tribal Court, established pursuant to the Snoqualmie Tribal Constitution.

TRIBE means the Snoqualmie Indian Tribe, including but not limited to any office, department, agency, commission, authority, instrumentality, enterprise, corporation, or other entity of the Snoqualmie Indian Tribe.

SECTION 5.0 – INSURANCE

The Tribe shall maintain a commercial general liability policy in the amount of \$10,000,000 per occurrence for bodily injury, property damage, and personal injury arising out of, connected with, or resulting from activities undertaken by or services provided by the Snoqualmie Indian Tribe.

SECTION 6.0 – LIMITED WAIVER OF SOVEREIGN IMMUNITY

- (a) The Tribe hereby waives its sovereign immunity for all tort claims up to the limits of the commercial general liability insurance policy specified in section 5.0 of this Chapter. The Snoqualmie Tribe, its enterprises, agencies and officers are entitled to protection under the doctrine of sovereign immunity for any acts related to tort claims that may be made due to events that may occur on Snoqualmie Tribal lands. The Tribe hereby waives sovereign immunity only to the extent set forth in this section. Officers of the Tribe, including members of the Tribal Council, remain immune from suit for actions arising within the course and scope of their authority and duties.
- (b) This Chapter waives sovereign immunity (as limited in subsection (a) of this section) only up to the limits of the insurance policy referenced in section 5.0 for bodily injury, property damage and personal injury claims to the extent such tort claims are covered by the Tribe's general liability policy specified in section 5.0 of this Chapter and only in the forums contemplated in this Chapter.
- (c) The Tribe specifically excludes consent from suit for any punitive damages.
- (d) The sovereign immunity of the Tribe is waived only in the following instances:
 - (1) Injuries proximately caused by the negligent acts and/or omissions of the Tribe, its agents, employees or officers;
 - (2) Injuries proximately caused by the condition of any Snoqualmie Tribal Facility, provided the claimant establishes that the facility was in a dangerous condition.

SECTION 7.0 – SCOPE OF CLAIMS

Washington tort law, except as noted below, applies to all tort claims of bodily injury, property damages, or personal injury arising out of, connected with, or relating to the operations of the Snoqualmie Indian Tribe, including, but not limited to injuries resulting from entry onto the Snoqualmie Tribal land for purposes of patronizing Gaming Facilities or undertaking Gaming Activities. The burden of proof as to the Claimant's purpose for entry on Snoqualmie Tribal lands shall be that of the Claimant.

SECTION 8.0 – LIMITATIONS ON AWARDS

- (a) No rule of law imposing absolute or strict liability against the Tribe, its agents, employees or officers shall be applied in any tort claim filed under this Chapter.
- (b) No award or other judgment imposing punitive or exemplary damages, or attorneys' fees shall be applied against the Tribe, its agents, employees, or officers in any tort claim filed under this Chapter.
- (c) No award for loss of consortium shall be applied against the Tribe, its agents, employees, or officers in any action or claim for injuries under this Chapter.
- (d) No award for pain and suffering or mental anguish shall be applied against the Tribe, its agents, employees or officers, except where such award does not exceed fifty percent (50%) of the actual damages sustained, and provided that any such award does not exceed the limits of the liability insurance policy of the Tribe applicable to the underlining action or claim without regard to any deductible amount contained in the insurance policy.

SECTION 9.0 – ACTIONS OUTSIDE THE SCOPE OF EMPLOYMENT OR AUTHORITY

- (a) This Chapter does not immunize agents, employees, or officers of the Tribe from individual liability for the full measure of the recovery applicable to a tort claim, if it is established that the conduct exceeded the scope of employment or authority. Claims for individual liability arising out of conduct that is found to exceed the scope of employment or authority and that arise within the exterior boundaries of the Snoqualmie Indian Reservation or on Snoqualmie Tribal lands shall be heard only in the Snoqualmie Tribal Court.
- (b) If the Tribal Court finds that the injuries claimed from an act or omission of an agent, employee or officer of the Snoqualmie Indian Tribe was willful and wanton or otherwise outside the scope of employment or authority, the Tribe may request and the Court may order the individual defendant(s) named in the tort claim to reimburse the Tribe for costs and attorneys' fees which may have been incurred in the defense of the defendant(s).

SECTION 10.0 – PROCEDURES AND TIME FOR FILING TORT CLAIMS

- (a) No tort claim may be filed in Tribal Court under this Chapter unless the person who claims to have suffered an injury first sends written notice of the claim to the Secretary of the Tribal Council and the Tribe's In-House Legal Counsel. The notice shall be sent by certified mail, return receipt requested. If the tort claim alleges the injury was caused by the act or omission of an agent, employee, or officer of the Tribe, the written notice required by this Section shall also be given to the agent, employee, or officer.
- (b) Notice required in subsection (a) shall contain the following information:
 - (1) The name, current address, and telephone number of the tort claimant, and the name, current address, and telephone number of the claimant's attorney, if any.
 - (2) A concise statement describing the conduct, circumstances or other facts which brought about the injury. The statement must include the date and time when the injury occurred, the place where the injury occurred, the names of any agent, employee or officer of the Snoqualmie Indian Tribe who was involved, or who

may have knowledge of the facts giving rise to the injury, and the names, address, and telephone numbers, if known, of any other persons involved or who may have knowledge of the facts.

- (3) A concise statement of the nature and extent of the injury claimed to have been suffered, including submission of relevant medical reports.
 - (4) A statement of the amount of damages that is being requested.
- (c) The notice required under this Section shall be valid only if:
- (1) It is given to the required parties no later than one hundred and eighty (180) days after the act or omission occurred giving rise to the injury; and
 - (2) It contains all of the information required in Subsection (b) of this Section.
- (d) The notice shall be deemed given and effective as of the date of the last postmark of any written notice required by this Section.
- (e) No tort claim may be brought in Snoqualmie Tribal Court under this Chapter until the expiration of ninety (90) days after the date of the last notice required by this Section is given.
- (f) Any tort claim filed under this Chapter must be filed with the Tribal Court within two-hundred-seventy (270) days from the date that the act or omission occurred which gave rise to the tort claim.
- (g) No tort claim under this Chapter shall be accepted for filing by the Tribal Court unless the claimant files written proof of compliance with Subsections (a)-(c) of this Section.
- (h) No tort claim may be brought in Tribal Court under this Chapter for damages in excess of the amount set forth in the written notice of claim required by Subsection (a) of this Section. Damages sought in excess of the amount stated within the written notice of claim may be awarded by the Tribal Court only if the claimant proves the increased amount is based upon evidence not reasonably discoverable at the time the notice was given, or upon proof of intervening facts relating to the amount of the claim.
- (i) Any person filing a tort claim in Tribal Court for money damages under this Chapter shall cause a copy of the complaint and summons to be served upon the Secretary of the Tribal Council and the Tribe's In-House Legal Counsel. If the action alleges a claim involving an act or omission of a Tribal entity, services of the summons and complaint shall also be given to the Director of the Tribal entity.
- (j) A defendant in any action brought pursuant to this Chapter, whether for monetary damages or prospective declaratory, mandamus, injunctive or other extraordinary relief, shall have not less than sixty (60) days after receipt of the complaint and summons, and such other time as the Tribal Court may allow, to file an answer or other responsive pleading or motion.
- (k) The time periods for filing a notice of claim for monetary damages, and for commencing an action in Tribal Court for monetary damages under this Chapter do not apply in a suit for prospective declaratory, mandamus, injunctive or other extraordinary relief against

the Tribe or its agents, employees or officers.

SECTION 11.0 – TRIBAL DISPUTE PROCESS

Upon receipt of the Notice of Claim required in Section 10.0 of this Chapter, the Tribal Administrator shall cause the claim to be submitted to the Tribe's insurer. If a claim is rejected by the insurer or the parties have reached an impasse as to the dollar value of a claim, the claim may be taken to the Snoqualmie Tribal Court, provided all jurisdictional prerequisites set forth in this Chapter have been satisfied.

SECTION 12.0 – LIMITATIONS ON WAIVER OF SOVEREIGN IMMUNITY

- (a) No judgment, order or award pertaining to any claim for monetary damages authorized by this Chapter shall be for more than the limits of a valid and collectible liability insurance policy or policies carried by the Tribe covering each such claim, or otherwise established pursuant to any self-insured liability and/or other Tribal governmental claims program, approved and adopted pursuant to Tribal law. To be valid and collectible, the liability insurance policy or policies must have been in effect at the time the alleged injury occurred.
- (b) Notwithstanding any other provision of this Chapter, there shall be no waiver of sovereign immunity as to any tort claim which is defended by the United States under the Indian Self-Determination and Education Assistance Act, the Federal Tort Claims Act, or any other Federal law. Upon certification by the Tribe's In-House Legal Counsel that defense of any tort claim has been tendered to the United States, any action or proceeding on such claim shall be stayed by order of the Tribal Court without bond. The action or proceeding in Tribal Court shall be dismissed, after notice to the parties and an opportunity to be heard, upon receipt of notice satisfactory to the Tribal Court that the United States has assumed defense of the tort claim. The stay shall be dissolved and an order directing further proceedings in the action or proceeding on the tort claim shall be entered by the Tribal Court, after notice and a right to be heard thereon, upon receipt of notice satisfactory to the Tribal Court that the United States has declined to assume defense of the tort claim.
- (c) Notwithstanding any other provision of this Chapter, there shall be no exception to or waiver of sovereign immunity for any tort claim alleged to have resulted from any of the following:
 - (1) Exercise, performance, or the failure to exercise or perform a discretionary function or duty, or the implementation or failure to implement decisions by the Tribe or any agent, employee, or officer of the Tribe whether or not the discretion was abused in any such matter;
 - (2) Action taken or decision made in good faith and without gross negligence in carrying out the law;
 - (3) Intentional torts, except that this provision does not immunize the Tribe for any acts or omissions of investigative or law enforcement officer giving rise to claims for assault, battery, false arrest, false imprisonment or malicious prosecution. For purposes of this subsection, "investigative or law enforcement officer" means any agent, employee or officer of the Tribe who is empowered to execute searches, to seize evidence, or to make arrests under Tribal law;

- (4) Legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature, such as but not limited to adopting or failing to adopt a law;
 - (5) Issuance, denial, suspension, or revocation, or the failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval or other authorization;
 - (6) Termination or reduction of benefits under a Tribal assistance program, if the Tribe, or any agent, employee or officer of the Tribe is authorized by law, rule, regulation or policy to determine whether or not such authorization or benefits should be issued, denied, suspended, or revoked;
 - (7) Probation, parolee, furlough or release from confinement of a prisoner or other detainee, or from the terms and conditions or the revocation thereof, except upon a showing of gross negligence;
 - (8) Injury or damage caused by an escaping or escaped person or prisoner, a person resisting arrest, or by a prisoner to himself or herself, except upon a showing of gross negligence;
 - (9) Decision made by the Tribe or any agent, employee or officer of the Tribe in the implementation of the Indian Child Welfare Act or other laws regarding the placement or supervision of minors or incompetent persons;
 - (10) Claim based upon an act or omission of any agent, employee or officer of the Tribe exercising due care, in the execution of any statute, rule or regulation, whether or not such statute, rule or regulation is valid; or
 - (11) Claim based upon the assessment or collection of any tax, or the detention of any goods or merchandise by any law enforcement officer.
- (d) The enumeration of the immunities set forth in subsection (c) of this Section shall not be construed to waive any other immunities nor to assume any liabilities except as explicitly provided by this Chapter.
- (e) The procedures and standards for giving notice of claims to the Tribe and commencing tort claim actions in Tribal Court under this Chapter are integral parts of the limited waiver of sovereign immunity provided by this Chapter, and shall be strictly and narrowly construed. A tort claim for monetary damages against the Tribe shall be forever barred unless written notice of the claim has been given pursuant to the requirements in this Chapter, and is commenced in Tribal Court in accordance with the provisions of this Chapter.
- (f) Neither execution nor attachment shall issue against the Tribe in any claim for injury or proceedings initiated under this Chapter.

SECTION 13.0 - BENCH TRIAL

All tort claim actions commenced under this Chapter shall be tried by judges of the Snoqualmie Tribal Court, without a jury.

SECTION 14.0 – EXTINGUISHMENT AND PRESERVATION OF CERTAIN CLAIMS, ACTIONS AND DEFENSES

- (a) Any liability for monetary damages assumed by the Tribe for the actions or omissions of any Tribal agent, employee or officer under this Chapter shall be the exclusive remedy available to any person who suffers an injury caused by any Tribal agent, employee or officer. Any claim for monetary damages assumed by the Tribe which otherwise would lie against a Tribal agent, employee or officer, except for this Chapter, is forever extinguished in favor of the remedy established and limited by this Chapter, whether or not the person in whose favor such remedy is created exercises the right to timely present written notice of any claim and commence an action for a tort claim in Tribal Court under this Chapter.
- (b) This Chapter expressly preserves defenses of qualified or absolute immunity to actions for monetary damages against Tribal agents, employees or officers in their individual capacities. For example, the defenses preserved under this Chapter include, but are not limited to, absolute legislative and judicial immunities, qualified and absolute executive immunities, and their derivatives.
- (c) A person who suffers an injury as a result of an act or omission of the Tribe or a Tribal agent, employee or officer may not use procedures other than those established in this Chapter to seek monetary damages, even if another remedy may be provided by another provision of Tribal law. Notwithstanding the foregoing, this Chapter shall not bar any person from pursuing remedies in accordance with otherwise applicable law for claims relating to workers' compensation, unemployment compensation, or employee disciplinary actions taken pursuant to applicable Tribal personnel policies and procedures.
- (d) Volunteers duly authorized by the Tribe or a Tribal agent, employee or officer shall have the same immunities under this Chapter as Tribal agents, employees and officers who receive salary compensation.

SECTION 15.0 – SEVERABILITY

If any part of this Chapter is found to be invalid by any court of competent jurisdiction, all remaining valid parts are severable and shall remain in full force and effect.

SECTION 16.0 – SOVEREIGN IMMUNITY

Unless otherwise specified explicitly and clearly in this Chapter, nothing herein shall be construed to be a general waiver of the Tribe's sovereign immunity.

ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 17TH DAY OF FEBRUARY, 2009 IN
SESSION DULY MET WITH 7 FOR, 0 AGAINST AND 0 ABSTAINING.

AMENDED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 2ND DAY OF APRIL, 2009 IN
SESSION DULY MET.. RESOLUTION No. 71-09.

CODIFIED BY THE SECRETARY OF TRIBAL AFFAIRS ON THE 3rd DAY OF April,
2009.

Cedene Henderson *Secretary*
SECRETARY OF TRIBAL AFFAIRS

4-3-09