

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

- WHEREAS, the Tribal State Gaming Compact between the White Mountain Apache Tribe and the State of Arizona requires, pursuant to Section 13 (d), that during the term of the Compact, the Tribe shall maintain public liability insurance which provides no less than One Million Dollars for personal injury and property damage; and
- WHEREAS, the Gaming Compact, Section 13 (c), requires that the Tribe establish procedures for the disposition of tort claims arising from alleged injuries to patrons of its gaming facilities; and
- WHEREAS, patrons of the Tribe's casino if injured on the casino premises, may file claims against the White Mountain Apache Tribe pursuant to the Tribal Tort Claims Act, which was adopted by the Tribal Council on May 7, 1992, approximately one year before the Gaming Compact was executed between the Tribe and the State of Arizona; and
- WHEREAS, the Tribal Tort Claims Act waives the sovereign immunity of the Tribe but only to the extent that the Tribe has obtained contracts of insurance including self-insurance programs in force at the time of any occurrence; and
- WHEREAS, Section 3.12 of the Tribal Tort Claims Act specifies that the maximum judgment order award pertaining to any permitted claim under the Tribal Tort Claims Act shall not be for more than the lesser of \$250,000 for each individual claimant, \$500,000 for each accident or occurrence or \$200,000 for wrongful death or the limits of any valid and collectable liability insurance policy carried by the Tribe nor for more than the amount of the Tribe's self-insurance claims program; and
- WHEREAS, the Tribal Tort Claims Act must be amended in order to clarify that the foregoing limitations shall not apply to tort claims at the tribal gaming facility; and
- WHEREAS, Section 3.10 I., K. and L. of the Tribal Tort Claims Act are recommended to be amended in order to clarify any confusion or interpretation thereof that may conflict with the Tribal/State Gaming Compact; and

**Resolution No. 07-97-196**

WHEREAS, the Tribal Attorney recommends to the Tribal Council that the attached proposed amendment to the Tribal Tort Claims Act be posted for public comment as required by the Tribal Constitution; and

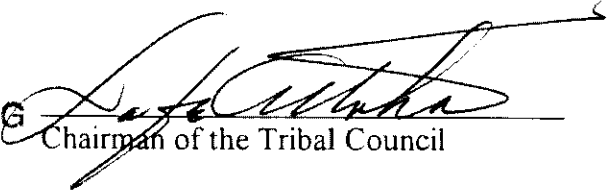
WHEREAS, the Tribal Council concludes that it would be in the best interest of the White Mountain Apache Tribe to clarify that liability insurance required by Section 13 (d) of the Compact is not subject to the limitations set forth in Section 3.12 A. of the Tribal Tort Claims Act; and

WHEREAS, the possibility that any tort claim alleged by patrons of the Tribe's gaming facility would exceed the maximum set forth in the Tribal Tort Claims Act is remote and the exposure of the Tribe to such claims is likewise remote but an amendment is nevertheless recommended to clarify and avoid any misinterpretation or confusion regarding the Compact provisions as they relate to the Tribal Tort Claims Act.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Council Secretary to post the attached proposed amendments to the Tribal Tort Claims Act and General Law of Torts Act in the form and content attached hereto and incorporated by reference herein for a minimum period of ten (10) days as required by the Tribal Constitution.

The foregoing resolution was on July 10, 1997 duly adopted by a vote of seven for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (i), (q), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

ACTING

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

**PROPOSED ORDINANCE  
AMENDMENT TO THE  
JUDICIAL CODE OF THE  
WHITE MOUNTAIN APACHE TRIBE  
FORT APACHE INDIAN RESERVATION**

**BE IT ENACTED** by the White Mountain Apache Tribal Council, in Council Assembled, that Chapter Three, Tort Claims Act, and Chapter Four, General Law of Torts Act, of the White Mountain Apache Judicial Code shall be amended as follows:

**SECTION 3.10      TRIBAL GOVERNMENT LIABILITY**

**I.** Failure to discover violations of any provision of law requiring inspections of property except as required by Section 13 (a) 1, 2, 3 and 4 of the Tribal/State Gaming Compact as it applies to the Tribal Gaming Facility only ;

**K.** Failure to respond to medical emergencies or to provide emergency medical services, except as required by Section 13 (b) of the Tribal/State Gaming Compact but only to the extent that provision is applicable to the Tribal Gaming Facility;

**L.** ~~Acts of Tribal Employees who have been determined by a Court to be guilty of a criminal offense;~~

**M. L.** Discretionary determinations of whether to seek or provide the resources necessary to purchase equipment, to construct or maintain facilities, roads or the like, to hire personnel, or to provide governmental services of any kind;

**N.M.** Plans or designs for construction, maintenance or improvement of Tribally, federally or state owned, controlled or maintained rights-of-way, easements, highways, roads, streets and bridges;

**O.N.** Under any theory of Products Liability.

**PO.** The Tribe shall not be vicariously liable for injuries or damages resulting from any act of a Tribal Employee unless the Tribal Employee is personally liable. Notwithstanding the foregoing, the Tribe shall not be vicariously liable for the acts of Tribal Employees who act without Tribal authorization or whose acts are otherwise outside or beyond the course and scope of the Tribal Employee's authority or employment.

**O.P.** Tribal volunteers acting within the course and scope of their authority or employment shall have the same degree of responsibility for their acts and enjoy the

same immunities and defenses as Tribal Employees.

**R.Q.** In addition to the immunity and defenses provided by this Chapter, the Tribe shall be entitled to any defense which would be available to the Tribe if it was a private entity or to a Tribal member if he/she were a non-member.

**S.R.** Nothing in this section shall immunize a Tribal Employee from individual liability for the full measure of recovery applicable to a person if it is established that the Tribal Employee's conduct was outside the scope of his authority or employment and that there is no Tribal insurance coverage available.

**T.S.** The enumeration of the above immunities shall not be construed to waive any other immunities, nor to assume any liability except as explicitly provided in this Chapter.

**SECTION 3.12**      **LIMITATIONS ON FORUM, DAMAGES AND CLAIMS FOR RELIEF**

The Tribe may be sued only in the White Mountain Apache Tribal Court and only with respect to claimed damages which are within the express coverage, and not excluded from coverage, by either commercial liability insurance contracts carried by the Tribe or an established Tribal self-insurance program, approved and adopted pursuant to the laws of the White Mountain Apache Tribe. All claims are further subject to the following provisions and limitations.

**A.** Except as required by Section 13 (d) of the Tribal/State Gaming Compact of 1993, no judgment, order or award pertaining to any permitted claim under this Chapter shall be for more than the lesser of:

1. The sum of \$250,000 for each individual claimant, but not exceeding the sum of \$500,000 for each accident or occurrence, or \$200,000 for wrongful death; or

2. The limits of valid and collectable liability insurance policies carried by the Tribe covering such claim or occurrence including such deductible amounts to the extent appropriated by the Tribal Council, nor for more than the amount of coverage provided for each such claim or occurrence under established claim reserves as appropriated by the Tribal Council or otherwise established pursuant to any self-insured claims program of the Tribal Government, approved and adopted pursuant to the laws of the Tribe.

**B.** Any such judgment, order or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance or established self-insurance program of the Tribe which is in effect at the time of the claim or occurrence.

**SECTION 4.205**      **DUTY OF OWNER, LESSEE OR OCCUPANT OF PREMISES TO RECREATIONAL USERS; LIABILITY; DEFINITIONS**

**B. As used in this section:**

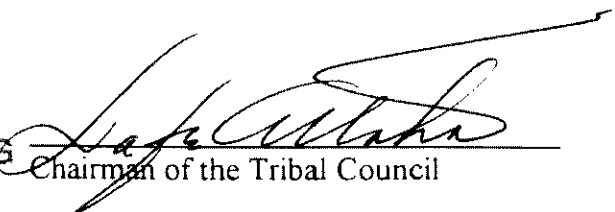
1. "Owner, Lessee or Other Occupant" includes the Tribe.


2. "Premises" means water courses, lakes, agricultural, range, mining, forest land, natural land, and any other similar land which the Tribe or any other person makes available to recreational users, with or without a permit, along with any buildings or other structures on such lands, provided, however, that premises as defined herein shall not include the Tribal Gaming Facility as defined in the Tribal/State Gaming Compact.

3. "Recreational user" means a person to whom permission has been granted or implied with or without the payment of an admission fee or other consideration to enter upon premises to hunt, fish, trap, camp, hike, ride, swim or engage in other similar recreational pursuits but does not include within this definition a patron of the Tribal Gaming Facility who is a licensee or invitee of the Tribal Gaming Facility. Provided, however, that this exception is limited to when the patron is a licensee, pursuant to Section 4.203 of this Chapter, or an invitee pursuant to Section 4.204 of this Chapter, of the Tribal Gaming Facility and then only within the exterior boundaries of the Tribal Gaming Facility.

The foregoing ordinance was on \_\_\_\_\_, 1997 duly adopted by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1(a), (i), (q), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

ACTING

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council