

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

WHEREAS, the Tribal Council by Resolution No. 07-97-196 directed the Tribal Council Secretary to post proposed amendments to the Tort Claims Act and General Law of Torts Act in each district for a minimum of ten days as required by the Constitution; and

WHEREAS, the Council Secretary advised the Tribal Council that said proposed ordinance has been posted in accordance with that directive; and

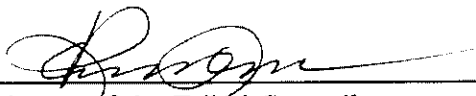
WHEREAS, the Tribal Council having received no opposition to the proposed amendments to the Tort Claims Act and General Law of Torts Act concludes that Ordinance No. 209 amending the Judicial Code should be enacted.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby enacts Ordinance No. 209 amending the Tort Claims Act and General Law of Torts Act of the Judicial Code of the White Mountain Apache Tribe.

The foregoing resolution was on August 08, 1997, duly adopted by a vote of eight for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by the White Mountain Apache Tribal Constitution, including Article IV, Sections 1 (a), (i), (q), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe on 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).

RECEIVED

AUG 15 1997
FORT APACHE INDIAN AGEN
WHITERIVER, ARIZONA


Chairman of the Tribal Council


Secretary of the Tribal Council

**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. 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;

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;

N. Under any theory of Products Liability.

O. 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.

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.

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.

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.

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).


Chairman of the Tribal Council


Secretary of the Tribal Council

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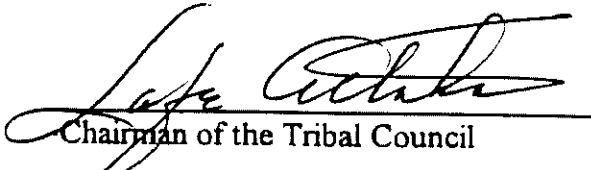
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