

TORTS AND INDIAN CIVIL RIGHTS ACT

Siletz Tribal Code § 3.200

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Ordinance Number 3.200. Amended by Resolution No. 2005-361, dated September 16, 2005; Resolution No. 2011-139, dated April 15, 2011; Resolution No. 2024-134, dated April 19, 2024.

Original Date: March 18, 2000
Subject: Torts and Indian Civil Rights Act

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§ 3.200 DEFINITIONS FOR STC § 3.200 TO STC § 3.221

- (a) As used in STC § 3.200 to STC § 3.221, unless the context requires otherwise:
- (a) “Department” means any department of the Siletz Tribal Government.
 - (2) “General Manager” means the General Manager of the Confederated Tribes of the Siletz Indians of Oregon.
 - (3) “Governing body” means the Siletz Tribal Council.
 - (4) “Indian Civil Rights Act” means 25 U.S.C. §§1301-1303, as it has been or may be amended from time to time.
 - (5) “Tort” means the breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, which results in injury to a specific person or persons and for which the law provides a civil right of action for damages or for a protective remedy.
 - (6) “Tribal body” means:
 - (A) The Tribe, Chinook Winds Casino and Convention Center and any department, corporation, agency, board or commission of the Tribe; and
 - (B) Any Siletz Tribal nonprofit corporation that is organized under state or Siletz Tribal law.

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(7) “Tribe” means the Confederated Tribes of the Siletz Indians of Oregon.

§ 3.201 SCOPE OF LIABILITY OF TRIBAL BODY, OFFICERS, EMPLOYEES AND AGENTS

(a) The sovereign immunity of the Tribe and all Tribal bodies, employees, officers and agents acting within the scope of their employment duties is waived for the express and limited purposes of actions under this ordinance.

(b) Subject to the limitations of STC § 3.200 to STC § 3.218, every tribal body is subject to action or suit for its torts and those of its officers, employees and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function or while operating a motor vehicle under the authority of the tribal body. The sole cause of action for any tort of officers, employees or agents of a tribal body acting within the scope of their employment or duties and eligible for representation and indemnification under STC § 3.205 shall be an action against the tribal body only. The remedies provided by this ordinance are exclusive of any other action or suit in the Siletz Tribal Court against any such officer, employee or agent of a tribal body whose act or omission within the scope of their employment or duties gives rise to the action or suit. No other form of civil action or suit in the Siletz Tribal Court or in any other court shall be permitted. If an action or suit is filed against an officer, employee or agent of a tribal body, on appropriate motion the tribal body shall be substituted as the only defendant.

(c) Every tribal body is immune from liability for any claim for injury to or death of any person or injury to property resulting from an act or omission of an officer, employee or agent of a tribal body when such officer, employee or agent is immune from liability.

(d) Every tribal body and its officers, employees and agents acting within the scope of their employment or duties, or while operating a tribal motor vehicle under the authority of the Tribe are immune from liability for

- 1) Any claim for injury to or death of any person covered by any workers' compensation law.
- 2) Any claim in connection with the assessment and collection of taxes.
- 3) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

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- (4) Any claim which is limited or barred by the provisions of any other statute, including but not limited to any statute of ultimate repose.
- (5) Any claim arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention of any of the foregoing.
- (6) Any claim arising out of an act done or omitted under apparent authority of a law, resolution, rule or regulation which is unconstitutional, invalid or inapplicable except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and applicable, unless such act was done or omitted in bad faith or with malice.

(e) Sections STC § 3.200 to STC § 3.218 do not apply to any claim against any tribal body or its officers, employees or agents acting within the scope of their employment arising before November 17, 1999. Any such claim may be presented and enforced to the same extent and subject to the same procedure and restrictions as if this ordinance had not been adopted.

§ 3.202 AMOUNT OF LIABILITY

(a) Liability of any tribal body or its officers, employees or agents acting within the scope of their employment or duties on claims within the scope of STC § 3.200 to STC § 3.218 shall not exceed:

- (1) \$100,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence.
- (2) \$100,000 to any claimant as general and special damages for all other claims arising out of a single accident or occurrence unless those damages exceed \$100,000, in which case the claimant may recover additional special damages, but in no event shall the total award of general damages exceed \$100,000.
- (3) \$500,000 for any number of claims arising out of a single accident or occurrence.

(b) No award for damages on any claim under this Ordinance shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(c) Where the amount awarded to or settled upon multiple claimants exceeds

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\$500,000, any party may apply to the Siletz appeals court to apportion to each claimant the proper share of the total amount limited by subsection (a) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the occurrence.

(d) Liability of any tribal body and one or more of its officers, employees or agents, or two or more officers, employees or agents of a tribal body, on claims arising out of a single accident or occurrence, shall not exceed in the aggregate the amounts limited by subsection (a) of this section.

(e) To the extent the Tribe or any tribal body possesses third party insurance coverage and is not self-insured, which insurance covers a particular claim made pursuant to this Ordinance, the maximum liability to which the tribal body may be subjected under this Ordinance will be the policy coverage limits available under such insurance. Third party insurance coverage and policy limits will be disclosed by the Tribe or tribal body to a claimant under this Ordinance, upon written request.

§ 3.203 NOTICE OF CLAIM; TIME OF NOTICE; TIME OF ACTION

(a) No action arising from any act or omission of a tribal body or an officer, employee or agent of a tribal body within the scope of STC § 3.200 to STC § 3.218 shall be maintained unless notice of claim is given as required by this section.

(b) Notice of claim shall be given within the following applicable period of time, not including the period, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity:

- (1) For wrongful death, within one year after the alleged loss or injury.
- (2) For all other claims, within 180 days after the alleged loss or injury.
- (3) Notice of claim required by this section is satisfied by:
 - (A) Commencement of an action in tribal court on the claim by or on behalf of the claimant within the applicable period of time provided in subsection (b) of this section; or
 - (B) Payment of all or any part of the claim by or on behalf of the tribal body at any time.
 - (C) A written notice of claim from a claimant or representative of a

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claimant to the General Manager of the Tribe containing:

- (i) A statement that a claim for damages is or will be asserted against a tribal body or an officer, employee or agent of the Tribe;
- (ii) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant; and
- (iii) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent.

(c) Notice of claim shall be given by certified mail or personal delivery to the General Manager of the Tribe only. A copy of the claim must be served on the tribal body or on the tribal body, if known, in which the employee, officer or agent is employed, by certified mail with return receipt requested.

(d) In an action arising from any act or omission of a tribal body or an officer, employee or agent of a tribal body within the scope of STC § 3.200 to STC § 3.218, the plaintiff has the burden of proving that notice of claim was given as required by this section.

(e) An action arising from any act or omission of a tribal body or an officer, employee or agent of the Tribe within the scope of this Ordinance shall be commenced within two years after the event causing the alleged loss or injury occurred.

§ 3.204 INSURANCE AGAINST LIABILITY; SELF-INSURANCE ALLOCATION

(a) The Tribe may procure third party insurance against liability of the Tribe, tribal bodies and its officers, employees and agents acting within the scope of their employment or duties, and in addition to, or in lieu thereof, may establish a self-insurance fund against such liability of the Tribe, tribal bodies and its officers, employees and agents. To the extent the Tribe or a tribal body is covered by third party insurance for any acts or omissions within the scope of this Ordinance, the liability limits for such acts or omissions shall be the policy limits of such third party insurance coverage.

(b) When a tribal body or employee, officer or agent of a tribal body is found liable under this Ordinance, damages are awarded to the claimant and the claim is covered by the Tribe's self-insurance coverage and not by third party insurance coverage, the Tribal Council may direct, in appropriate cases, that the Tribe's self-insurance fund be replenished from the budget of the tribal body which was found liable in that case.

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§ 3.205 THE TRIBE SHALL INDEMNIFY TRIBAL OFFICERS; PROCEDURE FOR REQUESTING COUNSEL; EXTENT OF DUTY OF THE TRIBE; OBLIGATION FOR JUDGMENT AND ATTORNEY FEES

(a) The Tribe shall defend, save harmless and indemnify any of its officers, employees and agents, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.

(b) The provisions of subsection (a) of this section do not apply in case of malfeasance in office or willful or wanton neglect of duty.

(c) If any civil action, suit or proceeding is brought against any tribal officer, employee or agent which on its face falls within the provisions of subsection (a) of this section, or which the tribal officer, employee or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, the tribal officer, employee or agent may, after consulting with the General Manager file a written request to the Tribal Council for assistance of counsel. The Tribal Council will appoint counsel to represent the officer, employee or agent in that action, suit or proceeding. The appointed counsel shall thereupon appear and defend the officer, employee or agent unless, after reasonable investigation, the appointed counsel finds that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty. In such case, the appointed counsel shall report such findings to the Tribal Council, who shall then decide whether or not to reject defense of the claim by the Tribe on the employee, officer, or agent's behalf.

(d) Any officer, employee or agent of the Tribe against whom a claim within the scope of this section is made shall cooperate fully with the appointed counsel, the General Manager, and other designated or delegated persons in the defense of such claim. If the appointed counsel, after consulting with the General Manager, determines that such officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the claim, the appointed counsel may at any time report such actions to the Tribal Council, who may reject the defense of the claim by the Tribe on behalf of the employee, officer or agent.

(e) If the Tribal Council rejects defense of a claim under subsections (c) or (d) of this section, no tribal funds shall be paid in settlement of said claim or in payment of any judgment against such officer, employee or agent. Such action by the Tribal Council shall not prejudice the right of the officer, employee or agent to assert in appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty, or that he or she did in fact cooperate with the Tribe in the defense of the claim, in which case the officer, employee or agent shall be indemnified against liability and reasonable

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costs of defending the claim, the cost of such indemnification to be a charge, if not covered by or subrogated by available third party insurance coverage, against any self-insurance fund established by the Tribe.

(f) Nothing in subsections (c), (d) or (e) of this section shall be deemed to increase the limits of liability of any tribal body or any tribal officer, agent or employee under STC § 3.202, or obviate the necessity of compliance with STC § 3.203 by any claimant, nor to affect the liability of the Tribe itself or of any tribal body or any other tribal officer, agent or employee on any claim arising out of the same accident or occurrence.

§ 3.206 SETTLEMENT OF CLAIMS BY LOCAL TRIBAL BODY

The Tribal Council may, subject to the provisions of any third party insurance contract existing, compromise, adjust and settle tort claims against the Tribe, a tribal body or its officers, employees or agents acting within the scope of their employment for damages under STC §§ 3.200 to 3.218 and may, subject to procedural requirements imposed by tribal law or other charter, appropriate money for the payment of amounts agreed upon. In appropriate cases, the Tribal Council may direct that such settlement, compromise or adjustment amount be replenished to the self-insurance fund from the budget of the tribal body connected to or involved with the claim that is the subject of such settlement, compromise or adjustment.

§ 3.207 PAYMENT OF JUDGMENT OR SETTLEMENT; REMEDIES FOR NONPAYMENT; INSTALLMENT PAYMENTS

(a) When a judgment is entered against or a settlement is made by the Tribal Council for a claim within the scope of STC §§ 3.200 to 3.218, including claims against officers, employees or agents required to be indemnified under STC § 3.205, payment shall be made and the same remedies shall apply in case of nonpayment as in the case of other judgments or settlements against private individuals.

(b) The tribal court may order that the judgment or settlement be paid in quarterly, semiannual or annual installments over a period of time not to exceed 10 years. The court shall determine the term of years based upon the ability of the Tribe to effectively carry out its governmental responsibilities, and shall not allow a longer term than appears reasonably necessary to meet that need. The order permitting installment payments shall provide for annual interest at the judgment rate.

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§ 3.208 **[RESERVED]**

§ 3.209 **[RESERVED]**

§ 3.210 **ACTIONS AND SUITS BY THE TRIBE**

(a) A suit or action may be maintained by the Tribe on behalf of itself or any tribal body in tribal court upon a cause of suit or action accruing to it in the following cases:

- (1) Upon a contract made by a tribal body.
- (2) Upon a liability prescribed by law in favor of a tribal body.
- (3) To recover a penalty or forfeiture given to the tribal body.
- (4) To recover damages for injury to the corporate rights or property of the tribal body.

§ 3.211 **PROCEEDINGS BY THE TRIBE TO ENFORCE ORDINANCES AND RESOLUTIONS**

(a) The Tribe may maintain civil proceedings in the Siletz Tribal Court against any person or property to enforce requirements or prohibitions of its ordinances or resolutions when it seeks:

- (1) To collect a fee or charge;
- (2) To enforce a forfeiture;
- (3) To require or enjoin the performance of an act affecting real property;
- (4) To enjoin continuance of a violation that has existed for 10 days or more;
or
- (5) To enjoin further commission of a violation that otherwise may result in additional violations of the same or related provisions affecting the political integrity, the economic security, or the health and welfare of the tribe.

(b) The remedies provided by this section are supplementary and in addition to those described in STC § 3.210.

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§ 3.212 CONTRACT AND OTHER ACTIONS AND SUITS AGAINST THE TRIBE OR TRIBAL BODIES

(a) A suit or action may be maintained against the Tribe by and through and in the name of the appropriate tribal body upon a contract made by the Tribe or by such tribal body and within the scope of its authority; provided, however, that a valid resolution, approved by a majority of the Tribal Council was passed and expressly waives the sovereign immunity of the Tribe from suit for the specific contractual cause of action brought by the party against the Tribe or tribal body.

(b) In the event a contract has been entered into by a tribal body within the scope of its authority and such contract waives or purports to waive the sovereign immunity of that tribal body, that tribal body shall be responsible for defending any claim made against it under such contract pursuant to the authorization granted in this section. The Tribe may, at its option and in its sole discretion, substitute itself on behalf of a tribal body in defending a contract claim made under this section. In such case, the Tribe shall assume the position and role of the tribal body, and such substitution shall not constitute a waiver of the Tribe's separate sovereign immunity, and such claim shall be tried solely upon the waiver or purported waiver of sovereign immunity of the tribal body. Any award made under this subsection shall be entered against the tribal body and shall be payable only by the tribal body and not by the Tribe.

§ 3.213 SATISFACTION OF JUDGMENT AGAINST TRIBAL CORPORATION

(a) If judgment is given for the recovery of money or damages against the Tribe or a tribal body mentioned under STC § 3.212, no execution shall issue thereon for the collection of such money or damages, but the judgment shall be satisfied as follows:

- (1) The party in whose favor the judgment is given may, at any time thereafter, when an execution might issue on a like judgment against a private person, present a certified transcript of the docket thereof, to the Tribal Council who is authorized to draw orders on the treasurer thereof.
- (2) On the presentation of the transcript, the Tribal Council shall pass a resolution directing the treasurer to draw an order for the amount of the judgment, in favor of the party for whom the judgment was given. Thereafter, the order shall be presented for payment, and paid, with like effect and in like manner as other orders upon the treasurer of the Tribe.
- (3) The certified transcript provided for in subsection (1) of this section shall not be furnished by the clerk, unless at the time an execution might issue on the judgment if the same was against a private person, nor until satisfaction of the judgment in respect to such money or damages is

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acknowledged as in ordinary cases. The clerk shall include in the transcript a memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contains such a memorandum, no order upon the treasurer shall issue thereon.

(b) Any judgment entered against a tribal body under the provisions of this section shall be payable only from the funds or assets of such tribal body, unless the Tribal Council, by resolution, expressly agrees that the Tribe shall assume such liability on behalf of the tribal body.

§ 3.214 PROHIBITION OF CONFIDENTIAL SETTLEMENTS AND COMPROMISES; EXCEPTION

(a) Neither the Tribe, nor the tribal body, officer, employee or agent of the Tribe, who is a defendant in an action under STC §§ 3.200 to 3.218, shall enter into any settlement or compromise of the action if the settlement or compromise requires that the terms of the settlement or compromise be confidential.

(b) Notwithstanding subsection (a) of this section, the Siletz Tribal Court may, after an expedited examination in chambers, order that terms and conditions of a settlement or compromise of an action be confidential if the court determines, by written findings, that specific privacy interests of a private individual outweigh the Tribe's interest in the terms of the settlement or compromise.

(c) The Tribe and any tribal body, or officer, employee or agent of a tribal body, who is a defendant in an action under STC §§ 3.200 to 3.218, shall file with the court a full and complete disclosure of the terms and conditions of any settlement or compromise of the claims against the Tribe or tribal body, its officers, employees or agents. The disclosure shall be filed prior to the dismissal of the action.

(d) For the purposes of this section:

- (1) "Action" means a legal proceeding that has been commenced as provided in the Siletz Tribal Court Rules and Procedures; and
- (2) "Tribal body" has the meaning given in STC § 3.200(5)
- (3) "Tribe" has the meaning given in STC § 3.200(6).

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§ 3.215 **[RESERVED]**

§ 3.216 **[RESERVED]**

§ 3.217 **[RESERVED]**

§ 3.218 **[RESERVED]**

§ 3.219 **CIVIL CLAIMS AGAINST THE SILETZ TRIBE UNDER THE INDIAN CIVIL RIGHTS ACT**

The Tribe is subject to actions for violations of an individual's rights by the Tribe, a tribal body, or a tribal employee, officer or agent under the Indian Civil Rights Act, as enumerated in 25 U.S.C. § 1302 and STC § 3.212, in the Siletz Tribal Court.

§ 3.220 **AVAILABLE REMEDIES; AMOUNT OF LIABILITY**

(a) The Tribal Court may award a prevailing plaintiff injunctive, declaratory and monetary relief for violations of the Indian Civil Rights Act. No punitive damages may be awarded under this section.

(b) Monetary relief shall only be awarded by the tribal court when actual damages can be proven by the plaintiff. Such awards shall not exceed \$10,000, *provided*, to the extent the Tribe has third party insurance coverage which covers a particular claim, the Tribal Court may award damages to the extent of available insurance coverage. To the extent a tribal body or an employee, agent or officer of a tribal body is held liable under the terms of this section, the Tribal Council may direct that any damages not covered by third party insurance shall be paid from the budget of the tribal body involved with a claim made under this section.

(c) Reasonable attorneys' fees and costs shall be awarded to the prevailing party.

§ 3.221 **NOTICE OF CLAIM; TIME OF NOTICE; TIME OF ACTION**

(a) No action arising from any exercise of the powers of self-government of the Tribe in violation of STC § 3.219 shall be maintained unless notice of claim is given as required by this section.

(b) Notice of claim shall be given within one year after the alleged violation of the person's rights has occurred.

(c) Notice of claim required by this section is satisfied by:

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- (1) Commencement of an action in tribal court on the claim by or on behalf of the claimant within the applicable period of time provided in subsection (b) of this section; or
 - (2) Payment of all or any part of the claim by or on behalf of the tribal body at any time.
 - (3) A written notice of claim from a claimant or representative of a claimant to the General Manager of the Tribe containing:
 - (A) A statement that a claim is or will be asserted against a tribal body or an officer, employee or agent of the tribal body for violation of the Indian Civil Rights Act, § 3.212 or STC § 3.219;
 - (B) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant; and
 - (C) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent.
 - (D) Notice of claim shall be given by certified mail or personal delivery to the General Manger of the Tribe only. A copy of the notice of claim shall be sent by certified mail to the Chief Executive Officer of the tribal body involved, if known.
- (d) In an action arising under STC § 3.212 or STC § 3.219, the plaintiff has the burden of proving that notice of claim was given as required by this section.