

Washoe Tribe of Nevada and California

Law & Order Code

TITLE 34 – WASHOE TORT CLAIM CODE

[Enacted on 10/10/14 — Resolution 2014-WTC-93. Effective Date: 4/9/15. Current Through Date: 4/20/15]

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34-10 LEGISLATIVE FINDINGS, AUTHORITY, AND PURPOSE

34-10-010 Authority

The Washoe Tribal Council is the recognized governing body of the Washoe Tribe of Nevada and California (“Tribe”) or (“Washoe”) with the responsibility to exercise the privileges and powers of self-government, to conserve and develop our resources, and to secure the social and economic wellbeing of our Tribe. The Tribal Council finds that the Tribe provides governmental services which promote health, safety, welfare and economic security for residents of and visitors to Washoe lands or enterprises. This Title is enacted on the basis of inherent sovereign tribal powers delegated to the Tribal Council under Article VI of the Tribe’s Constitution and Bylaws.

34-10-020 Findings and Purpose

1. The Tribal Council recognizes that the Tribe and all other federally recognized Indian tribes and tribal entities are immune from suit except to the extent such immunity is clearly, explicitly and unequivocally waived, and that Tribal sovereign immunity serves an important function in preserving limited Tribal resources so that tribes can provide governmental services which promote health, safety, welfare and economic security for the residents of and visitors to tribal lands.
2. The Tribal Council declares that the purpose of this Title is to establish a process for the consideration and evaluation of claims brought by persons claiming to have suffered injury on while visiting the Washoe Travel Plaza and Gaming Facilities operating on Washoe lands.
3. The procedure set forth herein will allow the Tribe and any other federally recognized Indian tribe or tribal entity engaging in commerce on Washoe lands to continue (i) to provide governmental services which promote health, safety and economic security for the residents of and visitors to Washoe lands or enterprises and (ii) to provide a remedy to person(s) who are injured by negligent or wrongful acts or omissions of the Washoe Travel Plaza or Gaming Enterprises operating on Washoe lands.

4. This Title shall apply only to those claims which are considered actions arising in tort under any applicable law and that are also covered by the liability insurance of the Washoe Travel Plaza or any Gaming Enterprise.

34-10-030 This Title shall be known as the Washoe Tort Claims Code and shall be codified as Title 34 of the Washoe Law and Order Code.

34-20 **DEFINITIONS**

1. “Actual Damages” means the ascertainable loss of money sustained as a result of an injury covered under this Title 34.
2. “Award” means money damages which the Claims Administrator or the Washoe Tribal Gaming Commission determines are payable to compensate for a Compensable Injury recognized under this Title 34.
3. “Claim” means any written demand, together with required supporting information, that satisfies the procedural and substantive requirements of this Title, alleges a Compensable Injury, and is timely filed.
4. “Claimant” means an individual Gaming Enterprise patron allegedly suffering a Compensable Injury subject to this Title 34, or if the Claim is one for death by negligent act or omission, by either the personal representative, the surviving spouse, or next of kin of the deceased.
5. “Common Areas” means all areas and facilities outside of the Gaming Facility that are designated for general nonexclusive use, including, without limitation, the landscaped areas, passageways, walkways, hallways, parking areas and driveways.
6. “Compensable Injury” means:
 - (a) Death or harm to a person;
 - (b) Which, if inflicted by a person under Washoe Tribal law or other applicable law, would constitute a tort;
 - (c) The proximate cause of which was the negligent or intentional act of an official, officer, employee, agent or independent contractor acting in the course and scope of his or her employment and authority with the Tribe, or the Gaming Enterprise; and
 - (d) That are not excluded claims under Section 34-70-20, beyond the limitations on awards set forth in Section 34-70, or otherwise not in compliance with the terms of this Title 34.
7. “Emergency Management Worker” means any full or part-time paid, volunteer or auxiliary employee of the Tribe, any state, or the United States

Government, or any agency or organization performing emergency management services on any tribally-owned lands subject to the order or control of, or pursuant to a request of, the Tribe, any Tribal Entity, or any Gaming Enterprise.

8. "Employee" means any person who performs work assigned or controlled by the Tribe, Tribal Entity, or Gaming Enterprise. The term shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the Tribe, Tribal Entity, or any Gaming Enterprise.
9. "Gaming" means collectively any and all activities constituting Class I Gaming, Class II Gaming, Class III Gaming, and "gaming" as defined by the Gaming Compact between the Washoe Tribe and the State of Nevada, entered into pursuant to Section 11(d)(3) of the Indian Gaming Regulatory Act and published in the Federal Register on July 16, 2004, as the same may from time to time be amended.
10. "Gaming Claims Administrator" means the person, agency or insurance company designated by the Gaming Enterprise to administer and issue determinations regarding Claims filed against the Gaming Enterprise pursuant to this Title.
11. "Gaming Enterprise" shall mean any gaming business, event, enterprise or activity under the jurisdiction of the Tribe and conducted by the Tribe or any other federally recognized Indian tribe.
12. "Gaming Facility" means the building or buildings in which gaming activities occur and which are located on the Tribe's Indian lands.
13. "Officer" means a person serving at the request or direction of any tribe as a director, officer, or manager of a Tribal Entity according to a Charter. Officer shall not mean any member individually or collectively of the Tribal Council.
14. "Travel Plaza Claims Administrator" means the person, agency or insurance company designated by the Washoe Travel Plaza to administer and issue determinations regarding Claims filed against the Washoe Travel Plaza pursuant to this Title.
15. "Tribal Council" means the Tribe's governing body duly elected pursuant to the Constitution and Bylaws of the Washoe Tribe of Nevada and California.
16. "Tribal Court" means the Tribal Court(s) established pursuant to the Constitution and Bylaws of the Washoe Tribe of Nevada and California.
17. "Tribal Entity" means any tribal branch, office, department, agency,

commission, utility, authority, instrumentality, enterprise, corporation, partnership, limited liability company, or similar corporate entity (whether chartered under tribal, state or federal law), or other entity of any tribe.

18. "Tribal Law" means the Constitution and Bylaws of the Washoe Tribe of Nevada and California, ordinances, codes, resolutions, and other legislative enactments adopted by the Tribal Council, as well as the common law of the Tribal Court.
19. "Tribe or Tribal" means the Washoe Tribe of Nevada and California.
20. "Washoe Safety Committee" or "WSC" means the administrative claim review department of the Washoe Tribe of Nevada and California.

34-30 SOVEREIGN IMMUNITY

34-30-010 No Waiver of Washoe Sovereign Immunity.

Nothing contained in this Title shall be construed as waiving sovereign immunity from suit or counterclaim of the Tribe, its Tribal government, any Tribal Entity, any Gaming Enterprise owned by any tribe, and any officers, employees and agents thereof. All inherent sovereign rights of the Tribe and any other tribe as federally-recognized Indian tribes are hereby expressly reserved.

34-30-020 No Waiver of PCI Gaming Authority Sovereign Immunity.

The Gaming Enterprise is owned by the PCI Gaming Authority, an unincorporated instrumentality of the Poarch Creek Band of Indians, a federally recognized tribe of Indians. Nothing contained in this Title shall be construed as waiving the sovereign immunity from suit or counterclaim of the PCI Gaming Authority or the Poarch Creek Band of Indians. All inherent sovereign rights of the PCI Gaming Authority and the Poarch Creek Band of Indians are hereby expressly reserved.

34-40 EXCLUSIVE REMEDY

The remedies provided by this Title against the Tribe, any Tribal Entity, or any Gaming Enterprise owned by any tribe are exclusive of any other action or proceeding by reason of the same subject matter against the Tribe, Tribal Entity, or Gaming Enterprise, or an officer or employee of the Tribe, Tribal Entity, or Gaming Enterprise, engaged in work assigned or controlled by the Tribe, Tribal Entity or Gaming Enterprise.

34-50 CLAIMS PROCEDURE

34-50-010 Procedure for Giving Notice of Claims and Filing Actions

1. Claims permitted by this Title 34 against the Washoe Travel Plaza or any Gaming Enterprise owned by any tribe must be submitted to the applicable entity based on the location of the alleged injury:
 - (a) Claims arising within the Gaming Facility building and the exterior portion of the Gaming Facility over which PCI Gaming Authority has a leasehold interest shall be filed with the General Manager of the Gaming Enterprise.
 - (b) Claims arising within the Washoe Travel Plaza building and the exterior portion of the Washoe Travel Plaza over which it has a leasehold interest shall be filed with the General Manager of the Washoe Travel Plaza.
2. Any Claim permitted by this Title 34 against the Washoe Travel Plaza or any Gaming Enterprise owned by any tribe must be presented to the Washoe Travel Plaza or Gaming Enterprise, as applicable, by a written notice of the Claim as provided in Section 3 below, by certified mail, return receipt requested to the General Manager of the Washoe Travel Plaza or the Gaming Enterprise. The failure to timely provide all required items or to otherwise comply with this Title's provisions shall constitute grounds for a denial of Claim.
3. The written notice required by Section (1) shall include the following:
 - (a) The name, social security number, driver's license number and state of issuance, current address and telephone number of the Claimant and the name and current address and telephone number of the Claimant's attorney, if any;
 - (b) A complete statement of the factual basis of the alleged Compensable Injury that gave rise to the Claim, including the date, time, precise location where the alleged Compensable Injury took place, circumstances, and the purpose for which the Claimant was at the location at the time of the alleged Compensable Injury;
 - (c) The identity or description of all persons involved in the alleged Compensable Injury that gave rise to the Claim, including the name of any employees of the Tribe, Tribal Entity, or Gaming Enterprise, if known;
 - (d) The identity or description of any witness(es) to the alleged Compensable Injury that gave rise to the Claim, including the address and telephone number, if known;

- (e) A complete statement of the nature of the alleged Compensable Injury, including complete copies of any supporting documentation (including medical records and other potentially relevant material), and a statement of the specific amount of monetary damages requested;
 - (f) A complete statement of Claimant's potentially relevant medical history, including medical records, pre-existing conditions, prior legal claims and similar matters;
 - (g) The signature of Claimant or his or her representative under penalty of perjury under the laws of Nevada and the United States, attesting to the truth of all statements made therein;
 - (h) Any additional evidence the Claimant believes relevant to the Claim; and
 - (i) The Claims Administrator may request additional information at any time including, without limitation, medical bills, invoices, reports, test results, or other materials they may deem necessary to evaluate or settle the claim.
4. To be valid under this Title, the written notice of claim for monetary damages required by Section (a) shall have been given no later than ninety (90) days after the act or omission giving rise to the alleged Compensable Injury occurred. The claim must present all material facts that relate to the alleged Compensable Injury. The written notice of claim for monetary damages shall be conclusively deemed given and effective as of the date of the last postmark of any written notice required by Section (2) above.
 5. The procedures and standards for giving notice of claims and commencing actions **shall be strictly construed**. A tort claim for monetary damages against the Tribe, a Tribal Entity, or the Gaming Enterprise shall be forever barred unless written notice of the claim is presented in compliance with the requirements of this Title.

34-50-020 Procedure for Resolution of Claims

1. Upon receipt of a Claim, the General Manager of the Washoe Travel Plaza or the Gaming Enterprise shall immediately forward a copy of the claim to the Travel Plaza Claims Administrator or the Gaming Claims Administrator.
2. Within ninety (90) days of receipt of a Claim, the applicable Claims Administrator shall evaluate the Claim to determine its validity and the amount of any legitimate damages, if any, in accordance with the terms of this Title. The Claims Administrator may investigate the Claim, may request additional information from the Claimant, and may extend the time

necessary to complete his or her evaluation of the Claim by an additional thirty (30) days.

3. If the Claims Administrator finds the Claim to have merit, it shall attempt in good faith to resolve the dispute subject to the terms of this Title 34.
4. As a precondition to resolving any Claim, the Claimant shall execute a full settlement and release of all Claims known and unknown, using a form approved by the Tribe or the Gaming Enterprise, provide a completed and executed Internal Revenue Service form W-9, and consent to exclusive Washoe Tribal jurisdiction for resolving any disputes that may arise under or related to such settlement and release.
5. If the Claim is rejected, the applicable Claims Administrator shall provide the Claimant with a written decision rejecting the Claim. The written rejection shall include an evaluation of all relevant facts and the basis for rejecting the Claim. The written rejection shall also include the following statement:

“You have thirty (30) days from the date this rejection was personally delivered or deposited in the mail to file an appeal of this rejection that satisfies all of the requirements of Title 34 of the Washoe Law and Order Code with the Washoe Safety Committee.”

34-60 APPEALS OF CLAIM REJECTION OR ADMINISTRATOR INACTION

34-60-010 Appeals of Claim Rejection

A Claimant whose Claim has been rejected by the applicable Claims Administrator may file a written Appeal meeting the requirements of Section 34-50-10 and including a copy of the written rejection of claim with the Washoe Safety Committee (WSC) within thirty (30) days of receiving the rejection of claim.

34-60-020 Appeals of Claim Administrator Inaction

A Claimant whose Claim has not been resolved by the applicable Claims Administrator within one-hundred and eighty (180) days after the applicable Claims Administrator receives notice of the Claim, may file a written Claim meeting the requirements of Section 34-50-10 with the WSC within thirty (30) days of the one-hundred and eighty (180) day limit for resolution of the claim under Section 34-50-20(2).

34-60-030 Washoe Safety Committee Review of Claims

The WSC shall examine all of the relevant evidence in the matter and issue a decision regarding the disposition of the Claim subject to the terms of

this Title within sixty (60) days after receiving the Claim. If necessary as part of its investigation, the WSC may hold a hearing regarding the Claim.

34-60-040 Washoe Safety Committee Decisions

The decision of the WSC shall be issued in writing and contain evaluation of all relevant facts and the basis for the decision. This decision shall be final and binding upon all parties to the Claim.

34-70 LIMITS ON CLAIMS

34-70-010 Limitations on Monetary Awards for Compensable Injury

1. No Claim may be made, and no award may be granted, in excess of \$100,000 per person and \$300,000 per incident. Awards shall be for actual medical damages only, as supported by adequate documentation of physical injury and medical expenses.
2. No award, judgment or order shall be made under this Title: (i) based on strict or absolute liability; (ii) for punitive, general, or exemplary damages; (iii) for prejudgment interest; or (iv) attorneys' fees.
3. No award, judgment or order shall be made under this Title for pain and suffering or mental anguish and suffering or like claims.
4. No award for costs or expert witnesses shall be considered or granted.
5. No award for loss of consortium, or other third party claims, shall be considered or granted.
6. Notwithstanding any other provision of this Title, there shall be no recovery from the Tribe, any Tribal Entity, or any Gaming Enterprise as to any claim of injury which is defended by the United States because such claim is deemed a claim against 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 Washoe Safety Committee that defense of any claim of injury 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 opportunity for a hearing, upon receipt of notice satisfactory to the Tribal Court that the United States has assumed defense of the claim of injury. The stay shall be dissolved and an order directing further proceedings in the action or proceeding on the claim of injury shall be entered by the Tribal Court, after notice and hearing thereon, upon receipt of notice satisfactory to the Tribal Court that the United States has declined to assume defense of the claim of injury; provided that should the Tribe challenge any United States denial or declination of the claim or defense tender, the stay shall continue until the

Tribe's challenge has been finally adjudicated.

34-70-020 Excluded Claims

Notwithstanding any other provision of this Title, there shall be no recovery available under this Title for any claim of monetary damages for any injury alleged to have resulted from:

1. Exercise or 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 Tribal Entity or any Gaming Enterprise or any officer or employee of the Tribe or Tribal Entity or any Gaming Enterprise, whether or not the discretion be abused in any such matter;
2. Action taken or decision made in good faith and without gross negligence in carrying out the law;
3. Any intentional tort, including but not limited to assault battery, false imprisonment, malicious prosecution, abuse of process, libel, slander, defamation, misrepresentation, deceit, interference with contract rights, or interference with prospective economic advantage;
4. Any injury proximately caused by a negligent or intentional act or omission that was committed outside of the course and scope of employment and/or authority of any official, officer, employee, agent, or independent contractor of the Tribe, any Tribal Entity, or any Gaming Enterprise;
5. Any injury proximately caused by the act or omission of any person who is not an official, officer, employee, agent or independent contractor of the Tribe, any Tribal Entity, or any Gaming Enterprise or who is not otherwise subject to the Tribe's, any Tribal Entity's, or any Gaming Enterprise's direction, supervision, or control;
6. 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;
7. Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any-permit, license, certificate, approval or other authorization;
8. Termination or reduction of benefits under a Tribal assistance program if the Tribe or any employee or officer of the Tribe is authorized by law, rule or regulation to determine whether or not such authorization or benefits should be issued, denied, suspended, or revoked;

9. Probation, parole, furlough or release from confinement of a prisoner, other detainee or ward of the Tribe from the terms and conditions or the revocation thereof except upon a showing of gross negligence;
10. Any decision made by the Tribe or any employee or officer of the Tribe in the implementation of the Indian Child Welfare Act or other laws respecting the placement or supervision of minors or incompetent persons;
or
11. Any claim based upon an act or omission of any employee or officer of the Tribe or any Tribal Entity or any Gaming Enterprise exercising due care, in the execution of any statute, rule or regulation, whether or not such statute, rule or regulation be valid;
12. Any claim based upon an act or omission of any employee or officer of the Tribe or Tribal Entity or any Gaming Enterprise that engaged in work which was not assigned or controlled by the Tribe or Tribal Entity or the Gaming Enterprise;
13. Any claim related to worker's compensation, unemployment compensation, or claims or actions relating to employment decisions;
14. Any claim arising from actual or prospective contractual agreements regardless of the parties or prospective parties thereto;
15. Any claim allegedly sustained by a Tribal official, officer, employee, agent, or independent contractor connected with his or her employment or performance of official duties;
16. Any purported claim by any third party, including without limitation any injury allegedly arising from a claim for a loss of consortium or any other third party claim, or equitable indemnity or contribution arising from third party litigation;
17. Any injury allegedly caused by the issuance, denial, suspension, or revocation of any tribal gaming license or any other license or permit;
18. Any injury allegedly arising from acts or omissions committed by any patron of any Tribal Entity or any Gaming Enterprise; or
19. Any claim regarding disputes concerning gaming transactions or promotions, such as, but not limited to the operation or play of gaming machines, claims for winnings, claims for machine malfunctions, or claims for promotions, prizes or points.

34-80 ACTIONS IMMUNE FROM LIABILITY

34-80-010 Tort Claims Resulting from Emergency Management Activities

1. All activities relating to emergency management are hereby declared to be governmental functions.
2. Notwithstanding anything to the contrary in this Title 34, neither the Tribe, any Tribal Entity, any Gaming Enterprise, nor any Emergency Management Worker, individual, partnership, association or corporation complying with or reasonably attempting to comply with emergency management functions or any order, rule, or regulation of the Tribe or other applicable law, shall be held liable for the death of or injury to persons, or for damage to property, as a result of any such emergency management activity.
3. Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized Emergency Management Worker who shall, in the course of performing his or her duties as such, practice such professional, mechanical or other skill during an emergency management activity.
4. Any Emergency Management Worker performing emergency management services on any Tribally-owned lands pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the Tribe, any Tribal Entity, or any Gaming Enterprise is a party, shall possess the same powers, duties, immunities and privileges he or she would ordinarily possess if performing his or her duties in the state or political subdivision thereof in which normally employed or rendering services.

34-80-020 Tort Claims Against Volunteers

Volunteers duly authorized by the Tribe, any Tribal Entity, or any Gaming Enterprise in performing any of their authorized functions or duties or training for such functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities from suit as the Tribe, the applicable Tribal Entity, or the applicable Gaming Enterprise.

34-90 MISCELLANEOUS

34-90-010 Severability

If any part of this Title is declared to be invalid by the Tribal Court, all parts of this Title shall be invalid unless, within ninety (90) days of the judgment of the Tribal Court so declaring, the Tribal Council shall approve a resolution ratifying adoption of this Title without the part declared invalid. If application of this Title to any person is declared to be invalid

by the Tribal Court, such invalidity shall not affect application of this Title to any other person, which may be given without such invalid application. To these ends, and consistent with this Section, the provisions of this Title are declared to be severable.

34-90-020 Applicable Law

Washoe Tribal law shall apply and shall govern all claims and actions brought under this Title. In no circumstances shall any state law or state court, forum or tribunal, apply or govern any suit, action, claim, controversy or process brought under this Title.

34-90-030 Effective Date

This Title shall become effective on the date of adoption by Tribal Council resolution. Only claims that arise on the date of and after the effective date of this Title shall be allowable under this Title.