

SISSETON-WAHPETON OYATE

**CHAPTER 76
TORT CLAIMS ORDINANCE**

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**Sisseton-Wahpeton Oyate
Judicial Committee**
New Code Amended Code Repealed Code
Tribal Council Resolution No. SW014-048
Judicial Committee Adoption Date _____
Tribal Council Approval Date April 29, 2014

PART 1
GENERAL PROVISIONS

76-01-01 Purpose

The Tribe enacts this Tort Claims Ordinance in order to provide those persons that are guests of Dakota Sioux Casino and Dakota Connections Casino with a forum for redress of their legitimate claims, which would otherwise be barred due to the Tribe's sovereign immunity from suit. Therefore, the Tribe will pay compensation, solely pursuant to an insurance policy, for damages suffered due to injury to or loss of personal property, or personal injury or death, where such losses or damages are caused by a negligent or wrongful act or omission of an employee of the Tribe while functioning within the scope of the duties of that person's office or employment, under those circumstances where the Tribe, if a private person, would be liable to the claimant.

76-01-02 Authority

The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation (the "Tribe") enacts this Ordinance as an exercise of its inherent and Treaty-recognized sovereignty in accordance with Article VII of the Amended Constitution and By-laws of the Tribe.

76-01-03 Severability

If any clause, sentence, paragraph, section, or part of this Code shall, for any reason be adjudicated by the Tribal or Appellate Court to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which the judgment shall have been rendered.

76-01-04 Construction

This Code shall be interpreted and applied in a manner consistent with all other Codes, Laws, Resolutions, and Regulations of the Sisseton-Wahpeton Oyate.

76-01-05 Amendment

This Code may be amended only upon an affirmative vote of a majority of the Council of the Sisseton-Wahpeton Oyate.

76-01-06 Effect of headings

Headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Code.

**PART 2
DEFINITIONS**

76-02-01 Interpreting Definitions

Words or phrases used in this Code shall be interpreted so as to give them the meaning they have in common usage for the Sisseton-Wahpeton Oyate and to give this Code its most reasonable application. The words and phrases in this Part are specifically defined and shall control and prevail over any other definition.

76-02-02 Acting within the scope of office or employment means execution by any employee of the Tribe of the duties, responsibilities, authorities, powers and functions of employees in that person's position, whether acting in a governmental, business, professional, or other employment capacity.

76-02-03 Employee of the Tribe means all elected officials, all officers, and all other persons employed by the Tribe at Dakota Sioux Casino and Dakota Connection Casino.

76-02-04 Loss means any injury to or loss of personal property, or personal injury or death, where such losses or damages are caused by a negligent or wrongful act or omission of an employee of the Tribe while functioning within the scope of the duties of that person's office or employment.

76-02-05 Sisseton-Wahpeton Oyate of the Lake Traverse Reservation (the "Tribe") means the Tribe's operation of gaming at two locations in South Dakota and the following two entities: the Dakota Sioux Casino and the Dakota Connection Casino. For purposes of this Tort Claims Ordinance, the term Tribe is limited to these two entities and this Ordinance only applies to these two entities and their places of business.

76-02-05 Tribal Court means the Tribal Court of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation located in Agency Village, South Dakota.

PART 3
LIMITED WAIVER OF SOVEREIGN IMMUNITY, LIABILITY OF THE TRIBE

- 76-03-01** The Tribe hereby expressly waives its sovereign immunity from suit for the limited purpose of permitting claims made against the Tribe pursuant to this Ordinance to be brought in Tribal Court, and to permit damages to be awarded against the Tribe in accordance with the limits established in Section 7, provided (1) the damages are payable from the proceeds of an insurance policy, and (2) the employee of the Tribe was acting within the scope of office or employment. The Tribe will pay, from the proceeds of an insurance policy, compensation for injury to or loss of personal property, or for personal injury or death, caused by a negligent or wrongful act or omission of an employee of the Tribe while acting within the scope of office or employment, under circumstances where the Tribe, if a private person, would be liable to the claimant.
- 76-03-02** The limited waiver of the Tribe's sovereign immunity from suit provided in 76-03-01 shall not extend to cases filed pursuant to this Ordinance in any jurisdiction, except the Tribal Court of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation. The Tribe expressly retains its sovereign immunity from suit for all claims brought in all federal, state, and other tribal courts and in any federal, state, and tribal agency or administrative body.
- 76-03-03** The Tribe expressly retains its sovereign immunity from suit for those causes of action not covered by an insurance policy.
- 76-03-04** The Tribe hereby expressly retains its sovereign immunity from suit with respect to any claim that does not come within the provisions of this Ordinance.
- 76-03-05** No pre-judgment or post-judgment interest may be awarded against the Tribe, nor shall punitive damages be awarded against the Tribe.
- 76-03-06** Employees cannot bring claims against the Tribe under this Ordinance.
- 76-03-07** The Tribe shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the Tribe whose negligent or wrongful act or omission gave rise to the claim, as well as any other defenses to which the Tribe is entitled.

PART 4
ADDITIONAL WAIVERS OF SOVEREIGN IMMUNITY

76-04-01 The Tribe retains the right, where limited circumstances may warrant, to waive its sovereign immunity on a case-by-case basis to permit claims that are not authorized by this Ordinance, or to permit claims accruing prior to the date of this Ordinance, but only if such claims are heard in the Tribal Court.

PART 5
REMEDIES

76-05-01 The remedies against the Tribe provided by this Ordinance, whether for damages or injury to or loss of personal property, or for damages awarded to compensate for personal injury or death caused by an act or omission of an employee of the Tribe while acting within the scope of office or employment, is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter, whether the claim is made against the employee whose negligent or wrongful act or omission gave rise to the claim, against the estate of such employee, or against the Tribe as the employer of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against either the Tribe, the employee, or the employee's estate is precluded without regard to when the act or omission occurred. Double recovery is prohibited.

PART 6
LIMITS

76-06-01 The liability of the Tribe provided in Section 4 of this Ordinance shall not exceed two hundred fifty thousand dollars (\$250,000) per claim, or one million dollars (\$1,000,000) for multiple claims arising out of a single event or occurrence.

PART 7
JURISDICTION

76-07-01 The Tribal Court shall have original and exclusive jurisdiction to hear claims brought pursuant to this Ordinance and subject to the terms of the Ordinance.

PART 8
EXCLUSIONS

- 76-08-01** Without intending to preclude the Tribal Court from finding additional cases where the Tribe and its employees should not, in equity and good conscience, pay compensation for injury to or loss of personal property, or for personal injury or death, the Tribe is not liable for the following loss:
- (A) A loss caused by any act or omission of a Tribe employee exercising due care in the execution of a valid or invalid statute, rule, ordinance or resolution;
 - (B) A loss caused by the exercise or performance or failure to exercise or perform a discretionary function, whether or not the discretion is abused;
 - (C) A loss in connection with the assessment and collection of taxes;
 - (D) A loss other than one sustained from injury to or loss of personal property, or from personal injury or death;
 - (E) A loss based on the failure of a person to meet the standards needed for a license, permit, or other authorization issued by the Tribe, its employees or agents;
 - (F) A loss caused by an intentional tort, such as assault and battery, committed by law enforcement or investigative officials, such as security or surveillance; and
 - (G) A loss where the act or omission occurred outside of the principal place of business for Dakota Connection Casino or Dakota Sioux Casino.

PART 9
STATUTE OF LIMITATIONS

- 76-09-01** The statute of limitations for all claims brought against the Tribe pursuant to this Ordinance is two (2) years. The right to bring a claim against the Tribe shall begin to accrue on the date of the act or omission giving rise to the claim. The claim must be filed in accordance with the procedure and additional timelines established in Section 10.

PART 10
PROCEDURE

- 76-10-01** A lawsuit or cause of action shall not be filed or initiated upon a claim against the Tribe for injury to or loss of personal property, or for personal injury or death, caused by a negligent or wrongful act or omission of any employee of the Tribe while acting within the scope of that person's office or employment, unless the claimant shall have first presented the claim to legal counsel of the Tribe. The claim shall be set forth on a standard Claim Form to be developed and maintained by the Tribe's legal counsel.
- 76-10-02** Legal counsel of the Tribe shall determine whether the claim falls within the provisions of this Ordinance and whether the Tribe's employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose.
- 76-10-03** Upon certification by legal counsel that the claim comes within this Ordinance and that the Tribal employee was acting within the scope of that person's office or employment at the time of the incident out of which the claim arose, the claim shall be deemed an action against the Tribe under the provisions of this Ordinance and legal counsel shall present the claim to the Tribe's insurance company for investigation, evaluation, and payment under the insurance policy.
- 76-10-04** In the event that legal counsel has denied the claim, the claimant has six months to file suit in Tribal Court. If legal counsel refused to certify that the employee was acting within the scope of that person's office or employment at the time of the negligent or wrongful incident out of which the claim arose, the employee may at any time before trial petition the Tribal Court to find and certify that the employee was acting within the scope of that person's office or employment. Upon such certification by the Tribal Court, such action or proceeding shall be deemed to be an action or proceeding brought against the Tribe under the provisions of this Ordinance, and the Tribe shall be substituted as the party defendant.
- 76-10-05** Nothing in this Section shall prevent a claimant from reaching a settlement with the legal counsel of the Tribe.
- 76-10-06** The appropriate Tribe insurance carrier shall be permitted to defend on behalf of the Tribe a claim brought pursuant to this Ordinance.

PART 11
INDEMNIFYING THE TRIBE'S EMPLOYEES

76-11-01 The Tribe shall indemnify and hold harmless its employees from and against any and all suits, demands, actions, losses, claims, damages, expenses, liabilities, cross-claims and counter-claims, of whatever nature, and costs (excluding attorneys' fees) related to, arising out of, based on, or in connection with performing duties within the scope of the employees job or office, where it is determined that the employee acted within their scope of employment or office. The Tribe is under no duty to indemnify those employees who have not been certified to have acted within the scope of employment or office.

PART 12
SETTLEMENT

76-12-01 Legal counsel for the Tribe is authorized to enter into settlement negotiations, at any time, for any claim for money damages of \$25,000 or less against the Tribe for injury to or loss of personal property, or for personal injury or death, caused by a negligent or wrongful act or omission of any employee of the Tribe while acting within the scope of office or employment, under circumstances where the Tribe, if a private person, would be liable to the claimant. The settlement must be presented to the Tribal Council for formal approval. Upon receiving Tribal Council approval, the settlement is final and conclusive on the Tribe and all officers and employees of the Tribe, unless procured by fraud. The acceptance by the claimant of a settlement is final and conclusive on the claimant and constitutes a complete release of any claim against the Tribe and the employee or officer of the Tribe whose act or omission gave rise to the claim, by reason of the same subject matter.

PART 13
ATTORNEYS FEES

76-13-01 No attorney for a claimant, who is licensed or admitted to practice before the Tribal Court, may charge, demand, receive, or collect for services rendered, fees in excess of twenty-five (25) percent of any judgment rendered pursuant to this Ordinance or in excess of twenty (20) percent of any settlement made pursuant to this Ordinance. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this Section shall be fined not more than \$2,000 and shall lose her or his privilege to practice law before the Tribal Court.

Approved Motion No. 71, Resolution No. SWO-14-048 on April, 29, 2014

Sisseton-Wahpeton Oyate
Judicial Committee
New Code Amended Code Repealed Code
Tribal Council Resolution No. SWO-14-048
Judicial Committee Adoption Date _____
Tribal Council Approval Date April 29, 2014



Sisseton Wahpeton Oyate

LAKE TRAVERSE RESERVATION
P.O. Box 509
100 Veterans Memorial Drive
Agency Village, South Dakota 57262-0509
Phone: (605) 698-3911

TRIBAL COUNCIL RESOLUTION NO. SWO-14-048

Amend Tort Claims Ordinance

WHEREAS, The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and,

WHEREAS, The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (b) to acquire, own, use, manage, lease and otherwise encumber and to dispose of Tribal property, both real and personal, wherever situated; (c) to engage in any business that will further the economic development of the Tribe and its Members, and to use Tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (e) to hire employees and agents, including legal counsel, directly or as independent contractors, and to compensate them for their services; (f) to deposit Tribal funds to the credit of the Tribe, without limitations of the amount in any account; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and,

WHEREAS, On November 2, 2012, by motion no. 2 and through Tribal Council Resolution No. SWO-12-103, the Tribal passed into law the "Tort Claims Ordinance"; and,

WHEREAS, Amendments to the Tort Claims Ordinance, are intended to be made in an effort to format the Ordinance to conform to other Tribal Laws and identify the Ordinance by Chapter 75, these amendments are in compliance with Section 11 of the gaming compact between the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation and the State of South Dakota, executed by Tribal Chairman Robert Shepherd on November 5, 2012, and by Governor Dennis Daugaard on October 30, 2012, with approval by the United States Department of Interior, on December 20, 2012 being published in the *Federal Register*, Vol. 77, No. 249, Friday December 28, 2012 pursuant to 25 U.S.C. §2710(d)(3)(B); and,

WHEREAS, That attached to this Resolution is the draft copy of the amended Tort Claims Ordinance, all changes where words are deleted will be shown with the language stricken through, all additional or new language will be shown with the language underlined; and,

WHEREAS, After review of the Election Ordinance the Tribal Council hereby adopts the following revisions to the Election Ordinance:

- The Tort Claims Ordinance is identified as Chapter 76 of the Sisseton-Wahpeton Oyate Codes of Law.
- A Table of Contents has been inserted.
- "Section" have been replaced by "Part".
- Section Numbers have been included.
- The following sections have been added:

76-01-03 Severability

If any clause, sentence, paragraph, section, or part of this Code shall, for any reason be adjudicated by the Tribal or Appellate Court to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which the judgment shall have been rendered.

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WHEREAS, Sections not identified in this Resolution shall remain in effect.

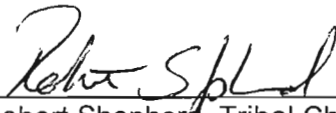
NOW THEREFORE, BE IT RESOLVED, that the Tort Claims Ordinance is hereby identified as Chapter 76, Tort Claims Ordinance; and,

FINALLY BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, hereby adopts the amendments to Chapter 76, Tort Claims Ordinance.

CERTIFICATION

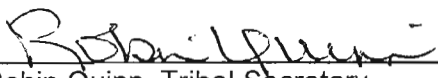
We, the Undersigned duly elected Tribal Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 9 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, April 29, 2014, by a vote of 14 for, 0 opposed, 0 abstained, 0 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 29th day of April 2014.



Robert Shepherd, Tribal Chairman
Sisseton-Wahpeton Oyate

ATTEST:



Robin Quinn, Tribal Secretary
Sisseton-Wahpeton Oyate

cc: SWO Legal Counsel
SWO Judicial Committee

