

STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As amended through Resolution No. 21-066 (July 19, 2021)

TORT CLAIMS CODE

CONFEDERATED TRIBES
OF THE
UMATILLA INDIAN RESERVATION

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TORT CLAIMS CODE

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TORT CLAIMS CODE

SECTION 1.01. TITLE

The title of this Code shall be the Tort Claims Code.

SECTION 1.02. FINDINGS

The Board of Trustees finds that:

- A. The Confederated Tribes of the Umatilla Indian Reservation ("Confederated Tribes") provides a broad range of governmental services, the provision of which has the potential to cause damage to property and injuries to persons in the event of the negligent action or inactions of Tribal government employees;
- B. The Confederated Tribes owns and operates several commercial enterprises serving the public where there is the potential for damage to property or injury to persons due to the negligent action or inaction of Tribal enterprise employees;
- C. Subject to the limitations set forth in this Code, persons suffering damage to their property or injury to their person due to the negligent action or inaction of Tribal government or enterprise employees should have access to a forum to address those damages;
- D. The government and enterprises of the Confederated Tribes acquire insurance (or are covered by the Federal Tort Claims Act in the case of programs operated pursuant to 638 Grants or Contracts) to compensate those persons who have suffered damage to their property or injury to their person due to the negligent action or inaction of employees of the Tribal government or enterprises;
- E. The Confederated Tribes has sovereign immunity from unconsented suit, which sovereign immunity must be waived to permit a suit against the Confederated Tribes seeking monetary damages for damage to property or injury to persons caused by the negligent action or inaction of a Tribal government or enterprise employee;
- F. It is appropriate for the Confederated Tribes to impose liability caps for claims against the Confederated Tribes for damage to property or injury to persons caused by the negligent action or inaction of Tribal government or enterprise employees; and
- G. The Umatilla Tribal Court is the appropriate judicial forum for resolving any claims against the Confederated Tribes for damage to property or injury to persons caused by the negligent action or inaction of Tribal government or enterprise employees.

SECTION 1.03. AUTHORIZATION FOR SUIT

- A. The Confederated Tribes may be sued in the Umatilla Tribal Court only when authorized by either: (1) applicable federal law, or (2) statute, ordinance or resolution approved by the Board of Trustees.
- B. No suit against the Confederated Tribes brought pursuant to this Code is authorized unless it complies with all applicable requirements of this Code and any other applicable laws of the Confederated Tribes.

SECTION 1.04. LIMITATIONS ON LIABILITY OF THE CONFEDERATED TRIBES

The Confederated Tribes shall have no liability for any claims of damage to property or injury to persons under the following circumstances:

- A. Where the Tribal government employee is acting pursuant to a 638 grant or contract funded by the Bureau of Indian Affairs (BIA), or the Indian Health Service (IHS), or any other

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federal agency or department, where the federal government has assumed liability for such damage or injury under the Federal Tort Claims Act;

- B. Where liability has been, or is hereafter assumed by a third party, including any governmental body or agency or a private entity or person, pursuant to applicable law, contract or agreement;
- C. Any claim for injury to or death of any person covered by the Confederated Tribes' Workers Benefit Code or the Workers' compensation laws of any jurisdiction; and
- D. Where the Confederated Tribes has been or is hereafter indemnified or held harmless by a third party.

SECTION 1.05. PRESERVATION OF OTHER IMMUNITIES AND DEFENSES; VICARIOUS LIABILITY; VOLUNTEERS

- A. Any liability of an entity, officer, employee or agent of the Confederated Tribes assumed pursuant to this Code is subject to any other immunity of that Tribal entity or person and is subject to any defense which would be available to the Tribal entity or person if they were private entities and/or persons;
- B. An entity of the Confederated Tribes is not vicariously liable for any injury or damage resulting from an act or omission of any Tribal officer, employee or agent if such party is not personally liable. Additionally, a Tribal entity is not vicariously liable for the actions or omissions of Tribal officers, employees or agents which are determined to be contrary to or without authorization or otherwise outside or beyond the course and scope of such officer's, employee's or agent's authority;
- C. This section does not immunize a Tribal officer, employee or agent from individual liability, not within Tribal insurance coverage, for the full measure of the recovery applicable to a person in the private sector if it is established that such conduct was outside the scope of his or her employment and/or authority; and
- D. Volunteers duly authorized by the Confederated Tribes, or any political subdivision thereof, 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 as officers and employees of the Confederated Tribes and its governmental and enterprise entities performing similar work.

SECTION 1.06. JURISDICTION IN UMATILLA TRIBAL COURT

The Umatilla Tribal Court shall have jurisdiction to hear suits against the Confederated Tribes for damage to property and injury to persons as authorized pursuant to this Code. Such suits shall be conducted pursuant to Rules of Civil Procedure, Evidence, and Appellate Procedure as adopted by the Umatilla Tribal Court or enacted by the Board of Trustees. In the absence of any such Tribal rules, the Federal Rules of Civil Procedure, Evidence, and Appellate Procedure shall apply.

SECTION 1.07. CONSENT TO SUIT AGAINST CONFEDERATED TRIBES; LIMITATIONS ON FORUM, DAMAGES, AND CLAIMS FOR RELIEF

- A. Subject to the limitations set forth in this Code, the Confederated Tribes 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 government or enterprise function. For purposes of this Code, a tort is an error or omission constituting a breach of a legal duty that is imposed by law, other than a duty arising from contract, the breach of which results in injury to a person or damage to property for which the law provides for a civil right of action for damages or for a protective remedy.

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- B. The Confederated Tribes may be sued only in the Umatilla Tribal Court and only with respect to any damages claim which is within the express coverage and not excluded by either commercial liability insurance carried by the Confederated Tribes or an established Tribal self-insured and/or other claims program of the Tribal government or enterprise, approved and adopted pursuant to the laws of the Confederated Tribes. Except as provided in subsections 1.07(C) and (H), claims against the Confederated Tribes under this Code are further limited in that no judgment, order of award pertaining to any suit or claim permitted hereunder shall be for more than the lesser of:
1. Two hundred thousand dollars (\$200,000) per claimant, but not exceeding five hundred thousand dollars (\$500,000) for all claimants involved in an occurrence. The limitations contained in this subsection apply to the sum of damages incurred by the claimant(s), regardless of the number of entities or persons alleged to be responsible or the number of actions filed; or
 2. The limits of valid and collectible liability insurance policies carried by the Confederated Tribes covering each such claim and in force at the time of such judgment including deductible amounts to the extent appropriated by the Board of Trustees, nor for more than the amount of coverage provided for each such claim under established claim reserves as appropriated by the Board of Trustees or otherwise established pursuant to any self-insured liability and/or other Tribal government or enterprise claims program, approved and adopted pursuant to the laws of the Confederated Tribes.
- C. Claims against the Confederated Tribes related to or involving the torts, as defined in section 1.07(A), of the law enforcement officers of the Umatilla Tribal Police Department while carrying out State of Oregon law enforcement powers outside the boundaries of the Umatilla Indian Reservation authorized under Oregon Senate Bill 412 enacted in 2011 are further limited in that no judgment, order or award pertaining to any suit or claim permitted hereunder shall be for more than the amount set forth or referenced in this subsection.
1. Limitation on Liability for Personal Injury or Death.
 - a. For causes of action for a single accident or occurrence arising on or after July 1, 2011 and before June 30, 2012 the sum of \$566,700 for any single claimant and \$1,133,300 for all claimants;
 - b. For causes of action for a single accident or occurrence arising on or after July 1, 2012 and before June 30, 2013 the sum of \$600,000 for any single claimant and \$1,200,000 for all claimants;
 - c. For causes of action for a single accident or occurrence arising on or after July 1, 2013 and before June 30, 2014 the sum of \$633,300 for any single claimant and \$1,266,700 for all claimants;
 - d. For causes of action for a single accident or occurrence arising on or after July 1, 2014 and before June 30, 2015 the sum of \$666,700 for any single claimant and \$1,333,300 for all claimants;
 - e. For causes of action arising on or after July 1, 2015, the liability limitations established pursuant to ORS 30.272(4) shall govern.
- D. Any such judgment, order or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance and/or established self-insured or government claims program of the Confederated Tribes which are in effect at the time of each such judgment, order, or award.
- E. No cause of action shall lie and no judgment may be entered or awarded on any claim for punitive or exemplary damages against the Confederated Tribes, nor against any officer,

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employee or agent of the Confederated Tribes acting within the course and scope of the authority of such office, employment or agency.

- F. No action may be brought in Umatilla Tribal Court under this Code for damages in excess of the amount set forth in the written notice of claim required in Section 1.09(A). Damages sought in excess of the amount stated in the written notice of claim may be awarded by the Umatilla Tribal Court only if the claimant proves the increased amount is based upon evidence not reasonably discoverable at the time the notice was given.
- G. Notwithstanding any provisions of this Code, there shall be no waiver of the sovereign immunity of the Confederated Tribes' entities, officials, employees or agents from claims for injury or damage alleged to have been sustained by:
1. Policy decisions or the exercise of discretion made by a Tribal official, employee or agent in the exercise of judgment or discretion vested in the entity or individual;
 2. A decision made in good faith and without gross negligence in carrying out the law, except that this provision does not immunize a Tribal entity, officer, employee or agent from liability for false arrest, false imprisonment or malicious prosecution;
 3. Legislative or judicial action or inaction or administrative action or inaction of a legislative or judicial nature, such as adopting or failure to adopt a law or by failing to enforce a law;
 4. Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization, nor by the termination or reduction of benefits under a Tribal assistance program, if the Tribal entity, officer, employee or agent is authorized by law to determine whether or not such authorization or benefits should be issued, denied, suspended, or revoked;
 5. Probation, parole, furlough or release from confinement of a prisoner or other detainee or from the terms and conditions or the revocation thereof except upon a showing of gross negligence;
 6. Any injury or damage caused by an escaping or escaped person or prisoner, a person resisting arrest, or by a prisoner to himself or herself, or to any other prisoner, except upon showing of gross negligence;
 7. Any personal injury claim, including but not limited to wrongful death, loss of consortium, or lost income, due to contraction of a communicable disease, unless the claimant presents clear and convincing evidence that:
 - a. the claimant contracted the communicable disease at a facility owned and operated by the Confederated Tribes; and
 - b. that the Confederated Tribes' facility where the claimant allegedly contracted the communicable disease failed to take reasonable measures to
 - i. notify patrons of the communicable disease and the associated risks where a public health emergency or pandemic has been declared ;
 - ii. advise patrons of appropriate precautions to protect the health of fellow patrons and Tribal employees; and
 - iii. take other appropriate measures to minimize the risk of the spread of the communicable disease.

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8. 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 Code.
 9. Any act or omission of the Umatilla Tribal Court, any member of the court acting in their official capacity, a judicial function of the Confederated Tribes of the Umatilla Indian Reservation, or of an employee in the execution of a lawful order of any court. "Official capacity" means all duties of office and includes administrative decisions or actions.
- H. Notwithstanding anything in this subsection to the contrary, in the event the Board of Trustees expressly agrees to an agreement imposing a higher liability limit for a specific Tribal program, enterprise, or under a specific contract or argument such higher liability limit shall supersede the limits set forth in this subsection for such specified Tribal program, enterprise or specific contract or agreement only.

SECTION 1.08. SUITS FOR PERFORMANCE OF DUTIES

Any officer, employee or agent of the Confederated Tribes may be sued in the Umatilla Tribal Court to compel him/her to perform his/her responsibility under the applicable laws of the United States and the laws of the Confederated Tribes.

- A. Relief awarded by the Umatilla Tribal Court for claims or suits brought under this section shall be limited to declaratory or prospective mandamus or injunctive relief and in accordance with the express provisions of the applicable laws of the United States and the laws of the Confederated Tribes establishing the responsibility for such performance;
- B. No relief as provided under this section may be awarded by the Umatilla Tribal Court without actual notice to Confederated Tribes and each individually named officer, employee and agent of the Confederated Tribes, nor before the time provided in this Code for answering complaints, motions (or order to show cause); and
- C. Nothing in this section shall be construed to supersede or waive any procedural, administrative or judicial requirement set forth in the laws of the Confederated Tribes as a prerequisite to the performance an act by an officer, employee or agent of the Confederated Tribes or relieve the petitioner from complying with such procedures.
- D. This section shall not apply to the members or officers of the Board of Trustees.

SECTION 1.09. TORT CLAIMS PROCEDURES

The procedure governing actions authorized by this Code shall be as follows:

- A. Any person or party desiring to institute suit against the Confederated Tribes or any officer, employee or agent of the Confederated Tribes as authorized by this Code shall, as a jurisdictional condition precedent to institution of such suit, provide notice of claims for such suit in writing to the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, the Tribal Attorney/Office of Legal Counsel and each individually named officer, employee and agent of the Confederated Tribes.
 1. Such notices shall be sent by registered mail, addressed to the main administrative offices of the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, the Tribal Attorney/Office of Legal Counsel and each individually named officer, employee and agent of the Confederated Tribes, return receipts requested. The time of such notice shall commence to run only from the date following actual delivery of the last notice to be delivered as evidenced upon such receipts, and filed together with such notices with the Umatilla Tribal Court in which such action may subsequently be commenced. The Chairman of the Board of Trustees, Secretary of the Board of Trustees, and the Tribal Attorney/Office of Legal Counsel shall ensure the availability, during all regular office hours, of office staff personnel duly authorized to

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accept and receipt for delivery of such notices provided herein, and their receipt thereof shall not waive the assertion of any appropriate defense pertaining to the validity of such notice or service.

2. Such notices must be served within one (1) year of the occurrence, or within one (1) year of when the claimant discovered, or reasonably should have discovered, the occurrence. Notwithstanding the foregoing, nothing in this provision shall be construed to extend the statute of limitations set forth in Section 1.11.
3. Such notices must include:
 - a. A concise statement describing the conduct, circumstances or other facts which brought about the injury; the time and place of the injury; and the name(s) of any officer, employee or gent of the Confederated Tribes involved, if known;
 - b. The name of each claimant;
 - c. The current address and telephone number of each claimant or their attorney, if any;
 - d. Relief which will be sought, including the amount of monetary damages;
 - e. For claims involving Personal Injury. The notice of claims for Personal Injury not involving death (including pain and suffering) must also include:
 - i. A written report by the claimant's attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and related diminished earning capacity;
 - ii. Itemized bills for medical, dental and hospital expenses incurred, or itemized receipts of payment for such expenses;
 - iii. If the prognosis reveals the necessity of future treatment, a statement of expected expenses for such treatment;
 - iv. If the claim is made for loss of time from employment, a written statement from the employer showing actual time lost from employment, whether the claimant is a full or part-time employee, and the wages or salary actually lost;
 - v. If the claim is for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost; and
 - vi. Any other evidence or information, which may have a bearing on either the responsibility of the Confederated Tribes for the personal injury or the damages claimed.
 - f. For claims alleging wrongful death. In support of a claim of wrongful death, the claimant must also submit the following evidence or information:
 - i. Proof that the claimant is the authorized personal representative of the decedent;
 - ii. Proof that the personal representative's claim is for the benefit of the decedent's heirs;

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- iii. An authenticated death certificate or other competent evidence showing cause of death, date of death and age of the decedent;
 - iv. Decedent's employment at the time of death, including monthly earnings (if any), and the duration of his or her last employment;
 - v. Names, addresses, birth dates, kinship and marital status of the decedent's dependents, including identification of those dependents who were dependent for support upon the decedent at the time of his or her death;
 - vi. Degree of support afforded by the decedent to each dependent who relied upon him or her at the time of death;
 - vii. Decedent's general physical and mental condition before death;
 - viii. Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts for payment of such expenses;
 - ix. If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of the pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death; and
 - x. Any other evidence or information that may have a bearing on either the responsibility of the Confederated Tribes or its officers, employees or agents for the death or damages claimed.
- g. For claims of property damage. In support of a claim for injury to or loss of property, real or personal, the claimant must also submit the following evidence or information:
- i. Proof of ownership of the property;
 - ii. A detailed statement of the amount claimed with respect to each item of property;
 - iii. An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs;
 - iv. A statement listing date of purchase, purchase price, and salvage value, where repair is not economical; and
 - v. Any other evidence or information that may have a bearing on either the responsibility of the Confederated Tribes for the injury to or loss of property or damages claimed.
4. No action shall be accepted for filing against the Confederated Tribes or any officer, employee or agent of the Confederated Tribes unless the claimant has filed proof of compliance with this section by service of the notices as required by this subsection at least sixty (60) days prior to the date on which the complaint or any other action is proposed to be filed in the Umatilla Tribal Court. In the event that the notice does not comply with the requirements in this Section, the Court shall dismiss the complaint.
5. In any action against the Confederated Tribes or any officer, employee or agent of the Confederated Tribes, the time for responding to the valid service of any summons and complaint shall be sixty (60) days; to valid service of any order to show cause, not less

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than thirty (30) days; and to valid service of any motion, not less than twenty (20) days. Any claim against the Confederated Tribes or any Tribal entity, officer, employee, or agent thereof, which is filed pursuant to this Code, is deemed generally denied sixty (60) days after valid service of the complaint, unless the claimant or claimant's attorney or counsel filing the complaint is advised of acceptance or of a specific or otherwise limited denial in writing or by responsive pleading filed before the expiration of sixty (60) days; and any such claim shall otherwise proceed in the same manner as upon the filing of such general denial thereof. These time periods may not be shortened by any Court rule or judicial order, but shall be extended by any longer period provided by other applicable law, rule, or order of Court; and

6. Any person or party filing a complaint against the Confederated Tribes or any officer, employee or agent of the Confederated Tribes shall serve by registered mail, return receipt requested, a copy of the complaint together with summons duly issued, upon the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, the Tribal Attorney/Office of Legal Counsel and each individually named officer, employee and agent of the Confederated Tribes. Service of summons and complaint against any officer, employee or agent of the Confederated Tribes shall be made by any means authorized under Tribal law or Rules of the Umatilla Tribal Court, provided that the time for response thereto shall be as provided herein and service upon such parties shall not be affected by such required service upon the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, the Tribal Attorney/Office of Legal Counsel and each individually named officer, employee and agent of the Confederated Tribes.
7. A properly filed tort notice is effective for one hundred and twenty (120) days from the date of filing. Tort notices are not subject to extension. In the event a suit is filed in the Umatilla Tribal Court more than one hundred and twenty (120) days from the date of a properly filed tort notice, the Court shall dismiss the complaint.

SECTION 1.10. NO INSURANCE PURCHASE OBLIGATION

Nothing in this Code is intended to, nor shall it be construed to, impose an obligation on the Confederated Tribes to purchase or maintain liability insurance at any time or in any amount.

SECTION 1.11. STATUTE OF LIMITATIONS

A. Time for Commencement of Action.

1. **Personal Injury and Property Damage Claims.** In no event shall any action or suit against the Confederated Tribes, or its officials, employees or agents, for the negligent injury to persons, not resulting in death, or damage to property under this Code be commenced more than two (2) years from the date of the act or omission complained of.
2. **Wrongful Death Claims.** In no event shall any action or suit against the Confederated Tribes, or its officials, employees or agents, for the negligent injury to persons resulting in death under this Code be commenced more than one (1) year from the date of the act or omission complained of.
3. **Suit to Compel Performance of Official Duty.** In no event shall any action or suit against the Confederated Tribes, its officials, employees or agents, to compel the performance of their duties as permitted under §1.08 of this Code be commenced more than one year (1) year from the date of the act or omission complained of.

- B. When Action Commenced.** For the purposes of determining whether an action has been commenced within the time limits in paragraph A of this section, an action shall be deemed commenced as to the Confederated Tribes and each officer, employee and agent of the Confederated Tribes when:

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1. The notices required by §1.09 of this Code have been provided.
 2. The complaint has been filed in the Umatilla Tribal Court; and
 3. The complaint has been served on the Confederated Tribes and any officer, employee and agent of the Confederated Tribes named as a defendant.
- C. No tolling. The statute of limitations set forth in this section shall not be tolled by the filing of an action in any federal or state court, or in any other tribal court except the Umatilla Tribal Court.

SECTION 1.12. CIVIL LIABILITY FOR SERVING ALCOHOLIC BEVERAGES TO AN INTOXICATED PERSON OR A MINOR

- A. This section governs and provides the exclusive remedy for any claims for personal injury, including death, or property damage alleged to have been caused in whole or in part by the service or provision of an alcoholic beverage to an intoxicated person or a minor by an enterprise owned and operated by the Confederated Tribes.
- B. A person who voluntarily consumes alcoholic beverages served by a Tribal enterprise shall have no cause of action based on statute, common law or otherwise, against the Tribal enterprise, the Confederated Tribes, its officers, directors, employees and agents, even though the alcoholic beverages may have been served to the person while the person was visibly intoxicated, or the person was a minor. The provisions of this Section 1.12(B) apply only to claims for relief based on personal injury, including death, or property damage caused by intoxication and do not apply to claims for relief based on person injury, including death, or property damage caused by negligent or intentional acts other than service of alcoholic beverages to a visibly intoxicated person or minor.
- C. Third Party Claims for Service of Alcohol to Intoxicated Person. The Confederated Tribes or a Tribal enterprise licensed to sell or serve alcoholic beverages and their officers, directors, employees and agents shall not be liable for damages caused by an intoxicated patron or guest of such Tribal enterprise unless the claimant proves by clear and convincing evidence that:
1. The Tribal enterprise served, sold or provided alcoholic beverages to the patron or guest while that patron or guest was visibly intoxicated;
 2. That the claimant did not substantially contribute to the intoxication of the patron or guest by:
 - a. Providing or furnishing alcoholic beverages to the patron or guest;
 - b. Encouraging the patron or guest to consume or purchase alcoholic beverages or in any other manner; or
 - c. Facilitating the consumption of alcoholic beverages by the patron or guest in any manner; and
 3. That the service, sale or provision of alcoholic beverages to the visibly intoxicated patron or guest was the proximate cause of claimant's damages.
- D. Third Party Claims for Service of Alcohol to a Minor. The Confederated Tribes or a Tribal enterprise licensed to sell or serve alcoholic beverages and their officers, directors, employees and agents shall not be liable for damages caused by the service of alcohol to a minor patron or guest of such Tribal enterprise unless the claimant proves by clear and convincing evidence that:
1. The Tribal enterprise served, sold or provided alcoholic beverage to the patron or guest while that patron or guest was a minor;

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2. A reasonable person would have determined that identification should have been requested from the minor patron or guest, or that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic beverage was sold or served;
 3. That the claimant did not substantially contribute to the intoxication of the patron or guest by:
 - a. Providing or furnishing alcoholic beverages to the patron or guest;
 - b. Encouraging the patron or guest to consume or purchase alcoholic beverages or in any other manner; or
 - c. Facilitating the consumption of alcoholic beverages by the patron or guest in any manner; and
 4. That the service, sale or provision of alcoholic beverage to the minor patron or guest was the proximate cause of claimant's damages.
- E. Notice of Claim. A Tribal enterprise shall not be liable and the suit against a Tribal enterprise may not be filed for any claim under this Section unless the person asserting the claim has provided the Confederated Tribes and the Tribal enterprise notice as required by subsection 1.12(E), (F) and (G).
- F. Notice Timelines. A person asserting a claim under this Section shall provide notice within the following time periods:
1. If a claim is made for damages arising out of wrongful death, notice must be given within one year of the date of death;
 2. If a claim is made for damages for injuries other than wrongful death, notice must be given within 180 days of the date the injury occurs.
 3. The notice must be in writing and contain the following information:
 - a. A statement that a claim for damages is made against the Confederated Tribes, or a Tribal enterprise pursuant to Section 1.12 of the Tribal Tort Claims Code;
 - b. A description of the time, place and circumstances giving rise to the claim, which description shall include the factual basis for alleging each of the elements in section 1.12(C) or (D), as appropriate; and
 - c. The name and mailing address of the claimant to which correspondence regarding the claim may be mailed.
- G. Notice Recipients. The notice required by this section 1.12(F) shall be mailed to the Tribal officials as otherwise required by Section 1.09(A)(1) of this Code.

SECTION 1.13. SB 412 TORT CLAIMS AGAINST CRITFC

- A. CRITFC Officers. This Part applies only to tort claims arising out of the conduct of law enforcement officers employed by the Columbia River Intertribal Fish Commission ("CRITFC") who are commissioned by the Confederated Tribes of the Umatilla Indian Reservation to enforce the laws of the Confederated Tribes, who are certified by Oregon's Department of Public Safety Standards and Training ("DPSST"), and who are enforcing state law pursuant to SB 412.
- B. Authorization for Suit. Subject to the limitations set forth in Section 1.13(C), CRITFC and its officers, agents, servants, and employees, including CRITFC Officers, may be sued in the

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Umatilla Tribal Court for conduct arising out of state law enforcement activities conducted by CRITFC Officers pursuant to SB 412 that is not otherwise covered by the Federal Tort Claims Act or tribal court of any of CRITFC's other member tribes where that tribe has consented to allow such claims.

- C. Limitation on Forum, Damages, and Claims for Relief. CRITFC may be sued only with respect to any damages claim that is within the express coverage of and not excluded by either commercial liability insurance carried by CRITFC or an established self-insurance and/or other claims program of CRITFC, and further subject to the following limitations:
1. No judgment, order, or award pertaining to any such tort claims permitted hereunder shall exceed the limitations of liability applicable to a "local public body" (as that term is defined in ORS 30.260(6)) set forth in the Oregon Tort Claims Act, ORS 30.260 to ORS 30.300.
 2. Any such judgment, order, or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance and/or established self-insurance or other claims program of CRITFC that are in effect at the time of each such judgment order or award.
 3. No cause of action shall lie and no judgment may be entered or awarded on any claim for punitive or exemplary damages against CRITFC or against any officer, employee, or agent of CRITFC acting within the course and scope of the authority of such office, employment, or agency as it relates to the enforcement of state law under SB 412.
 4. No cause of action shall lie against CRITFC in the Umatilla Tribal Court where a cause of action arising out of the same facts is pending in or has already been adjudicated by a tribal court of one of the other CRITFC member tribes or any other court of competent jurisdiction.
 5. Notwithstanding any provisions of this section, there shall be no exception to the sovereign immunity of CRITFC or its officials, employees, or agents from claims for injury or damage alleged to have been sustained by:
 - a. policy decisions or the exercise of discretion made by a CRITFC official, employee, or agent in the exercise of judgment or discretion vested in the entity or individual;
 - b. a decision made in good faith and without the gross negligence in carrying out the law, except that this provision does not immunize a CRITFC officer, employee, or agent from liability for false arrest, false imprisonment or malicious prosecution;
 - c. probation, parole, furlough or release from confinement of a prisoner or other detainee or from the terms and conditions or the revocation thereof except upon a showing of gross negligence; or
 - d. any injury or damage caused by an escaping or escaped person or prisoner, a person resisting arrest, or by a prisoner to himself or herself, or to any other prisoner, except upon showing of gross negligence.
- D. Tort Claim Procedures. Any person or party wishing to institute suit against CRITFC or any officer, employee, or agent of CRITFC in the Umatilla Tribal Court under this section shall, as a jurisdictional condition precedent to institution of such suit, provide notice to the Executive Director of CRITFC, Chairman of the Board of Trustees, the Secretary of the Board of Trustees, the Office of Legal Counsel, and the Chief of CRITFC's Enforcement Department within a period of one year immediately following the events giving rise to the claim.

STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As amended through Resolution No. 21-066 (July 19, 2021)

1. Such notices shall be sent by registered mail, addressed to the main administrative offices of the Executive Director of CRITFC, the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, the Office of Legal Counsel, and the Chief of CRITFC's Enforcement Department, return receipts requested. The time of such notice shall commence to run only from the date following actual delivery of the last of the notices to be delivered as evidenced upon such receipts, and filed together with such notices with the court in which such action is to be subsequently commenced. The Executive Director of CRITFC, Chairman of the Board of Trustees, Secretary of the Board of Trustees, Office of Legal Counsel, and the Chief of CRITFC's Enforcement Department shall ensure the availability, during all regular office hours, of office staff personnel duly authorized to accept and receipt for delivery of such notices provided herein, and their receipt thereof shall not waive the assertion of any appropriate defense pertaining to the validity of such notice or service.
2. Such notices shall state the name of each claimant, the identity of each prospective defendant, the nature of all claims, relief which will be sought, and the correct address, name and telephone number of each claimant's attorney or spokesman (if any).
 - a. No action shall be accepted for filing against CRITFC or any officer, employee or agent of CRITFC unless the claimant has filed proof of compliance with this Section by service of the notices as required by this subsection at least thirty (30) days prior to the date on which the complaint or any other action is proposed to be filed with such court.
 - b. In any action against CRITFC or any officer, employee or agent of CRITFC, the time for responding to the valid service of any summons and complaint shall be sixty (60) days; to valid service of any order to show cause, not less than thirty (30) days; and to valid service of any motion, not less than twenty (20) days. Any claim against CRITFC or any officer, employee or agent thereof, which is filed pursuant to this act, is deemed generally denied sixty (60) days after valid service of the complaint, unless the claimant or claimant's attorney or counsel filing the complaint is advised of acceptance or of a specific or otherwise limited denial in writing or by responsive pleading filed before the expiration of sixty (60) days; and any such claim shall otherwise proceed in the same manner as upon the filing of such general denial thereof. These time periods may not be shortened by Rule of Court or judicial order, but shall be extended by any longer period provided by other applicable law, rule or order of court.
 - c. Any person or party filing a complaint against CRITFC or any officer, employee or agent of CRITFC in the Umatilla Tribal Court shall serve by registered mail, return receipt requested, a copy of the complaint together with summons duly issued, upon the Executive Director of CRITFC, the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, Office of Legal Counsel Lead Attorney, and the Chief of CRITFC's Enforcement Department. Service of summons and complaint against any officer, employee or agent of CRITFC shall be made by any means authorized under Tribal Rules or Rules of the Umatilla Tribal Court provided that the time for response thereto shall be as provided herein and service upon such parties shall not be affected by such required service upon the Executive Director of CRITFC, Chairman of the Board of Trustees, Secretary of the Board of Trustees, Office of Legal Counsel Lead Attorney, and the Chief of CRITFC's Enforcement Department.

STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
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APPENDIX A

LEGISLATIVE HISTORY

STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As amended through Resolution No. 21-066 (July 19, 2021)

TORT CLAIMS CODE

LEGISLATIVE HISTORY

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the Tort Claims Code in Resolution No. 00-14 (March 6, 2000).

Following enactment of the Tort Claims Code, its provisions have been amended as follows:

<u>Section</u>	<u>Change</u>	<u>Resolution</u>	<u>Resolution Date</u>
1.07(A)	Amended	Resolution 00-37	May 15, 2000
1.11	Added	"	"
All	Code Reformatted	Resolution 09-090	July 6, 2009
1.07(C)	Added	Resolution 11-100	December 19, 2011
1.12	Added	Resolution 11-099	December 19, 2011
1.13	Added	Resolution 12-012	March 12, 2012

In Resolution No. 18-009 (February 5, 2018), the Board of Trustees adopted a revised Tort Claims Code with the following substantive amendments intended to improve the quality of notice the Confederated Tribes receives and to clarify mandatory requirements of the Code:

- Section 1.07(B)(1) clarified that the \$500,000 limit applies to all claimants per occurrence.
- Section 1.07(B)(1) clarified that the money damages cap is the same regardless of how many entities or persons are responsible, or the number of actions filed.
- Section 1.07(F) clarified that the Court may not accept claims for actions seeking to surpass the money damages limit and specified that if a claimant seeks more monetary damages that was previously included in the notice, the claimant must prove the increase is based on facts not reasonably available when filed.
- Section 1.08(B) details here and throughout the Code to require service on the Tribe, each individually named person, and the Tribe's agents.
- Section 1.09(A)(2) requires that a claimant file a notice within one year of an occurrence. A clarification was also included that this one year deadline does not extend the statute of limitations.
- Section 1.09(A)(3) includes extensive additions to the requirements for all personal injury, death and property damage tort notices. The term "shall" was replaced with "must" but both terms are intended to convey a requirement with no exception.
- Section 1.09(A)(4) clarifies that dismissal is the sole remedy for improperly filed tort notices.
- Section 1.09(A)(7) was included to limit the effectiveness on tort notices.
- Section 1.11(A)(2) limits the statute of limitations for death claims to one year.

In Resolution 20-065 (June 15, 2020), the Board of Trustees amended Section 1.07(G) to expressly address Tort Claims related to the contraction of communicable diseases at Tribal facilities.

STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As amended through Resolution No. 21-066 (July 19, 2021)

In Resolution 21-066 (July 19, 2021), the Board of Trustees amended section 1.07(G) to add an explicit judicial immunity clause.