

**POKAGON BAND OF POTAWATOMI INDIANS
TORT CLAIMS ACT**

CHAPTER 1

Section 1.01. Title

This Act shall be known and may be cited as the Pokagon Band Tort Claims Act.

Section 1.02. Definitions

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

(a). “**Award**” means money damages which the Tribal Court or the Court of Appeals determines are payable to compensate for any Injury recognized under this Act.

(b). “**Economic Loss**” means the ascertainable loss of money or of the value of property sustained as a result of an Injury, provided that such Injury is covered by the liability insurance of the Pokagon Band or Pokagon Band Instrumentality without regard to any deductible amount contained in the insurance policy. Economic Loss includes wage loss and medical expense, but does not include impairment in future earning capacity.

(c). “**Non-Economic Loss**” means damages based on physical pain and suffering, mental anguish, upset, fright, shock, denial of social pleasures and enjoyment, disfigurement and disability.

(d). “**Claim**” means a written claim, complaint, or petition for an award under this Act. A Claim may be filed with respect to any injury as defined in this Act and which is covered by the liability insurance of the Pokagon Band or Pokagon Band Instrumentality without regard to any deductible amount contained in the insurance policy.

(e). “**Dangerous Condition**” means a physical aspect of any Reservation land, a facility located thereon, or the use of such Reservation land or facility that constitutes an unreasonable risk to human health or safety, which risk is known to exist or which in the exercise of reasonable care should have been known to exist, and which condition is proximately caused by the negligent or

wrongful act or omission of the Pokagon Band or Pokagon Band Instrumentality, including negligent or wrongful acts or omissions in maintaining such Reservation land or constructing, operating or maintaining such facility. For the purposes of this subsection, a Dangerous Condition should have been known to exist if it is established that the condition had existed for such a period of time and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered.

A Dangerous Condition shall not exist solely because the design of any facility is inadequate nor due to the mere existence of wind, water, ice or temperature by itself, or by the mere existence of a natural physical condition. Nothing in this Section shall preclude an accumulation of water, snow, or ice from being found to constitute a Dangerous Condition when the Pokagon Band or Pokagon Band Instrumentality fails to use existing means available to it for the removal of such accumulation and when the Pokagon Band or Pokagon Band Instrumentality had notice of such accumulation and reasonable time to act.

(f). “**Pokagon Band**” means the Pokagon Band of Potawatomi Indians, Michigan and Indiana, a federally recognized Indian tribe, and includes all departments, agencies, and other governmental subdivisions of the Pokagon Band and includes its employees, agents, officers and directors.

(g). “**Pokagon Band Instrumentality**” means the Pokagon Gaming Authority, Chinodin, Nbish-Kwé, Mno-Bmadsen, and any other instrumentality of the Pokagon Band and includes their employees, agents, officers and directors.

(h). “**Injury**” means death, physical harm to a Person, or damage to or loss of property, which is expressly covered by the liability insurance of the Pokagon Band or Pokagon Band Instrumentality without regard to any deductible amount contained in the insurance policy.

(i). “**Person**” means any individual, firm, partnership, corporation, or association.

(j). “**Reservation**” – means, under 25 U.S.C. § 1300j-5 or other applicable federal law:

(1). all lands, the title to which is held in trust by the United States for the benefit of the Pokagon Band of Potawatomi Indians; and

(2). all lands proclaimed by the Secretary of the Interior to be part of the Band's Reservation.

The term "Reservation" includes any rights-of-way running through the Reservation.

(k). "**Tribal Council**" means the governing body of the Pokagon Band.

(l). "**Tribal Court**" means the Pokagon Band Tribal Court and includes the Pokagon Band Tribal Court of Appeals.

CHAPTER 2

Section 2.01. Limited Waiver of Sovereign Immunity

(a). As to all matters within the scope of this Act, the sovereign immunity of the Pokagon Band and Pokagon Band Instrumentalities shall continue in full force and effect except to the extent that it is expressly waived by this Act.

(b). The Pokagon Band and Pokagon Band Instrumentalities may only be sued in the Tribal Court. The Pokagon Band has not waived its immunity or the immunity of any Pokagon Band Instrumentality from suit in state or federal court, or for any claims not specifically described in subsection (c) below.

(c). The sovereign immunity of the Pokagon Band and Pokagon Band instrumentalities is waived by this Act exclusively in the following instances:

(1). An injury proximately caused by the negligent or wrongful act or omission of the Pokagon Band or a Pokagon Band Instrumentality on the Reservation, including the negligent or wrongful act or omission of any of their employees, agents, officers, or directors;

(2). Injury proximately caused by the condition of any Reservation land or any structures or other improvements on Reservation land, the rights to and possession of which were held by the Pokagon Band or a Pokagon Band Instrumentality at the time of the Injury, provided the

claimant establishes that the Reservation land or the structures or other improvements on Reservation land were in a Dangerous Condition.

CHAPTER 3

Section 3.01. Limitation on Liability

The scope of liability of the Pokagon Band and any Pokagon Band Instrumentality shall include the negligent or wrongful acts and omissions of their employees, agents, officers, and directors, provided that when any such negligent act or omission occurred:

- (a). the employee, whether full-time or part-time, was acting during the course and within the scope of his or her employment;
- (b). the agent was acting during the course and within the scope of his or her agency; and
- (c). the officer or director was acting in fulfillment of his or her duties and responsibilities as an officer or director.

Section 3.02. Priority of Federal Tort Claims Act

(a). A Claim for any negligent or wrongful act or omission of an employee, agent, officer or director of the Pokagon Band or a Pokagon Band Instrumentality for which the United States may be liable under the Federal Tort Claims Act (28 U.S.C. §§ 1346(b) and 2671-2680) shall first be brought against the United States in accordance with the standards and procedures of the Federal Tort Claims Act.

(b). If the Tribal Court finds that a Claim that was brought in the Tribal Court against the Pokagon Band or a Pokagon Band Instrumentality may be brought against the United States pursuant to the Federal Tort Claims Act, the Tribal Court shall either dismiss the Tribal Court proceeding or stay the proceeding pending the outcome of the claim against the United States.

Section 3.03. Limitation on Awards and Remedies

(a). No rule of law imposing absolute or strict liability shall be applied in any Claim for injuries under this Act.

(b). No Award or other judgment imposing punitive or exemplary damages shall be granted in any Claim for injuries under this Act.

(c). No Award for loss of consortium shall be granted in any Claim for injuries under this Act.

(d). Awards for Non-Economic Loss shall be allowed for not more than fifty percent (50%) of the Economic Loss sustained; provided however that such Award is covered by, and falls within the policy limits of, the liability insurance of the Pokagon Band or Pokagon Band Instrumentality, without regard to any deductible amount contained in the insurance policy.

(e). No prejudgment or post-judgment remedy, whether execution, attachment or otherwise, shall issue against the Pokagon Band or a Pokagon Band Instrumentality on any Claim in a Tribal Court proceeding initiated under this Act; except that the Tribal Court may issue an order to the Pokagon Band or Pokagon Band Instrumentality to turn over insurance proceeds, if any, received by the Pokagon Band or Pokagon Band Instrumentality with respect to the Claim, and to pay the deductible, if any, applicable to the Claim under the applicable insurance policy.

Section 3.04. Claims Against Employees, Agents, Officers and Directors

Provided that a Claim brought against an employee, agent, officer, or director of the Pokagon Band or a Pokagon Band Instrumentality for a negligent or wrongful act or omission is within the scope of Section 3.01 of this Act, such Claim may only be asserted against the Pokagon Band or the Pokagon Band Instrumentality in whose service the employee, agent, officer, or director was engaged, in accordance with and in all respects subject to the provisions of this Act.

CHAPTER 4

Section 4.01. Liability for Expenses

If the Tribal Court determines that the Injury claimed arose from an act or omission of an employee or agent that was willful and wanton or otherwise outside the scope of employment or agency, the Court may order the employee or agent named in the Claim to reimburse the Pokagon Band or

Pokagon Band Instrumentality for any costs and attorney fees which it may have incurred in its defense of such Claim. No obligation of the Pokagon Band or Pokagon Band Instrumentality to defend an employee or agent acting beyond the scope of his or her employment or agency shall be inferred from this Act.

Section 4.02. Extent of Liability

(a). In any Claim concerning a single occurrence, the maximum amount of any Award under this Act, including damages, Court costs, interest, and any other costs, shall be:

(1). For any Injury to one Person, an amount which is in accordance with the maximum amount of coverage (without regard to deductible) applicable to such Claim under the terms of the liability insurance policy of the Pokagon Band or Pokagon Band Instrumentality; and

(2). For any Injury to two or more Persons, an amount which is in accordance with the maximum amount of coverage applicable to such Claims under the terms of the liability insurance policy of the Pokagon Band or Pokagon Band Instrumentality.

CHAPTER 5

Section 5.01. Notice Requirement

(a). No Claim may be brought under this Act unless written notice of the Claim is served upon the Pokagon Band or Pokagon Band Instrumentality by certified mail, return receipt requested within one hundred and twenty (120) days after the Claim accrues.

(b). The notice shall contain the following:

(1). The name and address of the claimant and the name and address of the claimant's attorney, if any;

(2). A concise statement of the factual basis of the Claim, including the date, time, place, and circumstances of the act, omission, or condition complained of;

(3). The name of any Gaming Enterprise Employee involved, if known;

(4). A concise statement of the nature and the extent of the Injury claimed to have been suffered;

(5). A statement of the amount of monetary damages that is being requested;

(6). When the Claim is one for death by negligent or wrongful act or omission, the notice of Claim may be presented by the personal representative of the decedent's estate, or the surviving spouse or next of kin of the deceased.

(c). All Claims filed under this Act must include proof of compliance with this section.

Section 5.02. Limitation on Presentation of Claim

All Claims shall be filed with the Tribal Court within one hundred and eighty (180) days of the date on which the Claim accrued.

CHAPTER 6

Section 6.01. Application of State Law

Any Claim brought under this Act shall be determined by the Tribal Court in accordance with the law of the Pokagon Band and, to the extent not inconsistent with any provision of this Act or other laws of the Pokagon Band, may also be determined by the Tribal Court in accordance with the state law applicable at the time of the Injury to similar claims made in the state where the Reservation land on which the Injury occurred is located.

Section 6.02. Maintenance of Insurance

The Pokagon Band and each Pokagon Band Instrumentality shall procure and maintain insurance in sufficient types and amounts to cover Injuries for which the sovereign immunity of the Pokagon Band and Pokagon Band Instrumentalities is waived by Section 2.01(c) of this Act.

CHAPTER 7

Section 7.01. Effective Date of Act

This Act shall become effective on January 27, 2006, provided that any subsequent amendment to this Act shall become effective upon enactment by the Tribal Council and each such amendment of this Act shall apply solely to Claims brought after the date the amendment was enacted.

Section 7.01. Severability

If any part of this Act is invalidated by the Tribal Court or by operation of law, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, that part remains in effect in all valid applications that are severable from the invalid applications.

Section 7.02. Miscellaneous Provisions

(a). In construing this Act, the present tense includes the past and future tenses, and the future tense includes the present tense.

(b). When reference is made to any portion of this Act, the reference shall apply to all amendments made hereafter.

(c). To the extent that any provision of this Act conflicts with any other provision of Pokagon Band law, the provisions of this Act shall govern and the conflicting provisions of such other law are hereby repealed.

(d). Section headings shall not be used in construing this Act.

LEGISLATIVE HISTORY

THE TORT CLAIMS ORDINANCE WAS ENACTED ON JANUARY 30, 2001 BY ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 01-01-30-01; THE ORDINANCE WAS COMPREHENSIVELY AMENDED, REFORMATTED, AND RENAMED THE "TORT CLAIMS ACT" BY ENACTMENT OF TRIBAL COUNCIL RESOLUTION NO. 14-05-19-03; AND ON JUNE 16, 2014 A TECHNICAL AMENDMENT TO RESTORE A PROVISION AT SUBSECTION 4.02(A)(1) WAS ENACTED BY TRIBAL COUNCIL RESOLUTION NO. 14-06-16-04.