

NORTHERN ARAPAHO CODE

TITLE 11. SOVEREIGN IMMUNITY

Section

- 101 Authority and Citation
- 102 Definitions
- 103 Reference to Code Includes Amendments
- 104 Severability
- 105 Effective Date of Code
- 106 Repeal of Inconsistent Law
- 107 Sovereign Immunity
- 108 Effect and Interpretation of the Shoshone & Arapaho Law and Order Code
- 109 Purchase of Liability Insurance, Limited Waiver of Sovereign Immunity
- 110 No Waiver Beyond Available Coverage
- 111 Exclusive Jurisdiction
- 112 Defenses Not Waived

Section 101 - Authority and Citation. This Code is enacted pursuant to the inherent authority of the Northern Arapaho Tribe to govern and to provide for the health, safety, welfare and economic security of its people and others within the jurisdiction of the Tribe. The Code shall be known as the Northern Arapaho Tribe Sovereign Immunity Code, and may be cited as 11 N.A.C. Section _____ (e.g., 11 N.A.C. Section 101).

Section 102 - Definitions.

(a) General Provisions. In construing the provisions of this Code, words are to be given their ordinary meaning and usage. The present tense may include the past and future tenses, and the future tense may include the present. Terms of gender may include all genders. Use of a singular or plural term may include either or both.

(b) Terms Defined. The terms listed below shall be defined as follows:

(1) "Employee" means a full- or part-time worker performing services for the Tribe on either a salary or wage basis and under the control and direction of the Tribe. The term does not include an independent contractor as defined by the Internal Revenue Service, Circular E, Publications 15 and 15-A.

(2) "Officer" means an officer, whether elected or appointed, whether paid or unpaid, acting on behalf of the Tribe. The term does not include members of the Northern Arapaho Business Council.

(3) "Tribal Court" means the Northern Arapaho Tribal Court or other Tribal Courts duly authorized by the Northern Arapaho Tribe.

(4) "Northern Arapaho Tribe" or "Tribe" means the Northern Arapaho Tribe of the Wind River Reservation, Wyoming, and includes, without limitation, any branch, office, department, agency, commission, utility, authority, instrumentality, enterprise or other entity of the Northern Arapaho Tribe of the Wind River Reservation, Wyoming.

(5) "S&A LOC" means the Shoshone & and Arapaho Law and Order Code.

Section 103 - Reference to Code Includes Amendments. When reference is made to any portion of this Code, the reference shall apply to all amendments made hereafter.

Section 104 - Severability. If any part of this Code is declared invalid by the Tribal Court, all parts of the Code not declared invalid and that are severable from the invalid part shall remain in full force and effect. If a part of this Code is invalid in one or more of its applications, that part shall remain in effect as to all valid applications that are severable from the invalid applications.

Section 105 - Effective Date of Code. This Code shall become effective on the date of enactment by the Northern Arapaho Business Council (NABC). Confirmations or restatements of the intent of sections of the S&A LOC, now codified herein, do not alter those sections, which have been effective since the date of enactment of the S&A LOC.

Section 106 - Repeal of Inconsistent Law. All ordinances, resolutions, codes and other laws of the Tribe inconsistent with this Code are hereby repealed. To the extent that this Code is not consistent with any other law of the Tribe or of the Shoshone and Arapaho Tribes, this Code shall govern.

Section 107 - Sovereign Immunity.

(a) **Tribal Sovereign Immunity.** The Tribe is immune from suit, except to the extent such immunity is expressly waived by the Tribe or by operation of applicable federal law.

(b) **Purposes.** Tribal sovereign immunity serves important functions, including:

(1) The preservation of limited tribal resources for the provision of governmental services necessary to protect and promote the health, safety, welfare and economic

security of tribal members and of residents and visitors to the Wind River Indian Reservation; and

(2) The preservation of the autonomous existence of the Tribe.

Section 108 - Effect and Interpretation of the Shoshone & Arapaho Law and Order Code.

(a) **Shoshone & Arapaho Law and Order Code.** Nothing in the S&A LOC is, nor shall it be construed to be, a waiver of the sovereign immunity of the Tribe or of members of the NABC.

(1) The provision of S&A LOC 1-8-5, that sovereign immunity is preserved except as "specifically waived by resolution or ordinance of the Tribes specifically referring to [sic] as such" describes only the method by which a waiver of sovereign immunity may occur. The provision is not itself a waiver of sovereign immunity and shall not be interpreted as such.

(2) The provisions of S&A LOC 1-8-5, that tribal "officers and employees are immune from suit for any liability arising from the performance of their official duties, except for gross abuse or intentional tortious conduct," are not, and shall not be construed to be, a waiver of the sovereign immunity of the Tribe or an assumption by the Tribe of any liability on behalf of officers or employees.

(3) Members of the NABC are not "officers" within the meaning of S&A LOC 1-8-5, and their immunity from suit is not waived by those Code provisions.

(4) The provisions of S&A LOC 3-9-7, creating a presumption of good faith, and providing that "[a]ny person, official, institution, or agency participating in good faith in any act required or permitted by Sections 3-9-1 through 3-9-12 is immune from any civil or criminal liability that might otherwise result by reason of the action" shall be interpreted in conjunction with Section 1-8-5 to mean that good faith is presumed, and that to defeat the good faith presumption requires a showing of gross abuse or intentional tortious conduct.

(5) The provisions of S&A LOC 3-9-7 creating a presumption of good faith and providing that "[a]ny person, official, institution, or agency participating in good faith in any act required or permitted by Sections 3-9-1 through 3-9-12 is immune from any civil or criminal liability that might otherwise result by reason of the action" are not, and shall not be interpreted to be, a waiver of the sovereign immunity of the Tribe or an assumption by the Tribe of any liability on behalf of any person, official, institution or agency.

(b) **Amendment of S&A LOC.** No addition, amendment, modification or change of any kind to the S&A LOC made after the effective date of this Northern Arapaho Sovereign Immunity Code shall be, or shall be interpreted to be, a waiver of the sovereign immunity of the Tribe unless the intent of the Tribe to waive sovereign immunity is expressly stated in such addition, amendment, modification or change and is affirmatively acknowledged by Resolution of the NABC adopting the S&A LOC provisions.

(c) This enumeration of immunities shall not be construed to waive any other immunities of the Tribe.

Section 109 - Purchase of Liability Insurance, Limited Waiver of Sovereign Immunity.

(a) **Liability Insurance Coverage.** The Tribe has no general duty to obtain, but in its sole discretion may choose to obtain, liability insurance coverage, including coverage for all or any portion of a risk for which claims are barred by sovereign immunity. The provisions of this Code apply regardless of whether insurance coverage has been obtained by the Tribe in its discretion or pursuant to a specific duty to do so.

(b) **Effect of Insurance Coverage.** If the Tribe obtains insurance coverage insuring against liability which is or could be barred by sovereign immunity, then the sovereign immunity of the Tribe is waived to the extent of the limits of the actually available liability coverage, subject to the provisions of this Code including, without limitation, Section 110.

(1) Such a limited waiver of the sovereign immunity of the Tribe is a decision made as an exercise of sovereign

authority, and shall not be construed as a relinquishment of such authority.

(2) This limited waiver of the sovereign immunity of the Tribe is permitted to advance the substantial interests of the Tribe in protecting sovereignty, tribal resources, and the Tribe's ability to allocate resources in the best interests of its members and residents of the Wind River Reservation.

(c) **Insurer as Defendant.** In all claims or actions brought pursuant to this Code, the insurer shall be named as a party defendant.

(d) **Coverage for Claims under Federal Law.** Notwithstanding the above provisions, if the Tribe obtains coverage for the purpose of protecting itself against potential losses under a federal law and if that purpose of the coverage is stated as a part of or by an amendment to the insurance policy, no waiver of sovereign immunity permitted by this Code shall be applicable to claims brought under the federal law except to the extent of the liability insurance coverage actually available as to those claims.

(e) **Defense Provided by the United States.** Notwithstanding any other provision of this Code, there shall be no waiver of sovereign immunity as to any claim of injury which is defended by the United States as a claim deemed to be against the United States under the Indian Self-Determination and Education Assistance Act, the Federal Tort Claims Act or any other federal law.

Section 110 - No Waiver Beyond Available Coverage.

(a) **Waiver Only to Extent of Coverage.** This Code does not authorize waiver of sovereign immunity for any claim in excess of actually available insurance coverage. No judgment, order or award permitted by this Code shall exceed the limits of the valid and collectible liability insurance policy or policies carried by the Tribe covering each such claim and in force at the time of such judgment, order or award.

(b) **No Recovery From Tribe.** Any judgment, order or award permitted by this Code may be satisfied only pursuant to the

express terms of the policy or policies of liability insurance and neither execution nor attachment shall issue against assets of the Tribe in any claim or proceeding initiated under this Code.

(c) Limits on Judgments. Notwithstanding any other provision of this Code, no judgment against the Tribe shall include an award:

- (1) Based upon a rule of law imposing absolute or strict liability;
- (2) For exemplary or punitive damages;
- (3) For interest prior to judgment; or
- (4) For attorney's fees.

Section 111 - Exclusive Jurisdiction.

(a) Exclusive Tribal Jurisdiction. The Tribal Court shall have exclusive jurisdiction over claims or actions of any kind allowed pursuant to this Code.

(b) No Waiver as to Other Forums. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe from any suit or action in state or federal court, before any state or federal agency or in any other forum or context whatsoever.

(c) Tribal Law Controls. Any claim brought pursuant to the provisions of this Code shall be determined by the Tribal Court in accordance with the Codes of the Tribe and the S&A LOC.

Section 112 - Defenses Not Waived.

(a) Other Defenses Retained. In any action permitted by this Code, the limited waiver of sovereign immunity as provided herein does not bar the Tribe from asserting any other defenses or claims that may be available.

(b) Insurer Not Authorized to Assert Sovereign Immunity. Unless the policy expressly provides otherwise, an insurer is not

authorized or empowered to assert a sovereign immunity defense without the express written consent of the NABC.

History: 2008. Title 11. Section 101 et seq., Sovereign Immunity, was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated March 13, 2008, Resolution No. 2008-9950. Typographic error corrected in Section 112(b) on June 1, 2010. Technical amendments for the purpose of clarifying references to tribal courts were enacted on August 17, 2016, by Resolution No. NABC-2016-702, and additional technical amendments were enacted on August 31, 2016, by Resolution No. NABC-2016-713.