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ARTICLE IV. TORTS CODE

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**Sec. 3-241. Title.**

This Article shall be known as the Mohegan Torts Code (hereinafter "Code").

(Ord. No. 2005-02, § 1, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009)

**Sec. 3-242. Effective Date.**

The effective date of this Article shall be March 25, 2009 (hereinafter the "effective date"). Its provisions shall apply to all claims that have accrued on or after the effective date.

(Ord. No. 2005-02, § 2, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009)

**Sec. 3-243. Authority.**

This Article is enacted by the Tribal Council of The Mohegan Tribe of Indians of Connecticut pursuant to Article IX, Section 2, of the Mohegan Constitution, and is adopted by the Management Board of the Mohegan Tribal Gaming Authority ("MTGA") pursuant to Article XIII, Section 1 of the Mohegan Tribal Constitution and Mohegan Tribal Ordinance No. 952, enacted on May 15, 1995.

(Ord. No. 2005-02, § 3, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009)

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**Sec. 3-244. Purpose.**

The Mohegan Tribe of Indians of Connecticut, a federally-recognized sovereign Indian tribal nation occupying the Mohegan Reservation on land held in trust by the United States in Uncasville, Connecticut, intends this Code to govern the adjudication of torts arising from actions of the Mohegan Tribe of Indians Connecticut and from actions of the Mohegan Tribal Gaming Authority, and their subordinate entities and their respective authorized officials, agents, employees and representatives acting within the scope of their authority or employment on behalf of such entities, wherever located.

(Ord. No. 2005-02, § 4, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009)

**Sec. 3-245. Definitions.**

Except as otherwise provided, the following terms are defined as follows:

*Act* means acts and omissions.

*Accrual date* shall mean the date on which the injury giving rise to a claim or complaint occurred, or the date on which the injury was or reasonably should have been discovered by the injured party.

*Actual damages* means the measurable loss of money or property sustained as a result of an injury. Any award for actual damages shall be reduced by payments received by the prevailing party from collateral sources as defined herein. The cost of reasonable and necessary medical care, including hospitalization, diagnostic studies, physical therapy, rehabilitative services, custodial care, psychological counseling, and all other generally accepted therapies for the treatment of an injury, as defined in this Section, shall include the total amount of invoices submitted, regardless of the fact that some or all of the submitted invoices are subject to adjustments or write-offs resulting from contractual agreements or other relationships between providers and third-party payors, including Medicare.

*Claim* means a civil action for recovery of damages. Claimant or plaintiff means the person who files a complaint under this Code.

*Collateral sources* means any payments made to the claimant, or on his behalf, by or pursuant to:

- (1) Any health or sickness insurance, automobile accident insurance that provides health benefits, and any other similar insurance benefits, except life insurance benefits available to the claimant, whether purchased by him or provided by others; or
- (2) Any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the costs of hospital, medical, dental or other health care services; "Collateral sources" do not include amounts received by a claimant as a settlement.

*Complaint* means a document setting forth the claims of a claimant or plaintiff.

*Duty* means an obligation, to which The Mohegan Tribal Courts are authorized to give legal recognition and effect, to conform to a particular standard of conduct.

*Employee* shall mean a person who is an applicant for employment at or by a Mohegan Tribal Entity, or an employee, servant, agent, volunteer, attorney, elected or appointed official of a Mohegan Tribal Entity.

*Fault* means the failure to fulfill a legal duty. It includes acts proximately causing or substantially contributing to injury or damages.

*Gaming Disputes Court* shall mean the Mohegan Gaming Disputes Court established by The Mohegan Tribe pursuant to Mohegan Tribal Ordinance No. 95-4.

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*Gaming facilities* includes all those facilities known as the Mohegan Sun Casino" together with all buildings and all appurtenant roads, parking lots, access ramps, structures, developments and improvements operated or under the control of the MTGA and used directly or indirectly in connection with the Mohegan Sun for gaming or for entertaining, serving, feeding, hosting patrons of the Mohegan Sun, and all related activities, including any associated hotel, resort or entertainment facilities, and including the operation of motor vehicles owned or leased by the MTGA, without regard to their location either on or off the Mohegan Reservation.

*Injury* means the invasion of any legally protected interest of a person or a loss of any kind to a person.

*Mohegan Tribal Court* shall mean the Mohegan Tribal Court established by the Mohegan Tribe pursuant to Mohegan Tribal Ordinance 2002-09.

*Mohegan Tribal Entity* means any entity established pursuant to the Mohegan Constitution or duly-enacted Mohegan Tribal Ordinances, including but not limited to the Mohegan Tribal Gaming Authority, without geographical limitation.

*Mohegan Tribe* means The Mohegan Tribe of Indians of Connecticut as recognized by the United States under 25 C.F.R. part 83 on May 15, 1994.

*Mohegan Tribal Gaming Authority* or *MTGA* means that Mohegan Tribal Entity established by The Mohegan Tribe pursuant to the Mohegan Tribal Gaming Authority Ordinance No. 95-2, enacted on May 15, 1995.

*Negligence* means conduct that falls below the standard established by law or custom for the protection of others against unreasonable risk of injury or harm. The standard of conduct to which a person must conform to avoid being negligent is that of a reasonable person under similar circumstances. Where applicable, the rule of actual or constructive notice shall be applied to determine negligence; negligence shall not be deemed to arise from the mode of operation.

*Non-economic damages* means all non-pecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering.

*Person* means any individual, firm, partnership, corporation or association.

*Reservation* means the Mohegan Indian Reservation located within the Town of Montville, Connecticut and includes all lands within The Mohegan Tribe's reservation as established under the Mohegan Land Claims Settlement Act, 25 V.S.C. 1 775 and all lands subsequently added to the reservation under federal law.

*Strict liability* means liability without fault.

*Tort* means an injury to a person caused by a breach of a legal duty to that person, but does not include a breach of a duty imposed by contract.

(Ord. No. 2005-02, § 5, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009)

**Sec. 3-246. Limitations of Actions.**

- (a) A civil action under this Code shall be brought by filing a complaint pursuant to the procedures set forth in this Code within one (1) calendar year of the accrual date.
- (b) For the purpose of meeting the limitations deadline set forth in this Code, a claim is brought when the complaint is filed with the Clerk of the appropriate court, i.e., either the Mohegan Tribal Court or the Gaming Disputes Court.

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- (c) Except as provided in Section 3-247 of this Code, there shall be no tolling of the limitations deadline for any reason, including equitable reasons. The filing of a lawsuit in a jurisdiction other than either of the Mohegan Tribal Courts referenced herein shall not delay the limitations deadline.
- (d) Except as provided in Section 3-247 of this Code, the Gaming Disputes Court and the Mohegan Tribal Court shall have no jurisdiction over any claim or complaint that is filed more than one (1) calendar year after the accrual date.

(Ord. No. 2005-02, § 6, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009)

**Sec. 3-247. Persons Under Disability.**

- (a) If a person who has sustained an injury otherwise cognizable pursuant to this Code dies on the accrual date or after the accrual date and before the deadline for filing a complaint, such deadline shall be extended until sixty (60) days following the date a legal representative of such person is appointed by a court of competent jurisdiction.
- (b) If a person who has sustained an injury otherwise cognizable pursuant to this Code has been adjudged by a court of competent jurisdiction to be an incompetent person at any time prior to the deadlines for filing a Complaint under this Code, the deadlines otherwise applicable pursuant to this Code shall be extended until sixty (60) days following the date a legal representative of such person is appointed by a court of competent jurisdiction.
- (c) If a person who has sustained an injury otherwise cognizable pursuant to this Code is under the age of eighteen (18) at the Accrual Date and is not an emancipated minor and has no parent or legal guardian as of the deadlines otherwise applicable pursuant to this Code, such deadlines shall be extended until sixty (60) days following the date a legal representative of such person is appointed by a court of competent jurisdiction.

(Ord. No. 2005-02, § 7, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009)

**Sec. 3-248. Procedure.**

- (a) Any person who, wherever located, sustains an injury as defined in this Code that arises from or out of the Gaming Facilities or that is allegedly caused directly or indirectly by acts or omissions of the MTGA (or its authorized representatives), and who seeks recovery from the MTGA for such alleged injury, may file a complaint with the Gaming Disputes Trial Court, together with the required filing fee, pursuant to the Rules of Procedure of the Gaming Disputes Court.
- (b) Any person who, wherever located, sustains an injury as defined in this Code and who seeks to recover for said injury from any Mohegan Tribal Entity (or its authorized representatives) allegedly caused directly or indirectly by acts or omissions of a Mohegan Tribal Entity other than the MTGA (or its authorized representatives), may file a Complaint with the Mohegan Tribal Court, together with the required filing fee, pursuant to the Rules of Procedure of the Mohegan Tribal Court.
- (c) Every complaint filed under this Code 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, in consecutively numbered paragraphs, of the facts giving rise to the complaint;
  - (3) The date(s), time(s), and location(s) of the alleged injury, if known;

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- (4) The name of any individual(s) alleged to have caused the alleged injury, and their relationship, if known, to a Mohegan Tribal Entity;
  - (5) The name of the Mohegan Tribal Entity that is considered liable to the Claimant for the alleged injury;
  - (6) A concise statement of the nature and extent of any alleged injury sustained by the Claimant; and
  - (7) If the Complaint is brought by a personal representative of a person under a disability (as defined in this Code), the name of such personal representative and a copy of any officially-dated document probative of the appointment of such personal representative.
- (d) No person or entity shall have a right pursuant to this Code to the trial of any matter before a jury.
- (e) A final judgment of a Mohegan Trial Court in any action brought under this Code may be appealed pursuant to the applicable Rules of the Mohegan Court in which final judgment [is] entered.

(Ord. No. 2005-02, § 8, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009)

**Sec. 3-249. Venue and Jurisdiction.**

- (a) Venue for tort claims arising in connection with the gaming facilities as defined in Section 3-245 of this Code, and/or against authorized representatives of the MTGA acting within the scope of their employment, shall be found exclusively in the Mohegan Gaming Disputes Court.
- (b) Venue for tort claims arising in connection with any Mohegan Tribal Entity other than the Gaming Facilities shall be found exclusively in the Mohegan Tribal Court.
- (c) In the event that a complaint is filed with a Mohegan court but venue is determined by that court to be incorrect, the Mohegan Tribal Court or the Mohegan Gaming Disputes Court may, on motion, transfer the case to the other. The transfer of a case from one Mohegan court to another shall not be construed as determinative of whether the court to which a complaint is transferred has subject matter jurisdiction. In the event of a transfer, any filing fees paid pursuant to the rules of a Mohegan court shall be reimbursed to the plaintiff, but the plaintiff must pay any filing fees required by the Mohegan court to which the complaint is transferred.
- (d) Transferred cases shall be considered to have been filed, for purposes of the time limitations set forth in this Code, on the date when filed in the transferring court.
- (e) In order to effectuate the intent of The Mohegan Tribe and the MTGA, the Mohegan Tribal Courts shall have personal jurisdiction over all persons and entities wherever located to the fullest extent permitted by applicable law.

(Ord. No. 2005-02, § 9, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009)

**Sec. 3-250. Limited Waiver of Sovereign Immunity and Consent to Suit.**

- (a) By enactment of this Code, The Mohegan Tribe waives its sovereign immunity, and the sovereign immunity of its subordinate entities except for the Mohegan Tribal Gaming Authority, and consents to be sued by persons with tort claims arising under this Code, but only in the Mohegan Tribal Court; provided that this waiver of sovereign immunity shall permit no recovery of damages against The Mohegan Tribe or the Mohegan Tribal Entities or their authorized representatives, in any measure or amount in excess of the damages authorized to be recovered under this Code.

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- (b) By adoption of this Code, the Mohegan Tribal Gaming Authority waives its sovereign immunity and consents to be sued by persons with tort claims arising under this Code, but only in the Mohegan Gaming Disputes Court; and this waiver of sovereign immunity shall permit no recovery of damages against the Mohegan Tribal Gaming Authority, or its authorized representatives, in any measure or amount in excess of the damages authorized to be recovered under this Code.
- (c) The waivers of sovereign immunity contained herein shall be strictly and narrowly construed.
- (d) The limitations upon recovery against the sovereign tribal entities and representatives as set forth herein shall not apply to limit recovery against a defendant that is not a Mohegan Tribal Entity or its authorized representative.
- (e) This Code shall not apply to any claims by an employee, as defined in this Code, arising in connection with: an application for employment; the rejection of an employment application; or any aspect of the employment relationship. All employment-based rights, claims, and remedies of Mohegan Tribal Entity employees are codified elsewhere, and this Code expressly does not waive the sovereign immunity of The Mohegan Tribe or any Mohegan Tribal Entity and does not contain or express any consent by The Mohegan Tribe or any Mohegan Tribal Entity to be sued for any matter arising out of the employment relationship. The exclusion of such employee claims shall not serve as a bar to claims by an employee when such claims do not arise from or out of any aspect of an employment relationship.
- (f) This Code shall not apply to any claim by a Person who has a cause of action pending or adjudicated in any other judicial or arbitral forum based upon alleged acts or omissions actionable against any Tribal defendant or entity pursuant to the limited waiver of sovereign immunity contained in the Memorandum of Agreement between the Mohegan Tribe and the State of Connecticut, dated May 28, 2014, regarding law enforcement.
- (g) Nothing herein shall be construed as a waiver of either the Mohegan Tribe or the Mohegan Tribal Gaming Authority of its sovereign immunity as to claims arising under any Connecticut General Statute or arising under Connecticut common law.

(Ord. No. 2005-02, § 10 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009; Res. No. 2014-85, 9-3-2014; Res. No. TGA 2014-15, 9-3-2014)

#### **Sec. 3-251. Limitations on Awards.**

- (a) This Code does not permit recovery, from The Mohegan Tribe, the Mohegan Tribal Entities, the Mohegan Tribal Gaming Authority, or from their authorized officers, agents, representatives or Employees while engaged in conduct within the scope of their employment or authority, of:
  - (1) Punitive or exemplary damages;
  - (2) Damages for loss of consortium; or
  - (3) Non-economic damages in excess of two hundred (200) percent of the proven actual damages prior to any reduction for collateral source payments; or
  - (4) Damages in excess of the limits of any applicable liability insurance policy carried by The Mohegan Tribe, the MTGA, or other Mohegan Entity.
- (b) Any award of damages to a claimant shall be reduced in proportion to the claimant's contributory negligence, provided that the claimant shall recover nothing if the claimant's contributory negligence is determined to be greater than fifty (50) percent.
- (c) Following the determination of any award for actual damages, the court shall deduct from the actual damages recoverable by the claimant the total amount of collateral sources which have been paid for the benefit of the claimant as of the date the court enters judgment (the "collateral source

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deduction"), provided that no collateral source deduction shall be made to the extent that a right of subrogation exists with respect to the collateral source. The amount of any write-off, voluntary or involuntary, by a healthcare provider shall constitute a collateral source paid for the benefit of the claimant under this section. The collateral source deduction shall be reduced in proportion to the claimant's comparative negligence, if any. The collateral source deduction from actual damages shall not be reduced in any way by the cost of health insurance premiums or other costs of procurement of the collateral source. Notwithstanding the provisions of section 3-242, all provisions of this subsection shall be applied both prospectively and retroactively and shall apply to cases already pending in the Mohegan Gaming Disputes Trial court as of November 14, 2012.

(Ord. No. 2005-02, § 11, 6-22-2005; Res. No. 2007-17, 4-18-2007; Res. No. 2009-34, 3-25-2009; Res. No. TGA 2009-09, 3-25-2009; Res. No. 2013-06, 11-14-2012; Res. No. TGA 2013-05, 11-14-2012)

**Sec. 3-252. Liquor Seller Liability for Damage by Intoxicated Person.**

- (a) If the MTGA or any of its entities or authorized agents acting within the scope of employment, sells or serves any alcoholic liquor to an intoxicated person, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another whether within or beyond the Reservation, MTGA or its entity shall pay just damages to the person injured, up to two hundred fifty thousand dollars (\$250,000.00), or to persons injured in consequence of such intoxication up to an aggregate amount of two hundred fifty thousand dollars (\$250,000.00), to be recovered in an action under this section, provided the aggrieved person or persons shall give written notice to MTGA of such person's or persons' intention to bring an action under this section. Such notice shall be given
- (1) Within one hundred twenty (120) days of the occurrence of such injury to person or property; or
  - (2) In the case of the death or incapacity of any aggrieved person, within one hundred eighty (180) days of the occurrence of such injury to person or property.

Such notice shall specify the time, the date and the person to whom such sale or service was made, the name and address of the person injured or whose property was damaged, and the time, date and place where the injury to person or property occurred. It shall be sent certified mail to the persons to whom service is made for actions under this Code pursuant to Mohegan Rules of Civil Procedure. The defendant in any action brought hereunder shall be the MTGA or its entity and shall be brought in the Mohegan Gaming Disputes Court. Just damages, as may be awarded under this section, shall not be interpreted to allow multiple recoveries for the same injury under this or any other applicable law and shall be limited to the provisions in Section 3-251. No action under the provisions of this section shall be brought but within one year from the date of the act or omission complained of pursuant to Section 3-246. No such injured party shall have any cause of action for negligence or nuisance as a result of the sale or service of alcoholic liquor to a person twenty-one (21) years of age or older in any case permitted to be brought under this section. In order to sustain a claim under this section, an injured party must prove that, at the time of sale or service, the individual was intoxicated and was demonstrating outward signs of intoxication such as an abnormal mental or physical condition due to the influence of intoxicating liquors, a visible excitation of the passions and impairment of the judgment, or a derangement or impairment of physical functions and energies.

- (b) Notwithstanding the provisions of section 3-242, all provisions of this section shall be applied both prospectively and retroactively, as set forth in this subsection (b) and shall apply to cases already pending in the Mohegan Gaming Disputes Trial court as of February 9, 2011. The notice provisions of this section shall not bar any claims from being brought pursuant to this section for injuries to person or property of another caused by an intoxicated individual, which are already pending in the Mohegan Gaming Disputes Trial Court as of February 9, 2011, provided that the complaint already contains a claim based on the sale or service of alcohol. The notice provisions of this section shall

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also not bar any claims which accrued within one calendar year of February 9, 2011, if the limitations period of 3-246 is satisfied. Such aggrieved person or persons covered under this sub-section shall give written notice to MTGA of such person's or persons' intention to bring an action within one hundred twenty (120) days of February 9, 2011.

(Res. No. TGA 2011-02, 2-9-2011; Res. No. TGA 2013-05, 11-14-2012)

**Secs. 3-253—3-270. Reserved.**

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FOOTNOTE(S):

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**Editor's note—** Ord. No. 2005-02, §§ 1—11, adopted June 22, 2005, amended the Code by repealing former Art. IV, §§ 3-241—3-251, and adding a new Art. IV. Former Art. IV pertained to similar subject matter; and derived from Ord. No. 2001-07, adopted August 15, 2001. Additionally, Res. No. TGA 2007-07, adopted April 18, 2007, stipulated that the MTGA Management Board confirms the applicability of this Article to MTGA. The MTGA Management Board adopted an amendment by Res. No. TGA 2011-02 on February 9, 2011, as it applies to it, by adding Section 3-252. [\(Back\)](#)

**Cross reference—** See Section 1-222 for severability clause. [\(Back\)](#)