

WARM SPRINGS TRIBAL CODE

CHAPTER 390

SB 412 IMPLEMENTATION

I. GENERAL.....	1
390.001 Objective.....	1
390.010 Definitions.	1
II. IMPLEMENTATION OF SB 412 REQUIREMENTS.....	2
390.100 Insurance.....	2
390.105 DPSST Requirements	2
390.110 Deadly Physical Force Plan	2
390.115 Retention of SB 412 Records	2
390.120 Public Inspection of SB 412 Records	2
390.125 Biological Evidence.....	2
390.130 Tort Claims against State Certified Tribal Officers.....	3
390.135 Pretrial Discovery Policy	3
390.140 WSPD Policies and Procedures	3
III. SB 412 TORT CLAIMS AGAINST CRITFC.....	3
390.200 CRITFC Officers	3
390.205 Authorization for Suit.....	3
390.210 Limitations on Forum, Damages, and Claims for Relief.....	3
390.215 Tort Claim Procedures.....	5

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I. GENERAL

390.001 Objective. In July 2011, the governor of the State of Oregon signed into law Senate Bill 412 ("SB 412"), which gives officers employed by a federally recognized Indian tribe located within the boundaries of the State of Oregon the power to enforce state law provided that certain requirements are met. Although the Tribe believes that it may already enforce state law under the Oregon Supreme Court's decision in *State v. Kurtz*, 350 Or. 65, 249 P.3d 1271 (2011), the Tribal Council has determined that it is in the best interests of the Tribe to implement SB 412 so that the ability of the Tribe to enforce state law on and off the Warm Springs Indian Reservation is clearly defined. The Tribal Council believes that implementation of SB 412 will improve public safety in the Warm Springs community, especially in light of the significant number of non-Indians residing on and visiting the Reservation, over which the Tribe does not have criminal jurisdiction under current United States Supreme Court case law. This chapter is intended to apply only to activities by the Warm Springs law enforcement personnel conducted under SB 412—*i.e.*, the enforcement of the criminal and traffic laws of the State of Oregon. Thus, all provisions of this Chapter shall be narrowly construed to apply only to such state law enforcement activities, and to no other activities conducted by Warm Springs law enforcement personnel.

390.010 Definitions.

- (1) "CRITFC" means the Columbia River Intertribal Fish Commission or its successor organization of which the Tribe is a member.
- (2) "CRITFC Officers" means law enforcement officers employed by CRITFC who are commissioned by the Tribe to enforce the laws of the Tribe, who are certified by DPSST, and who are enforcing state law pursuant to SB 412.
- (3) "DPSST" means the Oregon Department of Public Safety Standards and Training.
- (4) "SB 412" means Senate Bill 412 (Oregon Laws 2011, chapter 644).
- (5) "SB 412 Records" means all records generated by State Certified Tribal Officers while conducting state law enforcement activities under SB 412, and does not include records related to State Certified Tribal Officers, such as personnel records, that are not generated pursuant to the Tribe's state law enforcement authority under SB 412.
- (6) "State Certified Tribal Officer" means a police officer, corrections officer, parole and probation officer, or any other person who is employed by the Tribe as a law

enforcement officer, is certified by DPSST, and is enforcing state law in accordance with this Chapter.

- (7) "Tribe" means the Confederated Tribes of the Warm Springs Reservation of Oregon.
- (8) "WSPD" means the Warm Springs Police Department.

II. IMPLEMENTATION OF SB 412 REQUIREMENTS

390.100 Insurance. The Tribe will maintain public liability and property damage insurance for vehicles operated by State Certified Tribal Officers and police professional liability insurance for State Certified Tribal Officers from a company licensed to sell insurance in the State of Oregon. The Tribe will notify DPSST within 30 days of the effective date of the change if the Tribe materially changes its applicable insurance coverage.

390.105 DPSST Requirements. With respect to the Tribe's employment of State Certified Tribal Officers, the WSPD shall comply with the requirements of ORS 181.610 to ORS 181.712 applicable to a "law enforcement unit" as that term is defined in ORS 181.610, and shall comply with any rules promulgated by the DPSST to implement SB 412.

390.110 Deadly Physical Force Plan. With respect to state law enforcement activities conducted under SB 412, the Tribe shall participate in the development of, and agree to be bound by, a deadly physical force plan approved under ORS 181.781 to ORS 181.796 to the same extent that the Jefferson County Sheriff is required to participate in, and be bound by, such a plan.

390.115 Retention of SB 412 Records. The WSPD shall retain all SB 412 Records in a manner substantially similar to the manner in which the provisions of ORS 192.005 to ORS 192.170 require the Department of State Police to retain public records.

390.120 Public Inspection of SB 412 Records. Members of the public, upon request, shall have the right to inspect SB 412 Records in a manner substantially similar to the manner in which the provisions of ORS 192.410 to ORS 192.505 provides members of the public with the right to inspect public records of the Department of State Police.

390.125 Biological Evidence. The WSPD shall preserve biological evidence collected by a State Certified Tribal Officer in manner substantially similar to sections 2 to 6, chapter 275, Oregon Laws 2011, when the biological evidence:

- (1) is collected as part of a criminal investigation into certain serious state offenses such as aggravated murder, murder, manslaughter in the first or second degree, rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree, and aggravated vehicular homicide, as set forth in section 2, chapter 275, Oregon Laws 2011; and

- (2) is otherwise in the possession of the WSPD and reasonably may be used to incriminate or exculpate any person for a serious state offense such as aggravated murder, murder, manslaughter in the first or second degree, rape, sodomy, unlawful sexual penetration in the first degree, and aggravated vehicular homicide, as set forth in section 2, chapter 275, Oregon Laws 2011.

390.130 Tort Claims against State Certified Tribal Officers. The Tribe has authorized tort claims against the Tribe, its subordinate organizations, enterprises, officers, agents, servants and employees subject to the conditions and limitations set forth in Warm Springs Tribal Code Chapter 205. Any tort claim brought against the Tribe, the WSPD, a State Certified Tribal Officer, or other Tribal official arising from the Tribe's state law enforcement authority under SB 412 must be asserted in accordance with Chapter 205, except that the limitations on damages set forth in WSTC 205.004(1) shall be inapplicable to tort claims arising from the Tribe's state law enforcement authority under SB 412. Instead, limitations of liability applicable to tort claims arising from the Tribe's state law enforcement authority under SB 412 shall be 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.

390.135 Pretrial Discovery Policy. The WSPD, although exempt from adopting a written pretrial discovery policy under SB 412, may adopt a pretrial discovery policy describing how the WSPD will assist the district attorney in meeting the pretrial discovery obligations imposed on the state by ORS 135.805 to ORS 135.873 for criminal prosecutions conducted in state court in which a State Certified Tribal Officer arrested or cited the defendant.

390.140 WSPD Policies and Procedures. The WSPD shall form, update, and implement any policies and procedures necessary to carry out the requirements set forth in this Chapter.

III. SB 412 TORT CLAIMS AGAINST CRITFC

390.200 CRITFC Officers. This Part III applies only to tort claims arising out of the conduct of CRITFC Officers as that term is defined in WSTC 390.010(2).

390.205 Authorization for Suit. Subject to the limitations set forth in WSTC 390.210, CRITFC and its officers, agents, servants, and employees, including CRITFC Officers, may be sued in the Warm Springs 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 the tribal court of any of CRITFC's other member tribes where that tribe has consented to allow such claims.

390.210 Limitations on Forum, Damages, and Claims for Relief. CRITFC may be sued in the Warm Springs Tribal Court only with respect to any damages claim that is within the express coverage 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, nor 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 Warm Springs Tribal Court under this Part III 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 390.210, 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.
- (6) The enumeration of the immunities set forth in subsection (5) above shall not be construed to waive any other immunities, nor to assume any liability except as explicitly provided in this chapter.

390.215 Tort Claim Procedures. Any person or party wishing to institute suit against CRITFC or any officer, employee, or agent of CRITFC in the Warm Springs Tribal Court under this Part III shall, as a jurisdictional condition precedent to institution of such suit, provide notice to the Executive Director of CRITFC, the Secretary-Treasurer of the Warm Springs Tribal Council, and the Chief of CRITFC's Enforcement Department within a period of one year immediately following the events giving rise to the claim.

- (1) Such notices shall be sent by registered mail, addressed to the main administrative offices of the Executive Director of CRITFC, the Secretary-Treasurer of the Tribal Council, 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, Secretary-Treasurer of the Tribal Council, 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 prospective plaintiff, 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 prospective plaintiff'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 plaintiff has filed proof of compliance with this Section 390.215 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 be 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 Warm Springs 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 Secretary–Treasurer of the Tribal Council, 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 WSTC 200.175–200.215 and the rules of the Warm Springs 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, the Secretary–Treasurer of the Tribal Council, and the Chief of CRITFC’s Enforcement Department.