

## **Title 1. Government and Finances - Chapter 112**

### **SOVEREIGN IMMUNITY**

#### **Yukwatatwani·yó**

*we are free from foreign powers*

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### **112.1. Purpose and Policy**

112.1-1. The purpose of this Law is to protect and preserve the sovereign immunity of the Oneida Tribe of Indians of Wisconsin, to define the entities and individuals entitled to the protection of such immunity, and to specify the manner in which such immunity may be waived.

112.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to exercise its sovereign immunity, and to grant limited waivers of such immunity, as dictated by the best interests of the Oneida Tribe of Indians of Wisconsin and its citizens. The Oneida Tribe of Indians of Wisconsin recognizes that Tribal sovereign immunity, as defined in numerous federal court decisions, is an inherent and indispensable aspect of Tribal sovereignty. The Oneida Tribe of Indians of Wisconsin also recognizes that Tribal sovereign immunity affords necessary protection of Tribal resources, and necessary protection for Tribal officers, employees, and agents in both governmental and commercial settings.

### **112.2. Adoption, Amendment, Repeal**

112.2-1. This Law is adopted by the Oneida Business Committee by resolution # BC-10-20-04-C, and amended by resolution #BC-02-12-14-D.

112.2-2. This Law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

112.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

112.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

112.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### **112.3. Definitions**

112.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Agent" shall mean a person who is authorized to act on behalf of the Oneida Tribe of Indians of Wisconsin with respect to a specific transaction or transactions.

(b) "Employee" shall mean any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules

applicable to determining the employer-employee relationship. For the purposes of this Policy, employee shall include elected or appointed officials, individuals employed by a Tribally Chartered corporation, and, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

(c) "Officer" shall mean a person elected or appointed to serve on a board, committee, or commission of the Oneida Tribe of Indians of Wisconsin.

(d) "Tribal Entity" shall mean a corporation or other organization which is wholly owned by the Oneida Tribe of Indians of Wisconsin, is operated for governmental or commercial purposes, and may through its charter or other document by which it is organized be delegated the authority to waive sovereign immunity.

(e) "Tribal property" shall mean property that is owned by the Oneida Tribe in fee, or property that is held in trust for the Oneida Tribe by the United States of America.

(f) "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin, and includes all departments, divisions, business units, and other subdivisions of the Tribe.

#### **112.4. Sovereign Immunity of the Tribe**

112.4-1. The sovereign immunity of the Tribe, including sovereign immunity from suit in any state, federal or Tribal court, is hereby expressly reaffirmed. No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against the Tribe unless the Tribe has specifically waived sovereign immunity for purposes of such suit or proceeding. No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against officers, employees or agents of the Tribe for actions within the scope of their authority, unless the Tribe has specifically waived sovereign immunity for purposes of such suit or proceeding.

#### **112.5. Sovereign Immunity of Tribal Entities**

112.5-1. The sovereign immunity of Tribal Entities, including sovereign immunity from suit in any state, federal or Tribal court, is hereby expressly reaffirmed. No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against a Tribal Entity unless the Tribe or the Tribal Entity has specifically waived sovereign immunity for purposes of such suit or proceeding. No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against officers, employees or agents of a Tribal Entity for actions within the scope of their authority, unless the Tribe or the Tribal Entity has specifically waived sovereign immunity for purposes of such suit or proceeding.

#### **112.6. Waiver of Sovereign Immunity**

112.6-1. All waivers of sovereign immunity shall be made in accordance with this law.

112.6-2. *Waiver by Resolution.* The sovereign immunity of the Tribe or a Tribal Entity may be waived:

- (a) by resolution of the General Tribal Council;
- (b) by resolution or motion of the Oneida Business Committee; or
- (c) by resolution of a Tribal Entity exercising authority expressly delegated to the Tribal Entity in its charter or by resolution of the General Tribal Council or the Oneida Business Committee, provided that such waiver shall be made in strict conformity with the

provisions of the charter or the resolution governing the delegation, and shall be limited to the assets and property of the Tribal Entity.

112.6-3. *Automatic Waiver to Allow Testimony and Production of Documents.* The Tribe hereby waives sovereign immunity to permit Tribal officers, employees and agents to testify as witnesses and to produce documents in the following circumstances:

(a) a court of competent jurisdiction or a duly authorized official has issued a subpoena requiring the Tribal officer, employee or agent to appear as a witness and/or to produce documents with respect to the prosecution of a juvenile or criminal offense committed on Tribal property; or with respect to the prosecution of a juvenile or criminal offense committed against the Tribe; against or by a member of the Tribe, an employee of the Tribe, a business owned or operated by the Tribe, or a patron of a business owned or operated by the Tribe.

(b) a court of competent jurisdiction or a duly authorized official has issued a subpoena require the Tribal officer, employee or agent to appear as a witness and/or to produce documents with respect to an emergency detention or the prevention and control of alcoholism in accordance with Chapter 51 of the Wisconsin State Statutes.

This automatic waiver of sovereign immunity shall not extend to and shall not be deemed to include any testimony or the production of any documents which are not directly relevant to the aforementioned purposes.

112.6-4. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds subject to the waiver, the court having jurisdiction and applicable law.

112.6-5. No waiver of sovereign immunity shall be deemed to be consent to the levy of any judgment, lien, or attachment upon the property of the Tribe or a Tribal Entity other than property specifically pledged, assigned or identified.

*End.*

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