

# An Act

Committee: Rules  
Assigned: 03/15/04 Committee: Council Mtg.

Sponsor: Frailey  
Author: Wilcoxon/Hembree

## LEGISLATIVE ACT 9-04

### A LEGISLATIVE ACT AMENDING LEGISLATIVE ACT #41-03 "THE CHEROKEE NATION LIMITED MIXED BEVERAGE SALES ACT", RELATING TO CHEROKEE NATION ENTERPRISES, INC. AND ADDING NEW LANGUAGE IN SECTION 8: SALES OF LIQUOR AND DECLARING AN EMERGENCY

#### BE IT ENACTED BY THE CHEROKEE NATION:

#### SECTION 1. TITLE AND CODIFICATION

This Act shall be known as "The Cherokee Nation Limited Mixed Beverage Sales Act" and codified as \_\_\_\_\_ (Title) \_\_\_\_\_ (Section) \_\_\_\_\_ of the Cherokee Nation Code Annotated.

#### SECTION 2. AUTHORITY

This legislation is enacted in compliance with the *Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. Section 1161*, and by the authority of the Cherokee Nation Tribal Council under Article V, Section 7 of the Constitution of the Cherokee Nation.

#### SECTION 3. PURPOSE

This Act authorizes the Board of Directors of Cherokee Nation Enterprises, Inc. (CNE), a wholly owned tribally chartered corporation, to establish retail liquor sales at designated locations within its hotel, restaurant and/or casino operations located on trust land. The purpose of this Act is to regulate and control the possession and sale of liquor by CNE as a licensee. This enactment will increase the ability of the Cherokee Nation to control the sale, distribution and possession of liquor at limited and designated areas on tribal trust land occupied by CNE.

#### SECTION 4. APPLICATION OF 18 U.S.C. SECTION 1161

Federal law requires that any authorization for the sale of liquor or other alcoholic beverages must be in conformity with the laws of the State and approved by an ordinance (law) duly adopted by the tribe having jurisdiction over such area of Indian country. All acts and transactions under this law of the Cherokee Nation shall be in conformity with federal law and with the laws of the State of Oklahoma as applicable.

#### SECTION 5. EFFECTIVE DATE

This Act shall be effective on certification by the Secretary of the Interior and its publication in the Federal Register.

#### SECTION 6. DEFINITIONS

As used in this Act, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" means the substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) "Alcoholic Beverage" is synonymous with the term "liquor" as defined in this Chapter.

(c) "Board of Directors" means the Board of Directors of Cherokee Nation Enterprises, Inc.

(d) "Liquor" includes mixed beverages and all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.

(e) "Sale" or "Sell" includes exchange, barter and traffic; and also includes the selling or supplying or distribution, by any means whatsoever, of liquor.

(f) "Tax Commission" this term refers to the Cherokee Nation Tax Commission.

(g) "Trust Land" means those lands which are held in trust by the United States for the Cherokee Nation and not for any individual Indian.

## **SECTION 7. POWERS OF ENFORCEMENT**

Section 1. The Tax Commission. In furtherance of this Act, the Tax Commission shall have the power:

(a) To issue licenses and publish and enforce rules and regulations adopted by the Tax Commission governing the sale, consumption and possession of alcoholic beverages and to establish procedure for conducting hearings related to licensing.

(b) To take all necessary steps to enforce this Act including the collection of fees, taxes and damages related thereto.

## **SECTION 8. SALES OF LIQUOR**

Section 1. ~~License Required. Sales of liquor and alcoholic beverages may only be made by CNE.~~ The Tax Commission is authorized to issue liquor licenses to CNE. Sales of liquor and alcoholic beverages shall only be made by CNE pursuant to a license issued by the Tax Commission. CNE shall designate to the Tax Commission each location where alcoholic beverages are proposed to be sold and a separate license shall be issued to CNE by the Tax Commission for each such location; provided that licenses shall only be issued for locations within the Nation's hotel, restaurant or casino operations on trust land. The license issued by the Tax Commission shall be in addition to any license required under applicable state law.

Section 2. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage is prohibited. Any person who is not licensed pursuant to this Act who purchases an alcoholic beverage and sells it, whether in the original container or not, shall be guilty of a crime and up to one (1) year imprisonment and/or \$500.00 fine if convicted.

## **SECTION 9. TAXES**

Section 1. Excise Tax. In lieu of any otherwise applicable tribal sales tax on the retail sale of liquor for alcoholic beverages, there shall be an excise tax in the amount of two percent (2%) of the retail sales price. These revenues shall be used to promote mental health and related issues associated with substance abuse and shall be reserved for expenditure as provided for in the annual budget by the Cherokee Nation Health Service. The Board of Directors shall be entitled to make recommendation as to how these revenues are expended.

## **SECTION 10. RULES, REGULATIONS, AND ENFORCEMENT**

Section 1. Any person who shall sell or offer for sale, distribution or transportation in any manner, liquor in violation of this Act, or who shall operate or shall have liquor for sale in his possession without a license, shall be guilty of a violation of this Act subjecting him or her to prosecution for a crime and up to one (1) year imprisonment and/or \$500.00 fine if convicted.

Section 2. Any person who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this Act subjecting him or her to prosecution for a crime and up to one (1) year imprisonment and/or \$500.00 fine if convicted.

Section 3. No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a violation of this Act subjecting him or her to prosecution for a crime and up to one (1) year imprisonment and/or \$500.00 fine if convicted.

Section 4. Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this Act subjecting him or her to prosecution for a crime and up to one (1) year imprisonment and/or \$500.00 fine if convicted.

Section 5. Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be in violation of this Act subjecting him or her to prosecution for a crime and up to one (1) year imprisonment and/or \$500.00 fine if convicted.

Section 6. Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this Act subjecting him or her to prosecution for a crime and up to one (1) year imprisonment and/or \$500.00 fine if convicted.

Section 7. When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

- (1) Driver's license or identification card issued by any state department of motor vehicles;
- (2) United States Active Duty Military;
- (3) Passport.

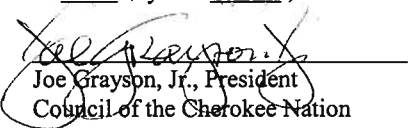
Section 8. Liquor which is possessed, including for sale, contrary to the terms of this Act is declared to be contraband. Any tribal law enforcement officer who is authorized to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property.

Section 9. Upon being found in violation of the Act, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Cherokee Nation.

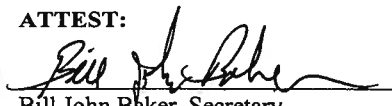
#### **SECTION 11. SEVERABILITY AND EFFECTIVE DATE**

Section 1. If any provision or application of this Act is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Act or to render such provisions inapplicable to other persons or circumstances.

Enacted by the Council of the Cherokee Nation on the 15<sup>th</sup> day of March, 2004.

  
Joe Grayson, Jr., President  
Council of the Cherokee Nation

**ATTEST:**

  
Bill John Baker, Secretary  
Council of the Cherokee Nation