

Committee: Rules

Date: 07/03/24

Committee Date: 07/15/24

Author: C. Harsha

Sponsor:: Mike Shambaugh, Danny Callison

An Act

Legislative Act 27-24

AN ACT AMENDING TITLE 40 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the “TERO Appeals Act” and codified at Title 40, Chapters 5-7 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to provide the Cherokee Nation District Court authority to hear TERO appeals.

Section 3. Legislative History

LA-38-05

LA-33-06

LA-30-12

LA-01-14

Section 4. Substantive Provisions

Title 40, Chapters 5, 6, and 7 shall be amended as follows:

CHAPTER 5 COMPLAINTS AND HEARINGS

§ 501. Filing of complaints by TERO and proceedings thereon generally

If the TERO staff has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with this title or any rules, regulations or orders of the TERO, it may file a complaint with the TERO Director and notify such party of the alleged violations. The TERO Director will attempt to achieve an informal settlement of the matter, but if an informal settlement

cannot be achieved, the TERO may impose penalties as provided in 40 CNCA § 601. Should any entity fail to comply with orders of the TERO, the TERO may pursue a civil legal action against the entity in Cherokee Nation District Court.

§ 502. Filing of complaints by Indians and proceedings thereon generally—Penalties for retaliatory actions by employers against employees filing complaints

- A. If any Indian believes that an employer has failed to comply with this title or rules, regulations or orders of the TERO, or if the Indian believes he or she has been adversely discriminated against by an employer because he or she is Indian, the Indian may file a complaint with the TERO specifying the alleged violation. Upon receipt of the complaint, the TERO shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or TERO may take further action as provided for by law.
- B. If any employer fires, lays off, or penalizes in any manner any Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided in 40 CNCA § 601.
- C. Nothing in this title shall prohibit the aggrieved Indian from pursuing from the employer other remedies available by law.

§ 503. Reserved

§ 504. Notice of hearings

- A. The ~~Administrative Appeals Board~~ Cherokee Nation District Court, ~~as established pursuant to 51 CNCA § 1001 et seq.~~ shall have the power ~~and duty~~ to hear ~~employer~~ appeals of TERO decisions denying certification of the employer as an Indian-owned economic enterprise. The ~~Administrative Appeals Board~~ District Court shall have the power to either affirm or reverse the TERO certification decision, ~~but will not have the power to award any other form of remedy in the cases brought under this title.~~
- ~~B. The Administrative Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the Administrative Appeals Board herein.~~
- ~~C. B.~~ ____ If a hearing is requested ~~by the Board, an individual, an employer, or union pursuant to this section,~~ a written notice of the hearing shall be given to all concerned parties ~~stating the nature of the hearing and the evidence to be presented.~~
- ~~D. C.~~ ____ The notice shall advise such parties of their right to be present at the hearing, to present testimony of witnesses and other evidence and to be represented by counsel at their own expense.

§ 505. Conduct of hearings

If any employer or person feels aggrieved by a decision made by the TERO they may appeal that decision to the ~~Administrative Appeals Board~~ Cherokee Nation District Court. ~~The Administrative Appeals Board shall hold a hearing in accordance with this act and will either confirm or deny the TERO decision. The Chairperson and Co-Chairperson of the Employment Committee of the Tribal Council may attend said hearings as advisory members, but shall not have any vote in the proceedings.~~

1. Hearings shall be governed by the ~~following~~ rules and procedures governing civil actions in the Cherokee Nation District Court:
 - a. ~~All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense;~~
 - b. ~~The Board may have the advice and assistance at the hearing of counsel provided by the Nation;~~
 - c. ~~The Chairman of the Board or the Vice-Chairman shall preside and the Board shall proceed to ascertain the facts in a reasonable and orderly fashion;~~
 - d. ~~The hearing may be adjourned, postponed and continued at the discretion of the Board.~~
2. At the final close of ~~the a~~ hearings, the ~~Board~~ Court may take immediate action or take the matter under advisement.
3. ~~The Board shall notify all parties forty-five (45) days after the last hearing of its decision in the matter.~~
4. ~~The Board shall conclude this process within ninety (90) days of the request for a hearing.~~

CHAPTER 6 ENFORCEMENT AND REMEDIES

§ 601. Penalties for violations of Title and rules, regulations or orders of the TERO or Administrative Appeals Board

- A. Any employer, contractor, subcontractor or union who violates this Title or rules, regulations or orders of the TERO shall be subject to penalties for the violation, including, but not limited to:
 1. denial of the right to commence or continue business within the jurisdiction of Cherokee Nation;
 2. suspension of operations within the jurisdiction of Cherokee Nation;
 3. payment of back pay and damages to compensate any injured party;
 4. an order to summarily remove employees hired in violation of this Title or rules, regulations or orders of the TERO;
 5. imposition of monetary civil penalties;
 6. prohibition from engaging in future operations within Cherokee Nation boundaries;
 7. an order requiring employment, promotion and training of Indians injured in the violation;

8. an order requiring changes in procedures and policies necessary to eliminate the violation;
 9. an order making any other provision deemed necessary to alleviate, eliminate or compensate for any violation.
- B. The maximum monetary penalty which may be imposed is Five Thousand Dollars (\$5,000.00) for each violation. The penalties will be graduated as follows:
1. The first violation will incur a fine of Two Hundred Dollars (\$200.00);
 2. The second violation will incur a fine of One Thousand Dollars (\$1,000.00);
 3. The third violation will incur a fine of Five Thousand Dollars (\$5,000.00).
- C. Each day during which a violation exists shall constitute a separate violation.
- D. Monetary penalties assessed by TERO may be tripled if it is shown that the violation occurred egregiously or with reckless or wanton behavior.
- E. Attorney fees and costs of pursuing or defending an action of the TERO may be awarded to the prevailing party.

CHAPTER 7 APPEALS

§ 701. Appeals from decisions of ~~Administrative Appeals Board~~ Cherokee Nation District Court

- A. Any party to a hearing shall have the right to appeal any decision of the ~~Board to the~~ District Courts of Cherokee Nation to the Cherokee Nation Supreme Court.

B. Appeals shall be governed by the rules and procedures of the Cherokee Nation Supreme Court

~~B.C.~~ Standard of review. The ~~District Supreme Court's~~ shall review of decisions of the ~~Administrative Appeals Board District Court without a jury and~~ shall be confined to the record, except that in cases of alleged irregularities in procedure before the ~~Administrative Appeals Board District Court~~, not shown in the record, testimony thereon may be taken by the ~~District Supreme Court~~. The ~~District Supreme Court~~, upon request, ~~shall~~ may hear oral arguments and receive written briefs.

~~C. Appeals of the decision of the District Court may be taken in the Supreme Court under the rules and procedures governing civil appeals before that Court.~~

§ 702. Employee Appeals Board — Change of name

The Employee Appeals Board, as established pursuant to 51 CNCA § 1001 et seq., shall hereinafter be known as the "Administrative Appeals Board".

Section 5. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 6. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

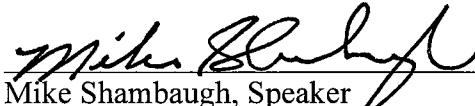
Section 7. Effective Date

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force immediately upon its passage and approval.

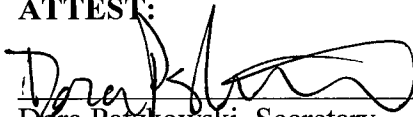
Section 8. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

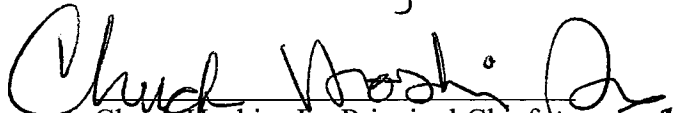
Enacted by the Council of the Cherokee Nation on the 15th day of July, 2024.


Mike Shambaugh, Speaker
Council of the Cherokee Nation


ATTEST:


Dora Patzkowski, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 17 day of July, 2024.


Chuck Hoskin, Jr., Principal Chief
Cherokee Nation

ATTEST:


Shella Bowlin, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Sasha Blackfox-Qualls	<u>Yea</u>	Melvina Shotpouch	<u>Yea</u>
Candessa Teehee	<u>Yea</u>	Victoria Vazquez	<u>Yea</u>
Lisa Hall	<u>Yea</u>	Dora Smith Patzkowski	<u>Yea</u>
Mike Dobbins	<u>Absent</u>	Joe Deere	<u>Yea</u>
E.O. "Jr." Smith	<u>Yea</u>	Kevin Easley, Jr.	<u>Yea</u>
Daryl Legg	<u>Yea</u>	Danny Callison	<u>Yea</u>
Joshua Sam	<u>Yea</u>	Julia Coates	<u>Yea</u>
Codey Poindexter	<u>Yea</u>	Johnny Kidwell	<u>Yea</u>
Mike Shambaugh	<u>Yea</u>		

**ADMINISTRATIVE
CLEARANCE**

Dept/Program:

Signature/Initial Date

Executive Director:

Signature/Initial Date

**Treasurer (Required:
Grants/Contracts/Budgets):**

Signature/Initial Date

Government Relations:

Signature/Initial Date

Administration Approval:

Signature/Initial Date

LEGISLATIVE CLEARANCE:

Legal & Legislative Coordinator:

Signature/Initial Date

Standing Committee & Date:

Chairperson:

Signature/Initial Date

**Cherokee Nation
Act/Resolution Proposal Form**

☒ Act

☐ Resolution

TITLE:

**AN ACT AMENDING TITLE 40 OF THE
CHEROKEE NATION CODE ANNOTATED AND
DECLARING AN EMERGENCY**

DEPARTMENT CONTACT: Chuck Hoskin Jr.

RESOLUTION PRESENTER: Chad Harsha

COUNCIL SPONSOR: Mike Shambaugh

NARRATIVE:

The purpose of this Act is to provide the Cherokee Nation District Court authority to hear TERO appeals.