

Committee: Full Council  
Date: 6-2-09 Committee Date: 6-15-09

Author: Todd Hembre  
Sponsor: Chuck Hoskin Jr.

**VETO**

6/22/09

DATE

**An Act**

PRINCIPAL CHIEF

Legislative Act 14-09

Override failed 8/10/09  
by a vote of 948 N

**A LEGISLATIVE ACT AMENDING TITLE 68 OF THE CHEROKEE NATION CODE  
ANNOTATED – ADDING PROVISIONS FOR TAX REBATE OF LICENSED  
TOBACCO RETAILERS**

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

**Section 1. Title and Codification**

This act shall be known as the “Tobacco Retailer Rebate Act of 2009” and codified as \_\_\_\_\_ (Title) \_\_\_\_\_ (Section) \_\_\_\_\_ of the Cherokee Nation Code Annotated (CNCA).

**Section 2. Purpose**

This Act is to protect the viability of Cherokee Nation licensed smoke shops that they are designated as a “border” smoke shop by mutual agreement between the State of Oklahoma and Cherokee Nation, through a monthly rebate for smoke shops currently in business. These provisions assist these retailers in continuing to operate a profitable business.

**Section 3. Substantive provisions**

The following sections shall be included in Title 68 of the Cherokee Nation Code Annotated:

**Tobacco Rebate**

Cherokee Nation licensed “border” smoke shops, as determined by the Cherokee Nation Tax Commission and consistent with the Tobacco Tax Compact between the State of Oklahoma and the Cherokee Nation, including any amendments or clarifications thereto arising at any time during the effectiveness of this Act, will receive a rebate in the amount of \$1.50 per carton purchased. This rebate will be in effect for the lesser of 18 months or until a neighboring state’s tax rate increases, as set forth herein.

Procedures:

1. To apply for the rebate the Cherokee Nation licensed retailer must provide monthly reports to the Cherokee Nation Tax Commission.
2. The rebate shall be paid on at least a monthly basis to qualifying smoke shops.

3. If a retailer fails to repay the Cherokee Nation for any overpayment of rebate discovered during the year-end reconciliation the Cherokee Nation Tax Commission will revoke the retailer's tobacco license and seek other remedies allowable by law.
4. The funds required from the rebate shall be administered from the Cherokee Nation General Fund.
5. If a bordering state increases its tax rate at or above the comparable tax rate of the State of Oklahoma the rate of this rebate will be discontinued for Cherokee Nation licensed retailers located within twenty (20) miles of said state.

**Section 4. Provisions as cumulative**

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

**Section 5. 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.

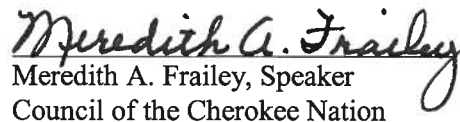
**Section 6. Effective Date**

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 from and after its passage.

**Section 7. Termination Date (Sunset Clause)**

This being an Act temporary in nature the provisions of this Act shall not extend beyond October 1, 2010 without specific amendment by the Cherokee Nation Tribal Council.

Enacted by the Council of the Cherokee Nation on the 15th day of June, 2009.

  
Meredith A. Frailey, Speaker  
Council of the Cherokee Nation

**ATTEST:**

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Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Chadwick Smith, Principal Chief  
Cherokee Nation

**ATTEST:**

\_\_\_\_\_  
Melanie Knight, Secretary of State  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Nay</u>
Bill John Baker	<u>Yea</u>	Chris Soap	<u>Nay</u>
Joe Crittenden	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Absent</u>	Bradley Cobb	<u>Yea</u>
David W. Thornton, Sr.	<u>Nay</u>	Charles Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Absent</u>	Julia Coates	<u>Nay</u>
Harley L. Buzzard	<u>Yea</u>	Jack D. Baker	<u>Nay</u>
Curtis G. Snell	<u>Absent</u>		



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**CHEROKEE NATION®**

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Chad "Comtassel" Smith  
Principal Chief

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Joe Grayson, Jr.  
Deputy Principal Chief

June 22, 2009

Meredith A. Frailey, Speaker  
Cara Cowan Watts, Deputy Speaker  
Council of the Cherokee Nation  
Tahlequah, Oklahoma

06-22-09P01:38 RCVD

Dear Speaker Frailey and Council Members:

I am returning the enactments passed by the Tribal Council at the regular meeting held on June 15, 2009 as required by our Constitution. The Cherokee Constitution (Article V, Section 11) requires that every enactment approved by the majority of the Council be presented to the Principal Chief before it becomes effective. I have carefully considered each enactment and I have approved all of them with the exception of one (1) vetoed enactment and one (1) enactment which I have elected not to sign.

**APPROVED RESOLUTIONS**

1. Resolution No. 61-09, A Resolution Approving and Authorizing the Submission of the Amended Fiscal Year 2009 Indian Housing Plan to the U.S. Department of Housing and Urban Development.
2. Resolution No. 62-09, A Resolution Authorizing Cherokee Nation Human Services and Cherokee Nation Health Services to Submit an Application for a Substance Abuse and Mental Health Services Administration (SAMHSA) Funded Grant to Expand Substance Abuse Treatment Capacity for Juvenile Drug Courts.
3. Resolution No. 63-09, A Resolution Authorizing the Department of Children, Youth and Family Services to Submit an Application for Funding to the Oklahoma Office of Juvenile Affairs, for Emergency Youth Shelter Services, and Prevention and Diversion Services.
4. Resolution No. 64-09, A Resolution Authorizing the Donation of Surplus Intercom System Equipment from Sequoyah Schools to Muldrow Public Schools.
5. Resolution No. 65-09, A Resolution Providing for the Donation of Surplus Optometry Equipment from Cherokee Nation to Northeastern State University College of Optometry.
6. Resolution No. 66-09, A Resolution Authorizing Cherokee Nation to Lease Trust Land to Salina-Spavinaw Telephone Company, Inc.
7. Resolution No. 67-09, A Resolution Authorizing the Submission of a Special Grant Application from the U.S. Department of Interior-Energy and Minerals Development Program.
8. Resolution No. 68-09, A Resolution Amending Resolution Number 74-88, Establishing the National Treasures Program.

**APPROVED LEGISLATIVE ACTS**

1. Legislative Act No. 13-09, An Act Amending Legislative Act #19-08 Authorizing the Comprehensive Budget for Fiscal Year 2009 – Mod. 8; and Declaring an Emergency.

2. Legislative Act No. 15-09, A Legislative Act Amending Title 68 Chapter 4 of the Cherokee Nation Code Annotated – Tobacco Tax; Amending §42 Tax on Cigarettes and §43 Tax on Tobacco Products.
3. Legislative Act No. 16-09, An Act Amending Legislative Act #19-00, as Amended by Legislative Acts #08-01 and #05-05, Establishing a Free and Independent Press for the Cherokee Nation.

#### UNSIGNED LEGISLATIVE ACTS


4. Legislative Act No. 17-09, An Act Appealing Legislative Act 05-95, Title 19 Cherokee Nation Code Annotated Section Twenty-one (21) and Twenty-two (22) Allowing for Reimbursement of Travel Expenses of Member of the Cherokee Nation Tribal Council.

#### VETOED LEGISLATIVE ACTS

1. Legislative Act No. 14-09, A Legislative Act Amending Title 68 of the Cherokee Nation Code Annotated – Adding Provisions for Tax Rebate of Licensed Tobacco Retailers.

I am vetoing this Act, which provides for a tax rebate of \$1.50 per carton to border tobacco retail shops. Immediately after ratification of the new Tobacco Compact, the Council wisely chose to defer subsidizing the tobacco industry until the affects of the new tax structure were known. The Tobacco Compact states in section 4 that the Nation may make a "...payment reflecting lost profit from the tribal tax." Although the sales have changed, we have no data to support whether profitability of these shops has been significantly affected, and certainly no data to show that profit has been reduced by \$1.50 per carton. Further, no border stores have closed since the implementation of the new compact in November, 2008. *Any* subsidy of the tobacco industry should be undertaken with great care, as tobacco use is a serious health hazard for which millions of scarce healthcare funds are expended each year for treatment. I agree with the Council's initial stance that any adverse effects of the new tobacco rates must be clearly proven before undertaking a subsidy of tobacco shops

Sincerely,



Chadwick Smith  
Principal Chief

cc: Legal & Legislative Coordinator, Council of the Cherokee Nation  
Councilors (17), Council of the Cherokee Nation  
Melanie Knight, Secretary of State