

Amended by
LA 116-05

An Act

Legislative Act 23-04

**ACT RELATING TO
CHEROKEE NATION SOVEREIGN IMMUNITY
AND DELEGATION OF AUTHORITY TO EXECUTE WAIVER FOR BUSINESS
ACTIVITIES**

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

Example: This act shall be known as the Sovereign Immunity Act and codified as _____ (Title) _____ (Section) _____ of the Cherokee Nation Code Annotated.

Section 2. Purpose

To clarify Cherokee Nation Sovereign Immunity and authorize the Principal Chief to waive sovereign immunity on a limited basis for business transactions of Cherokee Nation-owned Business Entities in order to better fulfill the duties prescribed by the Cherokee Nation Constitution.

Section 3. Legislative History

None.

Section 4. Definitions

For purposes of this Title:

- a) Act means an enactment of the Council as provided in the Constitution.
- b) Business Entity means any business entity in which the Nation is a majority owner.
- c) Nation means Cherokee Nation.
- d) Resolution means an enactment of the Council as provided in the Constitution.
- e) Sovereign Immunity means the preclusion of bringing suit against the government without its consent.

Section 5. Sovereign Immunity

- a) The Nation is a Federally Recognized Indian Nation existing from time immemorial and retains the inherent right to preclude lawsuits under the doctrine of sovereign immunity.
- b) The Nation does not consent to lawsuits in any court except by Act or Resolution.
- c) The Nation has the inherent right to waive, and grant authority to waive sovereign immunity with limitations as to time, place, manner, subject, and any other restrictions desired.

Section 6. Delegation Of Authority As To Business Entities.

The Principal Chief is authorized to execute a waiver of sovereign immunity and/or to agree not to raise the defense of sovereign immunity as to a Business Entity only as follows:

- a) All waivers shall be in writing and signed by the Principal Chief and verified by the Secretary-Treasurer. A copy shall be filed and indexed in the Office of the Principal Chief and with the office of the Tribal Council. This signature authority shall not be delegated.
- b) A waiver may be included in an agreement or contract containing other terms.

- c) All waivers shall contain provisions limiting:
- (1) Who may bring a claim: Only parties to a contract shall be eligible to bring a claim.
 - (2) Type of claims allowed: Any waiver shall be limited to obligations or rights arising under a written contract or agreement in a breach of contract claim.
 - (3) Types of relief or damages: The waiver shall be specifically limited to an award of actual or liquidated damages under the terms of the agreement. The waiver shall not allow recovery from the Business Entity for punitive or exemplary damages. Nor shall the waiver allow recovery from any elected officials, officers or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs or attorney fees.
 - (4) Choice of forum: Preference for jurisdiction of lawsuits pursuant to a waiver shall be filed, subject to a court asserting jurisdiction, first in Cherokee Nation courts, second in federal courts, third in state court.
 - (5) Choice of law: Preference of applicable law shall be prioritized as follows: Nation law first, Federal law second, and State law third.
 - (6) Duration of the waiver: Waivers shall be limited to the duration of the contract.
- d) Any waiver granted under this section shall not be canceled, terminated, or withdrawn except by agreement of the party entitled to the waiver.

Section 7. Delegation Of Authority As To Cherokee Nation.

In addition to all provisions in Section 6, any waiver of the sovereign immunity of the Cherokee Nation as a government shall be limited to:

- a) Actual damages resulting from legislative action which has a material adverse effect on an Business Entity's ability to perform obligations to a party to a contract under the contract.
- b) Any contractual obligation of an Business Entity in the event that the Nation terminates or dissolves the Business Entity or materially and unreasonably increases restrictions on the Business Entity's capacity to engage in its operations.
- c) Declaratory judgment interpreting the scope and validity of a waiver.

Section 8. Provisions as cumulative

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

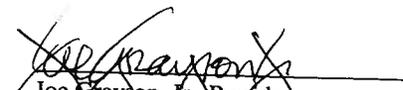
Section 9. Severability

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 10. Emergency declared

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 after its passage and approval.

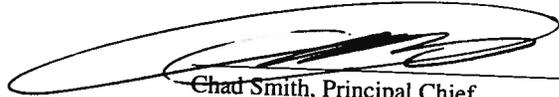
Enacted by the Council of the Cherokee Nation on the 14th day of June, 2004.


Joe Grayson, Jr., President
Cherokee Nation Council

ATTEST:


Bill John Baker, Secretary
Cherokee Nation Council

Approved and signed by the Principal Chief this 17th day of JUNE, 2004.



Chad Smith, Principal Chief
Cherokee Nation

ATTEST:



Callie Catcher, Secretary/Treasurer
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Audra Smoke-Conner	<u>YEA</u>	Melvina Shotpouch	<u>NAY</u>
Bill John Baker	<u>YEA</u>	Meredith A. Frailey	<u>YEA</u>
Joe Crittenden	<u>YEA</u>	John F. Keener	<u>YEA</u>
Jackie Bob Martin	<u>YEA</u>	Cara Cowan	<u>YEA</u>
Phyllis Yargee	<u>YEA</u>	Buel Anglen	<u>YEA</u>
David W. Thornton, Sr.	<u>YEA</u>	William G. Johnson	<u>YEA</u>
Don Garvin	<u>YEA</u>	Charles "Chuck" Hoskin	<u>YEA</u>
Linda Hughes-O'Leary	<u>YEA</u>		

Cherokee Nation Act/Resolution Proposal Form

Act Resolution

<u>ADMINISTRATIVE CLEARANCE</u>	
Program/Project Manager:	
Signature/Initial	Date
Department Director:	
Signature/Initial	Date
Executive Director:	
Signature/Initial	Date
Controller: (if needed)	
Signature/Initial	Date
Government Resources:	
<i>Melvin Wright</i>	<i>5/27/04</i>
Signature/Initial	Date
Administration Approval:	
<i>Melvin Wright for Chad Smith</i>	<i>5/27/04</i>
Signature/Initial	Date
LEGISLATIVE CLEARANCE:	
Legislative Aide:	
<i>gb</i>	<i>5.27.04 11:30am</i>
Signature/Initial	Date
Standing Committee & Date:	
<i>Sp Rules / 5 of 7.</i>	
Chairperson:	
Signature/Initial	Date
Returned to Presenter:	
	Date

TITLE: Sovereign Immunity Act

DEPARTMENT CONTACT: John Parris

RESOLUTION PRESENTER: Chad Smith

SPONSOR: Meredith Frailey

NARRATIVE: (See Attached Outline for Information If Outline is Required)

The Cherokee Nation has sovereign immunity, which means the Nation may not be sued in any court without a valid waiver. This immunity covers the government, agencies, and most wholly owned and/or controlled business entities. Currently, only the Nation as a body, acting through passage of a law pursuant to the Constitution, can waive sovereign immunity. The Nation enters into many business contracts with independent entities to provide necessary services. Many businesses trust the Nation and do not request a waiver of sovereign immunity. However some are unfamiliar with doing business with the Nation or as a matter of policy require a court enforceable dispute resolution capability and thus require a waiver before entering a contract. For instance, a corporation has a duty to its stockholders to only enter into court enforceable contracts. Sometimes a contract will be more favorable with a waiver than without.

This act clearly establishes the common law understanding of sovereign immunity and streamlines the ability to grant waivers to facilitate business transactions. Having an overall policy also facilitates long term planning.

The Act allows the Principal Chief to grant waivers in two areas. A waiver as to the Nation shall be only for damages related to legislative interference with the contract. This is the same protection granted in the Federal Constitution's contracts clause, Article I, Section 10 (1). A waiver limited to a business entity of the Nation would also be authorized, limited to the parameters described in section 6(3).

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