

Committee: Rules

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## An Act

### Legislative Act 29-21

#### AN ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

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

##### Section 1. Title and Codification

This act amends Title 21 of the Cherokee Nation Code Annotated and shall be codified at the sections referenced herein of the Cherokee Nation Code Annotated.

##### Section 2. Purpose

The purpose of this Act is to further modernize the Nation's criminal code.

##### Section 3. Legislative History

LA-10-90	LA-32-03	LA-20-08	LA-03-21
LA-13-91	LA-36-03	LA-22-08	LA-07-21
LA-24-02	LA-08-06	LA-08-12	
LA-25-02	LA-10-06	LA-09-12	
LA-39-02	LA-18-06	LA-35-12	
LA-40-02	LA-29-06	LA-10-13	
LA-41-02	LA-31-06	LA-09-16	
LA-42-02	LA-34-06	LA-12-18	
LA-31-03	LA-09-07	LA-28-20	

##### Section 4. Amendments

Title 21 shall be amended and expanded as follows:

#### **§ 748. Human trafficking for forced labor or forced sexual exploitation**

##### A. As used in Sections 748 and 748.2 of this title:

##### 1. "Coercion" means compelling, forcing or intimidating a person to act by:

a. threats of harm or physical restraint against any person,

b. any act, scheme, plan, or pattern intended to cause a person to believe that

performing, or failing to perform, an act would result in serious physical, financial, or emotional harm or distress to or physical restraint against any person.

- c. the abuse or threatened abuse of the law or legal process,
  - d. knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport, labor or immigration document, or other government identification document, including but not limited to a driver license or birth certificate, of another person,
  - e. facilitating or controlling a person's access to any addictive or controlled substance other than for legal medical purposes,
  - f. blackmail,
  - g. demanding or claiming money, goods, or any other thing of value from or on behalf of a prostituted person where such demand or claim arises from or is directly related to the act of prostitution,
  - h. determining, dictating or setting the times at which another person will be available to engage in an act of prostitution with a third party,
  - i. determining, dictating or setting the places at which another person will be available for solicitation of, or to engage in, an act of prostitution with a third party,  
or
  - j. determining, dictating or setting the places at which another person will reside for purposes of making such person available to engage in an act of prostitution with a third party;
2. “Commercial sex” means any form of commercial sexual activity such as sexually explicit performances, prostitution, participation in the production of pornography, performance in a strip club, or exotic dancing or display;
3. “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
4. “Human trafficking” means modern-day slavery that includes, but is not limited to, extreme exploitation and the denial of freedom or liberty of an individual for purposes of deriving benefit from that individual's commercial sex act or labor;
5. “Human trafficking for labor” means:
- a. recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion or for purposes of engaging the person in labor, or
  - b. benefiting, financially or by receiving anything of value, from participation in a venture that has engaged in an act of trafficking for labor;

6. “Human trafficking for commercial sex” means:

- a. recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion for purposes of engaging the person in a commercial sex act,
- b. recruiting, enticing, harboring, maintaining, transporting, providing, purchasing or obtaining, by any means, a minor for purposes of engaging the minor in a commercial sex act, or
- c. benefiting, financially or by receiving anything of value, from participating in a venture that has engaged in an act of trafficking for commercial sex;

7. “Legal process” means the criminal law, the civil law, or the regulatory system of the Cherokee Nation, the federal government, any state, territory, district, commonwealth, or trust territory therein, and any foreign government or subdivision thereof and includes legal civil actions, criminal actions, and regulatory petitions or applications;

8. “Minor” means an individual under eighteen (18) years of age; and

9. “Victim” means a person against whom a violation of any provision of this section has been committed.

10. It shall be unlawful to knowingly engage in human trafficking.

11. Any person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for a term of not more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment. The court shall also order the defendant to pay restitution to the victim as provided in 22 CNCA § 991F.

12. It is an affirmative defense to prosecution for a criminal offense that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking.

13. The consent of a victim to the activity prohibited by this section shall not constitute a defense.

14. Lack of knowledge of the age of the victim shall not constitute a defense to the activity prohibited by this section with respect to human trafficking of a minor.

### **§ 748.2 Rights of victims of human trafficking—Civil action against perpetrator**

A. Human trafficking victims shall:

1. Be housed in an appropriate shelter as soon as practicable;
2. Not be detained in facilities inappropriate to their status as crime victims;
3. Not be jailed, fined, or otherwise penalized due to having been trafficked;
4. Receive prompt medical care, mental health care, food, and other assistance, as necessary;

5. Have access to legal assistance, information about their rights, and translation services, as necessary; and
  6. Be provided protection if the safety of the victim is at risk or if there is a danger of additional harm by recapture of the victim by a trafficker, including:
    - a. taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals, and
    - b. ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.
- B. Any person aggrieved by a violation of 21 CNCA § 748(B) may bring a civil action against the person or persons who committed the violation to recover actual and punitive damages and reasonable attorney fees and costs. The civil action brought under this section may be instituted in the Cherokee Nation District Court. A criminal case or prosecution is not a necessary precedent to ~~the~~ civil action. The statute of limitations for the cause of action shall not commence until the latter of the victim's emancipation from the defendant, the victim's twenty-first birthday, or the plaintiff discovers or reasonably should have discovered that he or she was a victim of human trafficking and that the defendant caused, was responsible for or profited from the human trafficking.
- C. Upon availability of funds, the Principal Chief is authorized to establish an emergency hotline number for victims of human trafficking to call in order to request assistance or rescue.
- D. Any peace officer who comes in contact with a human trafficking victim shall inform the victim of the human trafficking emergency hotline number and give notice to the victim of certain rights. The notice shall consist of handing the victim a written statement of the rights provided for in subsection A of this section.
- E. Any peace officer or employee of the Cherokee Nation courts or the Department of Juvenile Justice who has reasonable suspicion that a minor may be a victim of human trafficking and is in need of immediate protection shall assume protective custody over the minor and immediately notify Cherokee Nation Indian Child Welfare. The minor shall be transferred to the emergency custody of Cherokee Nation Indian Child Welfare. While in the custody thereof, the minor shall be provided with any necessary emergency social services which include, but shall not be limited to, medical examination or treatment, or a mental health assessment.

Law enforcement and Cherokee Nation Indian Child Welfare shall conduct a joint investigation into the claim.

The minor shall remain in the custody of Cherokee Nation Indian Child Welfare until the investigation has been completed, but for no longer than two (2) judicial days, for the show-cause hearing. The Cherokee Nation Indian Child Welfare may release the minor to the custody of a parent or legal guardian if it determines the minor will not be subject to further exploitation. If no such determination is made, the minor shall be subject to the deprived child provisions of the Cherokee Nation Code Annotated and made eligible for appropriate child welfare services.

The minor shall not be subject to juvenile delinquency proceedings for prostitution or other nonviolent misdemeanor offenses committed as a direct result of being a victim of human

trafficking. It shall be an affirmative defense to delinquency or criminal prosecution for any misdemeanor or felony offense that the offense was committed during the time of and as the direct result of the minor being the victim of human trafficking.

### **§ 843.5. Criminal forfeiture**

A. Property subject to criminal forfeiture.—A person who is convicted of an offense under §§ 843, 843.1, 843.3, or 843.4 of this title, or who is convicted of an offense under §§ 1021(B), 1021.2, or 1021.3 of this title, shall forfeit to the Nation all such person's interest in:

1. Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and
2. Any property, real or personal, and not otherwise addressed by 21 CNCA § 1040.54, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property.

B. The provisions of 22 CNCA § 991A-11 shall apply to the criminal forfeiture of property pursuant to subsection A.

### **§ 843.6. Civil forfeiture**

Any property subject to forfeiture pursuant to § 843.5 of this title may be forfeited to the Nation in a civil case in accordance with the procedures set forth in 22 CNCA § 991A-11.

### **§ 1550.34. Other criminal law not precluded--Exception**

This act shall not be construed to preclude the applicability of any other provision of the criminal law of this ~~state~~Nation which presently applies or may in the future apply to any transaction which violates this act, unless such provision is inconsistent with the terms of this act

### **§ 1738. Seizure and forfeiture proceedings—Vehicles, airplanes, vessels, etc., used in attempt or commission of certain crimes**

- A. Any commissioned peace officer of this Nation is authorized to seize any equipment, vehicle, airplane, vessel, vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined, or ~~equipment~~ which is used in the attempt or commission of any armed robbery offense defined in 21 CNCA § 801, used to facilitate the intentional discharge of any kind of firearm in violation of 21 CNCA § 652, used in any act of burglary in the first or second degree, larceny of livestock, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by 21 CNCA § 1431, 21 CNCA § 1435, 21 CNCA § 1716, 21 CNCA § 1719 and 21 CNCA § 1720 or 47 CNCA §§ 4–104 and 4–107, used in the commission of any arson offense defined in 21 CNCA §§ 1401-1404, or used in any manner to facilitate or participate in the commission of any human trafficking offense in violation of 21 CNCA §§ 748 or 866. Said property may be held as evidence until a forfeiture has been declared or are lease ordered.

- B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the

Clerk of the Cherokee Nation District Court ~~for the county wherein such property is seized~~ and shall be given to all owners and parties in interest.

- C. Notice shall be given according to one ~~(1)~~ of the following methods:
1. Upon each owner or party in interest whose right, title, or interest is of record in the Oklahoma Tax Commission or the Cherokee Nation Tax Commission, or with the county clerk for filings under the Uniform Commercial Code, served in the manner of service of process in civil cases prescribed by ~~12 O.S. § 2004~~ the Federal Rules of Civil Procedure;
  2. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by 12 O.S. § 2004; or
  3. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property by one publication in a newspaper of general circulation in the county where the seizure was made.
- D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.
- E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the property forfeited to the Nation, if such fact is proven.
- F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.
- G. At the hearing the Nation shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection (A) of this section with knowledge by the owner of the property.
- H. The claimant of any right, title, or interest in the property may prove his lien, mortgage, or conditional sales contract to be bona fide and that his right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.
- I. In the event of such proof, the Court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser.
- J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Nation and shall be sold pursuant to judgment of the Court, as on sale upon execution, except as otherwise provided for by law.
- K. Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the ~~office of the prosecutor of the county wherein the~~

~~property was seized~~Attorney General. The ~~prosecutor~~Attorney General shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the ~~prosecutor~~Attorney General may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been released by the ~~prosecutor~~Attorney General shall be subject to the orders and decrees of the Court or the official having jurisdiction thereof.

- L. ~~The Neither the prosecutor~~Attorney General not the Nation shall ~~not~~ be held civilly liable for having custody of the seized property or proceeding with a forfeiture action as provided for in this section.
- M. Attorney fees shall not be assessed against the Nation or the ~~prosecutor~~Attorney General for any actions or proceeding pursuant to 21 CNCA § 1701 et seq.
- N. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:
  - 1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;
  - 2. To the payment of the actual reasonable expenses of preserving the property;
  - 3. To the victim of the crime to compensate said victim for any loss he may have incurred as a result of the act for which such property was forfeited; and
  - 4. The balance to the Cherokee Nation Treasurer.
- O. If the Court finds that the property was not used in the attempt or commission of an act specified in subsection (A) of this section, the Court shall order the property released to the owner as his right, title, or interest appears on record in the Oklahoma Tax Commission or the Cherokee Nation Tax Commission as of the seizure.
- P. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection (A) of this section. No property shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of ~~any~~this ~~n~~Nation.

**§ 2001. Unlawful proceeds—Transaction with counsel—Banking transaction—Penalties**

- A. It is unlawful for any person knowingly or intentionally to receive or acquire proceeds and to conceal such proceeds, or engage in transactions involving such proceeds, known to be derived from a specified unlawful activity, as defined in subsection F of this section. This subsection does not apply to any transaction between an individual and the counsel of the individual necessary to preserve the right to representation of the individual, as guaranteed by the Constitution of the Cherokee Nation and by the Sixth Amendment of the United States Constitution. However, this exception does not create any presumption against or prohibition of the right of the Nation to seek and obtain forfeiture of any proceeds derived from a violation of the laws of the Cherokee Nation.
- B. It is unlawful for any person knowingly or intentionally to give, sell, transfer, trade, invest, conceal, transport, or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of a specified unlawful activity, as defined in subsection F of this section.
- C. It is unlawful for any person knowingly or intentionally to direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from a specified unlawful activity, as defined in subsection F of this section.
- D. It is unlawful for any person knowingly or intentionally to conduct a financial transaction involving proceeds derived from a specified unlawful activity, as defined in subsection F of this section, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds known to be derived from a violation of the laws of the Cherokee Nation, or to avoid a transaction reporting requirement under state or federal law.
- E. Notwithstanding any other provision of this section, it shall be lawful for an organization engaged in the business of banking to receive deposits and payments, to pay checks and other withdrawals, and to process any other financial transaction for its customers in the ordinary course of business if it has no actual knowledge of any violation of the laws of the Cherokee Nation by that customer. If an organization engaged in the business of banking, acting in good faith and without actual knowledge of any violation of the laws of the Cherokee Nation by its customer, acquires a security interest or statutory lien with respect to a customer's funds, that customer's funds which are subject to the security interest or lien shall not be subject to forfeiture action, to the extent of the amount of that customer's indebtedness to the banking organization.
- F. For purposes of this section, "specified unlawful activity" means an act or omission, including any initiatory, preparatory, or completed offense or omission that is punishable as a misdemeanor or felony under the laws of Cherokee Nation, or if the act occurred outside the Cherokee Nation would be punishable as a misdemeanor or felony under the laws of the state in which it occurred and under the laws of the Cherokee Nation.
- G. Any person convicted of violating any of the provisions of this section is guilty of:
1. A misdemeanor, if the violation involves Two Thousand Five Hundred Dollars (\$2,500.00) or less;



2. A felony, punishable by imprisonment for not more than three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00).

H. In addition to any criminal penalty, a person who violates any provision of this section shall be subject to a civil penalty of three (3) times the value of the property involved in the transaction.

### **§ 2002. Seizure and forfeiture procedures—Claims—Liens—Proceeds**

A. Any commissioned peace officer of this Nation is authorized to seize any currency, negotiable instrument, monetary instrument, equipment or property used or involved in, used to facilitate, delivered from or traceable to a violation of 21 CNCA § 2001. The seized item may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the Attorney General in the Cherokee Nation District Court; provided, in the event the Attorney General elects not to file such action, or fails to file such action within ninety (90) days of the date of the seizure of the item, the item shall be returned to the owner.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the Cherokee Nation District Court and shall be given all owners and parties in interest.

C. Notice shall be given according to one of the following methods:

1. Upon each owner, lienholder, or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by the Federal Rules of Civil Procedure; or

2. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the item described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the item forfeited to the Nation, if such fact is proven.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. Proceedings under this section shall be special proceedings.

H. At the hearing the petitioner shall prove by a preponderance of the evidence that property was used in the attempt or commission of an act specified in subsection A of this section with knowledge by the owner of the item.

I. The claimant of any right, title, or interest in the item may prove the lien, mortgage, or conditional sales contract to be bona fide and that the right, title, or interest created by the item was created without any knowledge or reason to believe that the item was being, or was to be, used for the purpose charged.

- J. In the event of such proof, the court may order the item released to the bona fide or innocent owner, lienholder, mortgagee, or vendor if the amount due such person is equal to, or in excess of, the value of the item as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser.
- K. If the amount due to such person is less than the value of the item, or if no bona fide claim is established, the item may be forfeited to the Nation and may be sold pursuant to judgment of the court, as on sale upon execution, and as provided in 21 CNCA § 2506, except as otherwise provided for by law.
- L. A seized item taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the petitioner or in the custody of the law enforcement agency. The petitioner shall release the seized item to the owner of the item if it is determined that the owner had no knowledge of the illegal use of the item or if there is insufficient evidence to sustain the burden of showing illegal use of the item. If the owner of the property stipulates to the forfeiture and waives the hearing, the petitioner may determine if the value of the item is equal to or less than the outstanding lien. If such lien exceeds the value of the item, the item may be released to the lienholder. A seized item which has not been released by the petitioner shall be subject to the orders and decrees of the court.
- M. Attorney fees shall not be assessed against the Cherokee Nation or the petitioner for any actions or proceeding pursuant to this section.
- N. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:
1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the item, if any, up to the amount of the interest of that person in the property, when the court declaring the forfeiture orders a distribution to such person;
  2. To the payment of the actual reasonable expenses of preserving the item;
  3. To the victim of the crime to compensate the victim for any loss incurred as a result of the act for which the item was forfeited; and
  4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-half (1/2) to the investigating law enforcement agency and one-half (1/2) to the Attorney General to be used to defray any lawful expenses of the office of the Attorney General. If the petitioner is not the Attorney General, then the one-half (1/2) which would have been designated to that office shall be distributed to the petitioner.
- O. If the court finds that the item was not used in the attempt or commission of an act specified in subsection A of this section and was not an item subject to forfeiture pursuant to subsection B of this section, the court shall order the item released to the owner as the right, title, or interest as determined by the court.
- P. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection A or B of this section. No item shall be forfeited pursuant to the

provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while the item was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the the Cherokee Nation, the United States, or of any state.

Q. Whenever any item is forfeited pursuant to this section, the court may order that the forfeited item may be retained for its official use by the Cherokee Nation or the law enforcement agency which seized the item.

### **§ 2503. Property subject to forfeiture**

A. The following shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act;
2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act;
3. All property which is used, or intended for use, as a container for property described in paragraphs 1 and 2 of this subsection;
4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in 21 CNCA § 2101, or in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when such property is unlawfully possessed by an occupant thereof, except that:
  - a. No conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act; and
  - b. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state or Indian nation or tribe;
5. All books, records and research, including formulas, microfilm, tapes and data

which are used in violation of the Uniform Controlled Dangerous Substances Act;

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act;
7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under this act. The burden of proof is upon claimants of the property to rebut this presumption;
8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner.

8-9. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act.

- B. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.
- C. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of 21 CNCA § 2415.
- D. All items forfeited in this section shall be forfeited under the procedures established in 21 CNCA § 2506. Whenever any item is forfeited pursuant to this section the Cherokee Nation District Court shall order that such item, money, or monies derived from the sale of such item be deposited by the law enforcement agency which seized the item in the revolving fund provided for in 21 CNCA § 2107; provided, such item, money or monies derived from the sale of such item forfeited due to nonpayment of a fine imposed pursuant to the provisions of 21 CNCA § 2415 shall be apportioned as provided in 21 CNCA § 2416. Items, money or monies seized pursuant to subsections (A) and (B) of this section shall not be applied or considered toward satisfaction of the fine imposed by 21 CNCA § 2415. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of 21 CNCA § 2505.

- E. All property taken or detained under this section shall not be repleviable, but shall remain in the custody of Cherokee Nation, subject only to the orders and decrees of a court of competent jurisdiction. The Attorney General of Cherokee Nation shall follow the procedures outlined in 21 CNCA § 2506 dealing with notification of seizure, intent of forfeiture, final disposition procedures, and release to innocent claimants with regard to all property included in this section detained by Cherokee Nation.

#### **§ 2504. Seizure of property**

Any peace officer of this Nation shall seize property subject to forfeiture under this act when:

1. The seizure is incident to arrest or search warrant;
2. The property has been the subject of a prior judgment in favor of the ~~state~~ Nation in an injunction or forfeiture proceeding under this act;
3. Probable cause exists to believe the property is dangerous to health or safety; or
4. Probable cause exists to believe the property has been used, or will be used, in violation of this act.

#### **§ 2506. Seizure of property—Notice of seizure and intended forfeiture proceeding—Verified answer and claim to property—Hearing—Evidence and proof—Proceeds of sale**

A. Any peace officer of this Nation shall seize the following property:

1. Any property described in 21 CNCA § 2503(A)~~(4) or (6)~~. Such property shall be held as evidence until a forfeiture has been declared or release ordered; except for property described in paragraphs 1, 2 and 3 of 21 CNCA § 2503(A), or in the case of money, coins, and currency, deposited as provided in 21 CNCA § 2503(E); provided, any money, coins and currency taken or detained pursuant to this section may be deposited in an interest-bearing account by or at the direction of the Attorney General in the office of the Treasurer if the Attorney General determines the currency is not to be held as evidence. All interest earned on such monies shall be returned to the claimant or forfeited with the money, coins and currency which was taken or detained as provided by law;
2. Any property described in 21 CNCA § 2503(B); or
3. Any property described in 21 CNCA § 2503(C).

B. Notice of seizure and intended forfeiture proceeding shall be filed in the Office of the Court Clerk of the Cherokee Nation District Court and shall be given all owners and parties in interest.

C. Notice shall be given according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record in the

Cherokee Nation Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the Prosecuting Attorney of the Cherokee Nation District Court, by mailing a copy of the notice by registered mail to the last-known address; or
  3. Upon all other owners or interested parties, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the Nation.
- D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.
- E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the Court shall hear evidence upon the fact of the unlawful use and shall order the property forfeited to the state, if such fact is proved.
- F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.
- G. At a hearing in a proceeding against property described in 21 CNCA § 2503(A)(4) or (6) or (B) or (C), the requirements set forth in said paragraph or subsection, respectively, shall be satisfied by the Nation by a preponderance of the evidence.
- H. The claimant of any right, title or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide or innocent ownership interest and that his right, title or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.
- I. In the event of such proof, the Court shall order the property released to the bona fide or innocent owner, lien holder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the purchaser.
- J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Nation and sold under judgment of the court, as on sale upon execution, except as otherwise provided for in 21 CNCA § 2503.
- K. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Office of the Prosecuting Attorney of the Cherokee Nation District Court, subject only to the orders and decrees of the Court or the official having jurisdiction thereof.
- L. The proceeds of the sale of any property not taken or detained by Cherokee Nation shall be distributed as follows, in the order indicated:
1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the

property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the property; and
3. The balance to the Narcotics Revolving Fund.

M. Whenever any vehicle, airplane or vessel is forfeited under this act, the Cherokee Nation District Court may order that the vehicle, airplane or vessel seized may be retained by the law enforcement agency which seized the vehicle, airplane or vessel for its official use.

N. If the Court finds that the Nation failed to satisfy the required showing provided for in subsection (G) of this section, the Court shall order the property released to the owner or owners.

#### **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.

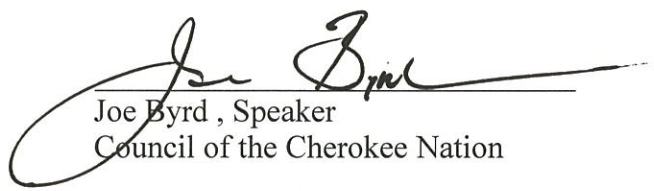
#### **Section 7. Effective Date/Emergency Declared**

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.

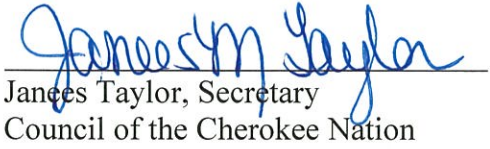
#### **Section 8. Self-Help Contributions**

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.

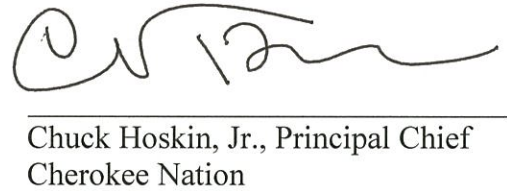
Enacted by the Council of the Cherokee Nation on the 14<sup>th</sup> day of June, 2021.

  
Joe Byrd , Speaker  
Council of the Cherokee Nation

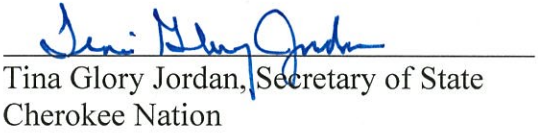
**ATTEST:**

  
Janees Taylor, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 18<sup>th</sup> day of June, 2021.

  
Chuck Hoskin, Jr., Principal Chief  
Cherokee Nation

**ATTEST:**

  
Tina Glory Jordan, Secretary of State  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

- |                   |            |                       |            |
|-------------------|------------|-----------------------|------------|
| Rex Jordan        | <u>Yea</u> | Harley Buzzard        | <u>Yea</u> |
| Joe Byrd          | <u>Yea</u> | Victoria Vazquez      | <u>Yea</u> |
| Wes Nofire        | <u>Yea</u> | Dora Smith Patzkowski | <u>Yea</u> |
| Mike Dobbins      | <u>Yea</u> | Joe Deere             | <u>Yea</u> |
| E. O. "Jr." Smith | <u>Yea</u> | Keith Austin          | <u>Yea</u> |
| Daryl Legg        | <u>Yea</u> | Janees Taylor         | <u>Yea</u> |
| Canaan Duncan     | <u>Yea</u> | Julia Coates          | <u>Yea</u> |
| Shawn Crittenden  | <u>Yea</u> | Mary Baker Shaw       | <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:**

*James Grew* 5/12/21  
Signature/Initial Date  
*JRM*

**LEGISLATIVE CLEARANCE:**

**Legal & Legislative Coordinator:**

*Shade* 5/12/21  
Signature/Initial Date

**Standing Committee & Date:**

*Rules* 5/27/21

**Chairperson:**

*Byrd*  
Signature/Initial Date

**Cherokee Nation  
Act/Resolution Proposal Form**

Act       Resolution

**TITLE:**

**AN ACT AMENDING TITLE 21 OF THE CHEROKEE  
NATION CODE ANNOTATED AND DECLARING AN  
EMERGENCY**

DEPARTMENT CONTACT: Chuck Hoskin Jr.

RESOLUTION PRESENTER: Taralee Montgomery

COUNCIL SPONSOR: Janees Taylor, Canaan Duncan, Victoria  
Vazquez, Daryl Legg, EO Smith, *Rex Jordan*  
*Keith Austin* *Joe Deere*

**NARRATIVE:**

The purpose of this Act is to further modernize the Nation's criminal code.

MAY 12 '21 PM 12:37