

Amended See

LA# 29-03

**ACT AMENDING THE
CHEROKEE NATION TRIBAL GAMING ACT; PROVIDING
FOR THE REGULATIONS AND LICENSING OF GAMING ON LANDS
UNDER THE JURISDICTION OF CHEROKEE NATION; AND
DECLARING AN EMERGENCY**

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1: Section 1 of the Cherokee Nation Tribal Gaming Act (4 CNCA §1) is amended to read as follows:

Section 1. Title and Codification

This enactment shall be known as the "Cherokee Nation Tribal Gaming Act" and shall be codified at Title IV, Sections 1 - 53 of the Cherokee Nation Code Annotated.

Section 2: Section 2 of the Cherokee Nation Tribal Gaming Act (4 CNCA §2) is amended to read as follows:

Section 2. Purpose

The purpose of this Act is:

A. To regulate the conduct of gaming owned and operated by the Cherokee Nation, or its officially licensed agents, on tribal lands of the Cherokee Nation, (hereafter referred to as Cherokee Nation) in compliance with Public Law 100-497, October 17, 1988, 102 Stat. 2467.

B. To provide a basis under tribal law for the regulation of gaming by the Cherokee Nation adequate to shield it from organized crime and other corrupting influences; ~~and to insure that the tribe Cherokee Nation is the primary beneficiary sole beneficial owner of the gaming operation;~~ and to assure that gaming is conducted fairly and honestly by the tribe, its agents, and the players; *and to implement the Indian Gaming Regulatory Act, 25 U.S.C. §§2701, et seq. ("IGRA"), and the regulations of the National Indian Gaming Commission ("NIGC") at 25 C.F.R. Parts 500 et seq.*

Section 3: A new Section 3 is hereby added to the Cherokee Nation Tribal Gaming Act to read as follows:

Section 3.0 Legislative History

(a) IGRA was enacted on October 17, 1988, establishing the NIGC. Under the IGRA, the NIGC is charged with regulating Class II gaming and certain aspects of Class III gaming.

(b) The NIGC adopted certain regulations in Chapter III of Title 25, Code of Federal Regulations (Parts 500-599), to provide purpose and scope, procedures for service of NIGC determinations, requirements for submitting new and existing gaming ordinances to the Chairman for approval, requirements for background investigations on primary management officials and key employees, and requirements for licensing employees of Indian gaming operations.

(c) Cherokee Nation enacted Legislative Act 30-89, on April 8, 1989, known as the "Cherokee Nation Tribal Gaming Act," to regulate the conduct of gaming owned and operated by the Cherokee Nation.

(d) On October 22, 1990, the Cherokee Nation amended the Gaming Act with Legislative Act 9-90, to comply with P.L. 100-497, October 17, 1988, 102 Stat. 2467, and to establish the Cherokee Nation Gaming Commission.

Section 4: Former Section 3 of the Cherokee Nation Tribal Gaming Act, "Definitions" (4 CNCA §3), is renumbered Section 4 and amended to read as follows:

Section 4. Definitions

For the purposes of this Title:

A. The "Nation" means the Cherokee Nation.

B. "Person" means any natural individual, company, partnership, firm, joint venture, association, corporation, estate, political entity, or other identifiable entity to which this Title can be applied.

C. "Restricted Individual Lands" means any lands the title to which is either held in trust by the United States for the benefit of any individual citizen of the Nation or held by any individual citizen of the Nation subject to restriction by the Nation over which the Nation exercised governmental power.

D. "Tribal Indian Lands" means:

~~1) Any lands the title to which is either held in trust by the United States for the benefit of the Nation or held by the Nation subject to restriction by the United States against alienation and over which the Nation exercises governmental power.~~

~~2) Land that title to which is either held in fee by the Nation, or which is held in trust by the United States for the Cherokee Nation or its members, and land title to which was acquired by the tribe through purchase by or for the tribe.~~

Land over which Cherokee Nation exercises governmental power and that is either—

a) Held in trust by the United States for the benefit of Cherokee Nation or any member of Cherokee Nation; or

b) Held by Cherokee Nation or any member of Cherokee Nation which is subject to restriction by the United States against alienation.

E. "Class I Gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

F. "Class II Gaming" means bingo or lotto (whether or not electronic, computer, or other technological aids are used) when players:

1) Play for prizes with cards bearing numbers or other designations;

- 2) *Cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined; and*
- 3) *Win the game by being the first person to cover a designated pattern on such cards.*

If played in the same location as bingo or lotto, Class II gaming includes (a) pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo; and (b) non-banking games that (1) state law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and (2) players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes.

Class II Gaming does not include any banking card games, including baccarat, chemindefer, or black jack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

G. The term "license" means:

- 1) *in connection with a gaming facility, a license issued by the Cherokee Nation Gaming Commission authorizing the operation of a gaming facility at a particular location owned and operated by the Nation; and*
- 2) *in connection with an individual person, a license issued by the Cherokee Nation Gaming Commission authorizing the person to be engaged as an employee or management official of a licensed gaming facility.*

Section 11: Section 11 of the Cherokee Nation Tribal Gaming Act (4 CNCA §11) is hereby amended to read as follows:

Section 11. Establishment of Cherokee Nation Gaming Commission

The Cherokee Nation Gaming Commission is hereby established as a part of the Executive Branch of the government of the Nation in order to carry out the Nation's responsibilities under IGRA and the NIGC's regulations at 25 C.F.R. §§501 et seq. and to implement the provisions of this Act. Provided, however, all actions and regulations of the Cherokee Nation Gaming Commission shall be consistent with the provisions of this Act, all other laws and resolutions of the Cherokee Nation Council, and the Constitution of Cherokee Nation.

Section 12: Section 12 of the Cherokee Nation Tribal Gaming Act (4 CNCA §12) is hereby amended to read as follows:

Section 12. Membership

A. *The Cherokee Nation Gaming Commission shall consist of no less than three (3) members of the Cherokee Nation to be appointed by the Principal Chief of the Cherokee Nation and approved by the Tribal Council of the Cherokee Nation. ~~Commission members will serve for a period of one (1), two (2), and three (3) years.~~*

B. *To be eligible to serve as a commissioner, a person must (1) be at least 25 years of age; (2) have a bachelor's degree from a college or university or its equivalent; (3) be of high moral character or integrity; (4) never have been convicted of a criminal offense other than misdemeanor traffic offenses; and (5) be physically able to carry out the duties of office.*

C. The Principal Chief shall, at the time of making the initial appointment and also at the time of making each appointment to fill a vacancy on the Commission as provided herein, designate one member to serve as Chairman, one member to serve as Vice Chairman, and one member to serve as Secretary.

D. The terms of office of the *Cherokee Nation Gaming Commission* shall be three years; provided, however, that in order to stagger the expiration of terms of office, one of the first group of Commission members appointed hereunder shall be appointed for a term of one year, one for a term of two years, and one for a term of three years. *Provided, however, the amendments set forth in this Legislative Act 1-94 shall not affect the terms of office of the persons who are members of the Cherokee Nation Gaming Commission as of the effective date of this Act.*

E. Commission members shall serve their terms of office free from political influence from any department of the government of the Nation and may be removed only for cause, after a hearing by the Judicial Appeals Tribunal under such rules and procedures as prescribed by the Council. A petition for removal for cause may be brought by a vote of the majority of Tribal Council members, or the Principal Chief. Except as authorized under the Constitution of the Cherokee Nation, no member of the *Cherokee Nation Gaming Commission* shall, directly or indirectly, solicit, receive, or in any manner be concerned in soliciting or receiving any assessment, subscription, or contribution for any political organization, candidacy, or other political purpose. No member of the *Cherokee Nation Gaming Commission* shall be a member of a committee of a partisan political club, or a candidate for nomination or election to any paid tribal office, or take part in the management or affairs of any tribal political party or in any political campaign, except to exercise his or her right as a citizen privately to express his or her opinion and to cast his or her vote.

F. In the event of a vacancy in the membership of the *Cherokee Nation Gaming Commission*, the Principal Chief shall, within twenty days of the occurrence of the vacancy, fill such vacancy for the unexpired term, subject to confirmation by a majority vote of the Council.

G. The *Cherokee Nation Gaming Commission* shall have the power to generally oversee ~~the director and the tribal gaming office and review its actions for approval~~ *the licensing of all gaming operations and the conduct of such operations in order to ensure compliance with this Act and any regulations adopted and orders issued by the commission.* The *Cherokee Nation Gaming commissioners* ~~commission~~ shall submit to each ~~execute~~ a conflict of interest provision disclosing potential unethical situations.

H. The *Cherokee Nation Gaming Commission* be charged with the sole responsibilities of administering and enforcing the provisions of this Act.

I. It shall be the responsibility of the *Cherokee Nation Gaming Commission* to promulgate regulations necessary to administer and implement the provisions of this Act. *The Cherokee Nation Gaming Commission's regulations shall include but not be limited to (1) procedures for conducting background investigations of key employees and primary management officials (as those terms are hereinafter defined); (2) procedures for issuing licenses to such employees and officials; (3) procedures for resolving gaming disputes between the gaming public and a licensed gaming facility; (4) procedures ensuring compliance with NIGC regulations requiring payment of annual fees to, and filing quarterly reports with, the NIGC; and (5) procedures ensuring that all gaming facilities are in compliance with the federal Privacy Act procedures as required by NIGC regulations. Such regulations may require licensees to adopt gaming dispute-resolution procedures, subject to Commission approval, with a right of appeal to*

the Cherokee Nation Gaming Commission. In resolving such gaming disputes on appeal or otherwise the Cherokee Nation Gaming Commission may receive written statements, affidavits, or other materials from the parties to said dispute or their witnesses and in its discretion may order one or more hearings to take oral statements or testimony. Any decision of the Cherokee Nation Gaming Commission in resolving such gaming disputes shall be in writing and may be appealed by the parties to the Judicial Appeals Tribunal by filing a written notice of appeal and a statement of the grounds therefor within 30 days of the date of receipt of the Commission's decision in accordance with Section 19 of this Act. All decisions on appeal by the Judicial Appeals Tribunal, and any decision by the Cherokee Nation Gaming Commission for which a timely Notice of Appeal has not been filed, shall be final.

J. The duties of the Cherokee Nation Gaming Commission shall include, but not be limited to, the following:

- 1. Printing and making available application forms for initial and renewal licenses, as well as any other licenses or tax return forms.**
- 2. Supervising the collection of all fees and taxes prescribed by this Act.**
- 3. Processing all license applications and tax returns which will be submitted under oath.**
- 4. Issuing of licenses.**
- 5. Determining applicable license fees.**
- 6. Auditing all returns and causing audits to be performed pursuant to IGRA and NIGC regulations.**
- 7. Reviewing all records, documents, and anything else necessary and pertinent to the financial accountability of licensees or enforcement of any provision of this ordinance.**
- 8. Reviewing for approval or denial any application or licensee, and limiting conditions to suspend or restrict any license.**
- 9. Proposing fines as needed for violations of this Act and/or regulations issued by Cherokee Nation Gaming Commission.**

Section 13: Section 13 of the Cherokee Nation Tribal Gaming Act (4 CNCA §13) is amended to read as follows:

Section 13. Procedures Opportunities for Hearing

The Cherokee Nation Gaming Commission shall afford an applicant for a license an opportunity for hearing prior to any final action denying such application and shall afford a licensee or any other person subject to this ordinance the opportunity for a hearing prior to taking any final action resulting in denying, terminating, revoking, suspending, or limiting a license or any other adverse action the commission deems appropriate; provided, the director Cherokee Nation Gaming Commission may summarily temporarily suspend or extend suspension of licenses for sixty (60) days in those cases where such action is deemed appropriate by the director Cherokee Nation Gaming Commission. In cases where a license is suspended prior to hearing, an opportunity for a hearing shall be provided promptly after suspension at the request of the licensee. The Cherokee Nation Gaming Commission is authorized to adopt rules and

regulations, consistent with this Act, governing the conduct of any and all hearings before the Cherokee Nation Gaming Commission as well as the process of issuing, modifying, conditioning, suspending, or revoking any license.

Section 14: Section 14 of the Cherokee Nation Tribal Gaming Act (4 CNCA §14) is amended to read as follows:

Section 14. Preliminary Determination

Whenever, upon preliminary factual finding, the *Cherokee Nation Gaming Commission* determines that any person has failed to comply with the provision of this Act or any regulations promulgated hereunder, the *Cherokee Nation Gaming Commission* shall make a certification of findings with a copy thereof to the subject or subjects of that determination. After five (5) days notice, and within thirty (30) days thereof, the committee shall hold a hearing at which time the *subject affected person or licensee* shall have an opportunity to be heard and present evidence. The commission shall have the *specific-right authority* to enjoin and restrain illegal activities.

Section 15: Section 15 of the Cherokee Nation Tribal Gaming Act (4 CNCA §15) is amended to read as follows:

Section 15. Hearing

At such hearing it shall be the obligation of the *subject applicant or licensee* to show cause why the preliminary determination is incorrect, why the application in question should not be denied, why the license or licenses in question shall not be revoked or suspended, why the period of suspension should not be extended, or to show cause why special conditions or limitations upon a license should not be imposed, to show cause why any other action regarding any other person or persons subject to any action should not be taken.

Section 16: Section 16 of the Cherokee Nation Tribal Gaming Act (4 CNCA §16) is amended to read as follows:

Section 16. Additional Powers of Cherokee Nation Gaming Commission

The *Cherokee Nation Gaming Commission* shall be empowered with all necessary powers of control over all such entities *and persons* as would normally fall within the purview of such *Cherokee Nation Gaming Commission*, or of those entities over which specific control is granted to the *Cherokee Nation Gaming Commission* by the Council. Without limiting the generality of the foregoing statement, the *Cherokee Nation Gaming Commission* or any member thereof, in the performance of its duties as defined by law, shall have the power to administer oaths, to conduct hearings, ~~to deputize law enforcement officers for purposes of enforcement of~~ *under this eede Act*, and to compel the attendance of witnesses and the production of the books, records, and papers of any person, firm, association, or corporation within the jurisdiction of the Nation for the purpose of the enforcement, assessment, or collection of any tax.

Section 17: Section 17 of the Cherokee Nation Tribal Gaming Act (4 CNCA §17) is amended to read as follows:

Section 17. Limitations—Recommendations

The *Cherokee Nation Gaming Commission* shall exercise only that authority granted herein, but may make additional recommendations to the Council at any time it deems proper.

Section 18: Section 18 of the Cherokee Nation Tribal Gaming Act (4 CNCA §18) is amended to read as follows:

Section 18. Salaries

The annual compensation, payable monthly, of the Chairman, Vice Chairman, and Secretary-Member of the *Cherokee Nation Gaming Commission* shall be as determined in accordance with the Annual Budget Appropriation.

Section 19: Section 19 of the Cherokee Nation Tribal Gaming Act (4 CNCA §19) is amended to read as follows:

Section 19. Appeals

A. The Judicial Appeals Tribunal shall have exclusive jurisdiction to hear appeals from final decisions of the *Cherokee Nation Gaming Commission* denying, modifying, conditioning, or revoking any license.

B. Any affected party may appeal any final decision of the *Cherokee Nation Gaming Commission* within 30 days after such decision by filing a notice of appeal with the *Cherokee Nation Gaming Commission* and serving a copy to the Nation. Thereafter the *Cherokee Nation Gaming Commission* shall promptly file the full record of the proceeding, including the notice of appeal, with the Judicial Appeals Tribunal.

C. In all appeals, the Judicial Appeals Tribunal shall give proper deference to the administrative expertise of the *Cherokee Nation Gaming Commission*. The Judicial Appeals Tribunal shall not set aside, modify, or remand any determination by the *Cherokee Nation Gaming Commission* unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The Judicial Appeals Tribunal shall issue a written decision on all appeals, which decision shall be final.

D. The Judicial Appeals Tribunal may, in its discretion, award costs and attorneys' fees to the Nation against any appellant whose appeal was frivolous, malicious, or in bad faith. Such fees shall be assessed and collected as a tax imposed under this title.

Section 20: Section 20 of the Cherokee Nation Tribal Gaming Act (4 CNCA §20) is amended to read as follows:

Section 20. Finality of Commission or Judicial Appeals Tribunal action

Any final finding or determination of the *Cherokee Nation Gaming Commission* which is not timely appealed, and any final determination of the Judicial Appeals Tribunal in proceedings pursuant to Section 19, shall be final

and binding in any other proceeding against or by the same person before the *Cherokee Nation Gaming Commission* or the *Judicial Appeals Tribunal*.

Section 21: Section 21 of the Cherokee Nation Tribal Gaming Act (4 CNCA §21) is amended to read as follows:

Section 21. License Required for Gaming Facilities

~~Any agent of the Cherokee Nation conducting~~ *All locations where* public gaming operations *are conducted* for the benefit of the Cherokee Nation on ~~property of the Cherokee Nation Indian lands~~ shall be required to have and display prominently an appropriate, valid, and current public gaming license issued pursuant to the provision of this Act. Any form of public gaming operations conducted within the jurisdiction of the Cherokee Nation without the ~~lawful written approval of a current, duly-issued license to conduct gaming operations approved by~~ the Cherokee Nation Gaming Commission is prohibited. Furthermore, it shall be unlawful for any person to conduct gaming activities within the boundaries of the Cherokee Nation which are not under license by and for the benefit of the Cherokee Nation or which mislead the general public in believing the gaming operation is owned and under control and operated by the Cherokee Nation. The *Cherokee Nation Gaming Commission* shall have the right *authority* to enjoin and restrain illegal activities.

Section 22: Section 22 of the Cherokee Nation Tribal Gaming Act (4 CNCA §22) is amended to read as follows:

Section 22. Classes and Fees

There shall be ~~three~~ *(3) two* different classes of gaming, each characterized by its separate requirements and fees. These classes are created in compliance with the Indian Gaming Regulatory Act, Public Law 100-497, October 17, 1988, *and the rules and regulations adopted pursuant to said Act.*

Section 23. Class I Gaming

No license requirement.

Section 24: Section 24 of the Cherokee Nation Tribal Gaming Act (4 CNCA §24) is amended to read as follows:

Section 24. Class II Gaming License

~~Only a wholly-owned Cherokee Nation tribal enterprise or its tribal enterprise wholly owned by Cherokee Nation or a duly-designated and approved agent or employee, acting on behalf of such tribal enterprise,~~ may apply for and receive a Class II Gaming license. Also, gaming must be conducted in facilities of the Cherokee Nation. A separate license must be issued by the ~~Committee~~ *Cherokee Nation Gaming Commission* for each place, facility, or location on Tribal lands on which Class II gaming is conducted. ~~The Cherokee Nation will have the sole proprietary interest and responsibility for the conduct of any gaming activity under a Class II license and all net revenues from any said gaming are to be used for tribal purposes including:~~

~~A. To fund tribal government operations or programs;~~

~~B. To provide for the general welfare of the Cherokee Nation and its members;~~

~~G. To promote tribal economic development;~~

~~The Cherokee Nation will cause annual audits of all gaming activity under a Class II license to be conducted within the existing independent tribal audit system and will provide all audit information to the National Indian Gaming Commission. The management and operation of any Class II gaming facility shall be subject to all applicable provisions of the Indian Gaming Regulatory Act. An annual fee of \$2,500 will be charged for any Class II gaming license.~~

Section 25: Section 25 of the Cherokee Nation Tribal Gaming Act (4 CNCA §25) is hereby repealed.

~~Section 25. Class III Gaming~~

~~Class III gaming is hereby authorized to be conducted only by an enterprise which is owned solely by the Cherokee Nation and may be issued to its designated and approved agents and employees. The Cherokee Nation will have the sole proprietary interest and responsibility for the conduct of any Class III gaming activity and the net revenues:~~

~~A. To fund tribal government operations or programs;~~

~~B. To provide for the general welfare of the Cherokee Nation and its members.~~

Section 26: A new section is hereby added to the Cherokee Nation Tribal Gaming Act, Section 26, which shall read as follows:

Section 26. Use of Gaming Revenue

The Cherokee Nation will have the sole proprietary interest in and responsibility for the conduct of any gaming activity under a Class II license and all net revenues from any such gaming are to be used for tribal purposes, including:

1) To fund tribal government operations or programs;

2) To provide for the general welfare of the Cherokee Nation and its tribal members;

3) To promote tribal economic development;

4) To donate to charitable organizations; or

5) To help fund operations of local government agencies.

Section 31: Section 31 of the Cherokee Nation Tribal Gaming Act (4 CNCA §31) is hereby amended to read as follows:

Section 31. Records, Returns and Audits

It shall be the responsibility of the Cherokee Nation Gaming Commission to promulgate regulations and cause to be established proper accounting procedures

and methods of operations for all license of Class II and III-gaming activities so that all monies or things of value received and paid out may be properly monitored and accounted for. All licenses under this Act shall be required to keep an approved accounting system which shall comply with, but not be limited to, all applicable provisions of this Act or regulations of the *Cherokee Nation Gaming Commission*. Said accounting system shall reflect all business and financial transactions involved or connected in any manner with the operation and conducting of activities authorized by this Act. The *Cherokee Nation Gaming Commission* shall have the right to subpoena records or to secure a Court Order to seize records for property not surrendered.

No applicant, license, or employee thereof shall neglect or refuse to produce records or evidence or to give information upon proper and lawful demand by the director of the *Cherokee Nation Gaming Commission*, or shall otherwise interfere with any proper and lawful efforts by the director of the *Cherokee Nation Gaming Commission* to produce such information. The *Cherokee Nation Gaming Commission* may conduct such hearings as deemed necessary to insure compliance with the provisions of this Act and accountability for all monies received and spent. Failure to comply with the provisions of this Act shall constitute grounds for complaint with the National Indian Gaming Commission and summary suspensions or revocation of any license or management contract.

The Cherokee Nation shall cause annual independent audits of all gaming operations conducted and shall submit the resulting annual audit report to the National Indian Gaming Commission in conformance with the NIGC's regulations. The management and operation of any gaming facility shall be subject to all applicable provisions of the Indian Gaming Regulatory Act.

All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit described in the preceding paragraph.

Section 32: Section 32 of the Cherokee Nation Tribal Gaming Act (4 CNCA §32) is hereby amended to read as follows:

Section 32. Rules of the Game

It shall be the responsibility of the Cherokee Nation Gaming Commission to promulgate regulations to establish the particular rules of ~~any given class all~~ ~~classes~~ of gaming in order that said gaming will be conducted with fairness and uniformity.

Section 33: Section 33 of the Cherokee Nation Tribal Gaming Act (4 CNCA §33) is hereby amended to read as follows:

Section 33. Age Limit for Gaming

No person who is under the age of 18 shall operate, engage, or participate in any manner in the operation of any class gaming activity. It shall be the responsibility of ~~any Manager or Licensed Agent~~ *the manager of all licensed gaming operations* of the Cherokee Nation to ensure compliance with this age limit requirement.

Section 34: Section 34 of the Cherokee Nation Tribal Gaming Act (4 CNCA §34) is hereby renumbered Section 52 of the Act and amended to read as follows:

~~Section 34. Inherent Sovereignty of the Cherokee Nation~~

~~With the passage of the amendments to this Legislative Act notwithstanding any other law or ordinance, this ordinance does not limit the inherent sovereignty of the Cherokee Nation.~~

Section 52. Sovereign Immunity

Norwithstanding any provisions herein, this Act shall not limit or restrict the inherent sovereignty of Cherokee Nation, and neither the Act nor any of its provisions shall operate to waive, in whole or in part, the sovereign immunity of Cherokee Nation.

Section 35: A new section is hereby added to the Cherokee Nation Tribal Gaming Act, Section 35, which shall read as follows:

Section 35. Protection of the Environment

All gaming facilities licensed by the Cherokee Nation Gaming Commission shall be constructed, maintained, and operated in a manner that adequately protects the human environment and the health and safety of the public.

Section 41: New sections are hereby added to the Cherokee Nation Tribal Gaming Act, Sections 41 through 51 and Section 53, which shall read as follows:

Section 41. Licenses for Key Employees and Primary Management Officials

The Cherokee Nation, by and through the Cherokee Nation Gaming Commission, shall ensure that the following policies and procedures as prescribed by the IGRA are implemented with respect to key employees and primary management officials employed at any Class II gaming facility operation on Cherokee Nation tribal lands.

Section 42. Definitions

For purposes of Sections 41 through 49:

Key Employee includes, but is not limited to:

- a) A person who performs one or more of the following functions:
 - (1) Bingo Caller;*
 - (2) Counting room supervisor;*
 - (3) Chief of Security;*
 - (4) Custodian of gaming supplies or cash;*
 - (5) Floor Manager;*
 - (6) Approver of credit; or*
 - (7) Custodian of gambling devices including persons with access to cash and accounting records;**

- b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or*

- c) *If not otherwise included, the four most highly compensated persons in the gaming operation.*

Primary Management Official means:

- a) *The person having management responsibility for a management contract;*
- b) *Any person who has authority:*
(1) To hire and fire employees;
(2) To set up working policy for the gaming operation; or
- c) *The chief financial officer or other person who has financial management responsibility.*

Section 43. Application Forms

(a) The following notice shall be placed on the application form for key employees or a primary management official before that form is filled out by an applicant:

"In compliance with the Privacy Act of 1974, the following information is provide: Solicitation of the information on this form is authorized by 25 U.S.C. §§2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated on this notice will result in a tribe being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors on processing your application."

(b) Existing key employees and primary management officials shall be notified in writing that they shall either:

- 1) Complete a new application form that contains a Privacy Act notice;*
or
- 2) Sign a statement that contains the Privacy Act notice and consent to routine uses as described in that notice.*

(c) The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

"A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment.

(U.S. Code, Title 18, Section 1001.)"

(d) Cherokee Nation, by and through the Cherokee Nation Gaming Commission, shall notify in writing existing key employees and primary management officials that they shall either:

- 1) Complete a new application form that contains a notice regarding false statements; or**
- 2) Sign a statement that contains the notice regarding false statements.**

Section 44. Background Investigations

(a) The Cherokee Nation, by and through the Cherokee Nation Gaming Commission, shall request from each primary management official and from each key employee all of the following information:

- 1) Full name, other names used (oral or written), social security number(s), date of birth, place of birth, citizenship, gender, all languages (spoken or written);**
- 2) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license number(s);**
- 3) The names and current addresses of at least 3 personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a) 2) of this section;**
- 4) Current business and residence telephone numbers;**
- 5) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;**
- 6) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;**
- 7) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the Court involved, and date and disposition if any;**
- 8) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the Court involved, and the date and disposition;**
- 9) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listing pursuant to paragraph (a) 7) or (a) 8) of this section, the criminal charge, the name and address of the Court involved, and the date and disposition;**
- 10) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;**
- 11) A current photograph;**

12) *Any other information Cherokee Nation Gaming Commission deems relevant; and*

13) *Fingerprints consistent with procedures adopted by Cherokee Nation Gaming Commission in accordance with 25 C.F.R. §522.2(h).*

(b) Cherokee Nation, by and through the Cherokee Nation Gaming Commission, shall conduct an investigation sufficient to make a determination under subsection 45 below. In conducting a background investigation, the Cherokee Nation Gaming Commission and/or any agent acting on its behalf shall promise to keep confidential the identity of each person in the course of the investigation.

Section 45. Eligibility Determination

Cherokee Nation, by and through the Cherokee Nation Gaming Commission, shall review a person's prior activities, criminal record, if any, and reputation, habits, and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Cherokee Nation Gaming Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, no gaming facility on Indian lands may employ that person in a key employee or primary management official position.

Section 46. Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission

(a) When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, Cherokee Nation, by and through the Cherokee Nation Gaming Commission, shall forward to the National Indian Gaming Commission a completed application for employment and shall conduct the background investigation and make the determination referred to in Section 45.

(b) The Cherokee Nation Gaming Commission shall forward the report referred to in Section 47 to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

(c) The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

Section 47. Report to the National Indian Gaming Commission

(a) Pursuant to the procedures set out in Section 44, the Cherokee Nation Gaming Commission shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

- 1) Steps taken in conducting a background investigation;*
- 2) Results obtained;*
- 3) Conclusions reached; and*
- 4) The basis for those conclusions.*

(b) The Cherokee Nation Gaming Commission shall submit with the report, a copy of the eligibility determination made under Section 45.

(c) If a license is not issued to an applicant, the Nation:

- 1) Shall notify the National Indian Gaming Commission; and**
- 2) May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Record System.**

(d) With respect to key employees and primary management officials, the Cherokee Nation Gaming Commission shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his/her designee for no less than three (3) years from the date of termination of employment.

Section 48. Granting a Gaming License

(a) If, within a thirty (30) day period after the National Gaming Commission receives a report, the National Indian Gaming Commission notifies the Cherokee Nation Gaming Commission that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Cherokee Nation Gaming Commission has provided an application and investigative report to the National Indian Gaming Commission, the Cherokee Nation Gaming Commission may issue a license to such applicant.

(b) The Cherokee Nation Gaming Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee of a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under paragraph (a) of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

(c) If, within the 30-day period described above, the National Indian Gaming Commission provides the Cherokee Nation Gaming Commission with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Nation has provided an application and investigative report to the National Indian Gaming Commission, the Cherokee Nation Gaming Commission shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Cherokee Nation Gaming Commission shall make the final decision whether to issue a license to such applicant.

Section 49. License Suspension

(a) If, after the issuance of a gaming license, the Cherokee Nation Gaming Commission receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under Section 45 above, the Cherokee Nation Gaming Commission shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(b) The Cherokee Nation Gaming Commission shall notify the licensee of a time and place for a hearing on the proposed revocation of a license.

(c) After a revocation hearing, the Cherokee Nation Gaming Commission shall decide to revoke or to reinstate a gaming license. The Cherokee Nation Gaming Commission shall notify the National Indian Gaming Commission of its decision.

Section 50. Provisions as Cumulative

The provisions of this Act shall be cumulative to existing Law.


Section 51. Severability

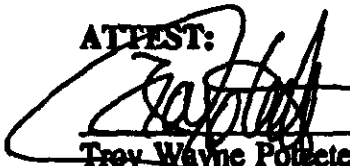
The provisions of this Act are severable and if any part of provision hereof shall be held void, the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

Section 52. 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 11TH day of APRIL, 1994.


John A. Ketcher, President
Cherokee Nation Tribal Council

ATTEST:

Troy Wayne Potete, Secretary
Cherokee Nation Tribal Council

Approved and signed by the Principal Chief this 11TH day of APRIL, 1994.


Wilma F. Mankiller, Principal Chief
Cherokee Nation

ATTEST:

Tommy Thompson, Secretary-Treasurer
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Don Crittenden	<u>YEA</u>	James Garland Eagle	<u>ABSENT</u>
Sam Ed Bush	<u>ABSENT</u>	Harold Phillips	<u>YEA</u>
Joe Byrd	<u>YEA</u>	Troy Wayne Potete	<u>ABSENT</u>
Mige Glory	<u>YEA</u>	Barbara Conness Mitchell	<u>YEA</u>
Mary Cooksey	<u>YEA</u>	Melvina Shotpouch	<u>ABSENT</u>
Paula Holder	<u>YEA</u>	William Smoke	<u>YEA</u>
Harold DeMoss	<u>YEA</u>	Maudie McLemore Bazille	<u>YEA</u>
Greg Pitcher	<u>YEA</u>		