

Committee: Rules

Author: Sara Hill

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Sponsor:: Janees Taylor, Canaan Duncan, Daryl Legg,
EO Smith, Joe Deere, Rex Jordan, Mike
Shambaugh

An Act

Legislative Act 30-21

AN ACT AMENDING TITLE 22 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 22 of the Cherokee Nation Code Annotated and shall be codified at Title 22, Chapter 26 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to establish the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, to inhibit criminal enterprises operating within the Cherokee Nation.

Section 3. Legislative History

LA-10-90
LA-04-91
LA-24-02
LA-33-03
LA-28-06
LA-31-06
LA-12-18
LA-29-20
LA-08-21

Section 4. Amendments

Title 22, Chapter 26 shall be established as follows:

CHAPTER 26

RICO

§ 1401. Short title

Sections 1401 through 1419 of this title shall be known and may be cited as the "Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act".

§ 1402. Definitions

As used in the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act:

A. "Beneficial interest" includes:

1. the interest of a person as a beneficiary pursuant to a trust, in which the trustee holds legal title to personal or real property, or
2. the interest of a person as a beneficiary pursuant to any other arrangement under which any other person holds legal title to personal or real property for the benefit of such person.

B. The term beneficial interest does not include the interest of a stockholder in a corporation or the interest of a partner in either a general or limited partnership;

C. "Enterprise" includes any individual, sole proprietorship, partnership, corporation, trust, governmental entity, or other legal entity, or any union, association, unincorporated association or group of persons, associated in fact although not a legal entity, involved in any lawful or unlawful project or undertaking or any foreign organization that the United States Secretary of State has designated a foreign terrorist organization pursuant to Title 8 U.S.C.A., Section 1189;

D. "Innocent party" includes bona fide purchasers and victims;

E. "Lien notice" means the notice pursuant to the provisions of 21 CNCA § 1412;

F. "Pattern of racketeering activity" means two or more occasions of conduct:

1. that include each of the following:

- a. constitute racketeering activity,
- b. are related to the affairs of the enterprise,
- c. are not isolated, and
- d. are not so closely related to each other and connected in point of time and place that they constitute a single event, and

2. where each of the following is present:

- a. at least one of the occasions of conduct occurred after March 1, 2021,
- b. the last of the occasions of conduct occurred within three (3) years, excluding any period of imprisonment served by any person engaging in the conduct, of a prior occasion of conduct, and
- c. for the purposes of 21 CNCA § 1403, each of the occasions of conduct constituted a felony pursuant to the laws of the Cherokee Nation;

G. "Pecuniary value" means:

1. anything of value in the form of money, a negotiable instrument, or a commercial interest, or anything else, the primary significance of which is economic advantage, or
2. any other property or service that has a value in excess of One Hundred Dollars (\$100.00);

H. "Person" means any individual or entity holding or capable of holding a legal or beneficial interest in property;

I. "Personal property" includes any personal property, or any interest in such personal property, or any right, including bank accounts, debts, corporate stocks, patents or copyrights. Personal property and beneficial interest in personal property shall be deemed to be located where the trustee, the personal property, or the instrument evidencing the right is located;

J. "Principal" means a person who engages in conduct constituting a violation of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act or who is legally accountable for the conduct of another who engages in a violation of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act;

K. "Racketeering activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any conduct which is chargeable or indictable as constituting a felony violation of one or more of the following provisions of the Cherokee Nation Code Annotated, regardless of whether such act is in fact charged or indicted:

1. relating to homicide pursuant to the provisions of 21 CNCA §§651, 652, 653, 701.7, 701.8, 701.16, 711 or 716 or relating to concealment of homicidal death pursuant to the provisions of 21 CNCA § 543,
2. relating to kidnapping pursuant to the provisions of 21 CNCA §§ 741, 745, 891 or 1119,
3. relating to sex offenses pursuant to the provisions of 21 CNCA §§ 886, 888, 1021, 1021.2, 1021.3, 1021.4, 1024.2, 1111, 1111.1, 1114 or 1123,
4. relating to bodily harm pursuant to the provisions of 21 CNCA §§ 645, 647, 649, 650, 650.2, 1289.16, 1302, 1303 or 1767.1,
5. relating to theft, where the offense constitutes a felony, pursuant to the provisions of Section 1704, 1707, 1708, 1709, 1710, 1711, 1713, 1716, 1719, 1720, 1721, 1722, 1723 or 1731,
6. relating to forgery pursuant to the provisions of 21 CNCA §§ 1561, 1562, 1571, 1572, 1573, 1574, 1575, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, or 1593,
7. relating to robbery pursuant to the provisions of 21 CNCA §§ 797, 800 or 801,
8. relating to burglary pursuant to the provisions of 21 CNCA §§ 1431, 1435 or 1437,

9. relating to arson pursuant to the provisions of 21 CNCA §§ 1368, 1401, 1402, 1403 or 1404,
10. relating to use or possession of a firearm or other offensive weapon while committing or attempting to commit a felony pursuant to the provisions of 21 CNCA §§ 1287, 1289.20 or 1289.21,
11. relating to gambling pursuant to the provisions of Section 941, 942, 944, 945, 946, 956, 957, 969, 971, 981, 982, 983, 985, 987, or 991,
12. relating to interference with public officers pursuant to the provisions of 21 CNCA §§ 434, 436, 437, 438, 439, 440, 441, 443, 444, 521, 522, 532, 540, 543, 545 or 546,
13. relating to interference with judicial procedure pursuant to the provisions of 21 CNCA §§ 388, 451, 453, 454, 455, 456, 491, or 504,
14. relating to official misconduct pursuant to the provisions of 21 CNCA §§ 380, 381, 382, 383, 384, 385, 386, 388, 389, or 390, .
15. relating to the Uniform Controlled Dangerous Substances Act, where the offense constitutes a felony, pursuant to the provisions of 21 CNCA §§ 2101 et seq.,
16. relating to automobile theft pursuant to the provisions of 21 CNCA §§ 4-102, 4-103, 4-107, 4-108, 4-109 or 4-110,
17. relating to embezzlement pursuant to the provisions of 21 CNCA §§ 341, 531 or 1451,
18. relating to extortion, where the offense constitutes a felony, pursuant to the provisions of 21 CNCA §§ 1304, 1481, 1482, 1484, 1485, 1486, 1487, or 1488,
19. relating to fraud, where the offense constitutes a felony, pursuant to the provisions of 21 CNCA §§ 358, 1411, 1412, 1413, 1414, 1415, 1416, 1503, 1541.1, 1541.2, 1541.3, 1542, 1543, 1544, 1550.2, 1550.22, 1550.23, 1550.24, 1550.25, 1550.26, 1550.27, 1550.28, 1550.29, 1550.30, 1550.31, 1550.32, 1632, 1635 or 1662,
20. relating to conspiracy, where the offense constitutes a felony, pursuant to the provisions of 21 CNCA §§ 421, 422 or 424,
21. relating to prostitution, pornography or obscenity pursuant to the provisions of 21 CNCA §§ 1021, 1040.52, 1081, 1085, 1086, 1087 or 1088,
22. relating to human trafficking or trafficking in children pursuant to the provisions of 21 CNCA §§ 748, 866 or 867,
23. relating to organized voter fraud pursuant to the provisions of Title 26 of the Cherokee Nation Code Annotated,
24. relating to exploitation of elderly persons or disabled adults pursuant to the provisions of 21 CNCA § 843.4,
25. relating to computer crimes pursuant to the provisions of 21 CNCA §§ 1953 and 1958,

26. relating to unlawful proceeds pursuant to the provisions of 21 CNCA § 2001.

- L. In addition, "racketeering activity" may be proven by proof of engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the above described conduct within another state, regardless of whether said conduct is chargeable or indictable in that state;
- M. "Real property" means any real property or any interest in real property, including any lease of, or mortgage upon real property. Real property and beneficial interest in real property shall be deemed to be located where the real property is located;
- N. "Trustee" includes trustees, a corporate as well as a natural person and a successor or substitute trustee as otherwise defined within the CNCA; and
- O. "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is unenforceable in the courts of the Cherokee Nation, because the debt was incurred or contracted in violation of a law relating to the business of gambling activity or in violation of the CNCA or federal law.

§ 1403. Prohibited acts—Venue

- A. No person employed by or associated with any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- B. No person, through a pattern of racketeering activity or through the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- C. No person who has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity, or through the collection of any unlawful debt, in which the person participated as a principal, shall use or invest, directly or indirectly, any part of the proceeds or any proceeds derived from the investment or use of any of those proceeds in the acquisition of any right, title, or interest in real property or in the establishment or operation of any enterprise.

A purchase of securities on the open market with intent to make an investment, and without the intent of controlling or participating in the control of the issuer or of assisting another to do so, shall not be unlawful pursuant to the provisions of this section if the securities of the issuer held by the purchaser, the members of the immediate family of the purchaser, and accomplices of the purchaser or immediate family of the purchaser in any pattern of racketeering activity, or the collection of an unlawful debt after the purchase, do not amount in the aggregate to one percent (1%) of the outstanding securities of any one class and do not confer the power to elect one or more directors of the issuer.
- D. No person shall attempt to violate or conspire with others to violate the provisions of subsection A, B or C of this section.
- E. Venue for a civil or criminal action to enforce the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act shall be in the courts of the Cherokee Nation.

§ 1404. Penalty for violation—Authority to institute proceedings

- A. Any person convicted of violating any provision of 21 CNCA § 1403 shall be punished by a term of imprisonment of not less than ten (10) years and shall not be eligible for a deferred sentence, probation, suspension, work furlough, or release from confinement on any other basis until the person has served one-half (1/2) of the sentence. A violation of each of the provisions of Section 1403 of this title shall be a separate offense.
- B. In lieu of the fine authorized by the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, any person convicted of violating any provision of 21 CNCA § 1403, through which the person derived pecuniary value, or by which the person caused personal injury, or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred, less the value of any property ordered forfeited pursuant to the provisions of subsection A of 21 CNCA § 1405. The court shall hold a separate hearing to determine the amount of the fine authorized by the provisions of this subsection.
- C. No person shall institute any proceedings, civil or criminal, pursuant to the provisions of this act, except the Attorney General.

§ 1405. Procedures for criminal forfeiture of property

- A. Any person convicted of violating any of the provisions of 21 CNCA § 1403 shall criminally forfeit to the state, according to the procedures established in subsection B of this section, any real or personal property used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of 21 CNCA § 1403, including any property constituting an interest in or means of control or influence over the enterprise involved in the conduct in violation of 21 CNCA § 1403, including:
 - 1. Any compensation, right, or benefit derived from a position, office, appointment, tenure, commission, or employment contract that accrued to the person during the course of conduct in violation of 21 CNCA § 1403;
 - 2. Any interest in, security of, claim against, or property or contractual right affording the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of 21 CNCA § 1403; or
 - 3. Any amount payable or paid pursuant to any contract for goods or services that was awarded or performed in violation of 21 CNCA § 1403.
- B. The criminal forfeiture procedures are as follows:
 - 1. A judgment of criminal forfeiture shall not be entered unless a special verdict containing a finding of property subject to forfeiture, specifying the extent of such property and describing with specificity such property and the circumstances by which the property is subject to forfeiture is returned; and
 - 2. If any property included in a special verdict of criminal forfeiture:
 - a. cannot be located,
 - b. has been sold to a bona fide purchaser for value,

- c. has been placed beyond the jurisdiction of the court,
- d. has been substantially diminished in value by the conduct of the defendant,
- e. has been commingled with other property that cannot be divided without difficulty or undue injury to innocent parties,
- f. is otherwise unreachable without undue injury to innocent parties, or
- g. is subject to a valid security interest, to the extent of the security interest, held by a bank, savings and loan association, credit union or supervised lender licensed by the Oklahoma Administrator of Consumer Credit, acquired prior to the lien notice provided by 21 CNCA § 1412, the district court shall order forfeiture of any other property of the defendant up to the value of the property that is unreachable.

§ 1406. Authority of court after indictment or information and hearing

After the filing of an indictment or information by the Attorney General and after a hearing with respect to which any person who shall be affected has been given thirty (30) days' notice and opportunity to participate, the court may, based on the indictment or information and the hearing:

1. Enter a restraining order or injunction;
2. Require the execution of satisfactory bond in the amount of ten percent (10%) of the property value; or
3. Take any other action, including the appointment of a receiver, that the Attorney General shows by a preponderance of the evidence is necessary to preserve the property which may be subject to criminal forfeiture.

§ 1407. Court authority after judgment—Authorization to seize property declared forfeited

Following the entry of a judgment that includes a fine or an order of criminal forfeiture pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, or both, the court may enter a restraining order or an injunction, require the execution of a satisfactory bond, or take any other action, including the appointment of a receiver, that the court deems proper to protect the interests of the Nation.

An order of criminal forfeiture shall authorize the Attorney General to seize the property declared forfeited upon such terms and conditions, relating to the time and manner of seizure, as the court shall deem proper.

§ 1408. Penalties pursuant to act as supplemental

Criminal penalties and fines pursuant to the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act are supplemental and not mutually exclusive, except when so designated, and shall not preclude the application of any other criminal or civil remedy pursuant to any other provision of the law.

§ 1409. Civil proceedings instituted by Attorney General

A. The Attorney General may institute civil proceedings against any person in the Cherokee Nation courts seeking relief from conduct constituting a violation of any provisions of 21 CNCA § 1403 with the right to a trial by jury at the request of either party. If the plaintiff in such a proceeding proves the alleged violation by a preponderance of the evidence, the district court, after making due provisions for the rights of innocent parties, may grant relief by entering any appropriate order of judgment, including:

1. Ordering any defendant to divest himself of any interest in any enterprise or any real property;
2. Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of 21 CNCA § 1403;
3. Ordering the dissolution or reorganization of any enterprise;
4. Ordering the suspension or revocation of a license, permit, or prior approval granted to any enterprise by an agency of the Nation; or
5. Ordering the surrender of the charter of a corporation organized pursuant to the laws of the Nation or the revocation of a certificate authorizing a foreign corporation to conduct business within the Nation.

In a proceeding initiated pursuant to the provisions of this section, injunctive relief shall be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury shall be required. Pending final determination of a proceeding initiated pursuant to the provisions of this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of a bond in the amount of ten percent (10%) of the value of the property against injury for an injunction improvidently granted. If the court issues an injunction or grants other relief pursuant to the provisions of this section, the plaintiff shall also recover costs, including reasonable attorney fees and costs of investigation and litigation reasonably incurred.

B. The civil penalty imposed pursuant to this section shall not exceed One Hundred Thousand Dollars (\$100,000.00), with no offset for the value of any property criminally forfeited or any fine imposed pursuant to the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act. This amount shall be applied to the costs and expenses of investigation and prosecution, and the balance, if any, shall be paid pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

C. A final judgment or decree rendered against the defendant in any civil or criminal proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, shall estop the defendant in any subsequent civil action or proceeding brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to a civil or criminal proceeding.

D. A civil action or proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act may be commenced at any time within five (5) years after the conduct made unlawful pursuant to the provisions of 21

CNCA § 1403 terminates or the cause of action accrues. If a criminal proceeding or civil action or other proceeding is brought by the Attorney General to punish, prevent, or restrain any activity made unlawful pursuant to the provisions of 21 CNCA § 1403, the running of the period of limitations prescribed by this section with respect to any cause of action of an aggrieved person, based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for two (2) years following its termination.

- E. Service of process in an action pursuant to the provisions of this section may be made upon any person outside the state if the person was a principal in any conduct constituting a violation of the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act in this Nation. The person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of the Cherokee Nation for the purposes of this section.
- F. The application of any civil remedy pursuant to the provisions of this section shall not preclude the application of any other civil or criminal remedy pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act or any other provision of law. Civil remedies pursuant to the provisions of this section are supplemental and not mutually exclusive.

§ 1410. Disposition of forfeited property

- A. Upon approval of the court, the Attorney General shall dispose of all property ordered forfeited in any criminal proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act as soon as feasible, making due provisions for the rights of innocent parties, by:
1. Public sale;
 2. Transfer to a governmental agency of the Nation for official use;
 3. Sale or transfer to an innocent party; or
 4. Destruction, if the property is not needed for evidence in any pending criminal or civil proceeding.
- B. Any property right not exercisable by, or transferable for value to the Nation shall not revert to the defendant. No defendant or any person acting in concert with the defendant or on behalf of the defendant shall be eligible to purchase forfeited property from the Nation.
- C. With respect to property ordered forfeited in any criminal proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, the Attorney General is authorized to:
1. Compromise claims;
 2. Award compensation to persons providing information resulting in a forfeiture pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act; and

3. Petition the court to mitigate or remit a forfeiture or to restore forfeited property to victims of a violation of 21 CNCA § 1403.

D. The proceeds of any sale or other disposition of forfeited property imposed pursuant to the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act shall be applied as follows:

1. To a bona fide innocent purchaser, conditional sales vendor, or mortgagee of the forfeited property up to the amount of the interest held by the person in the forfeited property;

2. To the fees and costs of the forfeiture and sale, including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and the court costs;

3. To all costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution; and

4. The balance to the credit of the Attorney General or law enforcement agencies in such proportions as are represented by the costs and expenses of investigation and prosecution as provided in the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

§ 1411. Balance of certain proceeds of forfeitures to pay costs of prosecution

The balance of the proceeds of all forfeitures ordered pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act shall be transmitted to the Cherokee Nation Treasurer and deposited in the Cherokee Nation Treasury, less any costs and expenses associated with investigation and prosecution, whether criminally or civilly, of conduct made unlawful by the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, including costs of resources and personnel.

§ 1412. Lien notice—Fees—Contents—Procedure

A. At any time after the institution of any civil proceeding or at any time after the filing of an indictment or information pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, the Nation may file a lien notice in the official records as may be required for perfecting a security interest for any given property. A filing fee in the amount as required by law for the filing of a mechanic's or materialmen's lien shall be required as a condition for filing the lien notice, and any county clerk, upon the presentation of such lien notice, shall immediately record it in the official records.

B. The lien notice shall be signed by the Attorney General and shall be in such form as the Attorney General prescribes and shall set forth the following information:

1. The name of the person against whom the proceeding has been brought or who has been charged or indicted for a violation of this act and any other names under which the person may be known. The Attorney General may also name in the lien notice any enterprise that is either controlled by or entirely owned by the person;

2. If known to the Attorney General, the present residence and business addresses of the persons named in the lien notice;

3. A reference to the criminal or civil proceeding stating that a proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act has been brought against the person named in the lien notice or that the person has been charged or indicted for a violation of this act, the name of the court where the proceeding has been brought or the conviction was made and any other lien notices filed, and, if known to the Attorney General at the time of filing the lien notice, the case number of the proceeding;
4. A statement that the notice is being filed pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act; and
5. The name and address of the Attorney General filing the lien notice.

A lien notice shall apply only to one person and, to the extent applicable, the names of enterprises, to the extent permitted in this section. A separate lien notice shall be filed for any other person against whom the Attorney General desires to file a lien notice pursuant to the provisions of this section.

- C. Within ten (10) days after filing of each lien notice, the Attorney General shall furnish to the person named in the notice by certified mail, return receipt requested, to the last-known business or residential address, a copy of the recorded notice. In the event the person cannot be served by certified mail, service may be by publication pursuant to the Federal Rules of Civil Procedure.
- D. From the time of its filing, a lien notice creates a lien in favor of the Nation on the following property of the person named in the notice:
 1. Any personal or real property owned by the person under any name set forth in the lien notice which is situated in the county where the notice is filed; and
 2. Any beneficial interest of said property owned by the person under any name located in the county where the notice is filed.

The lien shall commence and attach as of the time of filing of the lien notice and shall continue thereafter until expiration, termination, or release of the lien. The lien created in favor of the Nation shall be superior and prior to the interest of any other person in the personal or real property or beneficial interest in said property, if the interest is acquired subsequent to the filing of the notice.

- E. In conjunction with any civil proceeding:
 1. The Attorney General may file without prior court order in any county a lis pendens pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act. In that event, any person acquiring an interest in the subject real property or beneficial interest in it after the filing of the lis pendens, shall take the interest subject to the civil proceeding and any subsequent judgment of forfeiture; and
 2. If a lien notice has been filed, the Attorney General may name as defendants, in addition to the person named in the notice, any person acquiring an interest in the personal or real property or beneficial interest in it subsequent to the filing of the notice. If a judgment of forfeiture is entered in the proceeding in favor of the Nation, the interest of any person in the property that was acquired subsequent to

the filing of the notice and judgment of forfeiture shall be subject to the notice and judgment of forfeiture.

F. Upon the entry of a final judgment of forfeiture in favor of the Nation, the title to the forfeited real property shall be transferred to the Nation and shall be recorded in the official records of the county where the real property or a beneficial interest in it is located.

In the case of personal property or a beneficial interest in it, the property shall be seized if not already in possession of the Nation and disposed of in accordance with the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

G. If personal or real property or a beneficial interest in it subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a lien notice, the Nation may treat it as a fraudulent and preferential conveyance and may institute an action in the Cherokee Nation courts against the person named in the lien notice, the defendant in the civil proceeding or the person convicted in the criminal proceeding; and the court shall enter final judgment against such person or any beneficial interest in it together with investigative costs and attorney's fees incurred by the Nation in the action. If a civil proceeding is pending, such action shall be filed only in the court where such civil proceeding is pending.

H. The filing of a lien notice shall not affect the use to which personal or real property or a beneficial interest in it owned by the person named in the racketeering lien may be entitled to or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership of the property, except for the conveyance of said property, until a judgment of forfeiture is entered.

I. The term of a lien notice shall be for a period of six (6) years from the date of filing unless a renewal lien notice has been filed by the Attorney General. In this event, the term of the renewal lien notice shall be for a period of six (6) years from the date of its filing. The Attorney General shall be entitled to only one renewal of the lien notice.

J. The Attorney General may release in whole or in part any lien notice or may release any personal or real property or beneficial interest in it from the lien notice upon such terms and conditions as the Attorney General may determine. Any release of a lien notice executed by the Attorney General may be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of a lien notice.

K. If no civil proceeding has been instituted by the Attorney General seeking a forfeiture of any property owned by the person named in the lien notice, the acquittal in the criminal proceeding of the person named in the lien notice or the dismissal of the criminal proceeding, shall terminate the lien notice. If the civil proceeding has been instituted, in the event the criminal proceeding has been dismissed or the person named in the lien notice has been acquitted in the criminal proceeding, the lien notice shall continue for the duration of the civil proceeding.

L. If no civil proceeding or criminal proceeding is then pending against the person named in the lien notice, any person named in a lien notice may apply to the district court in the county where the notice has been filed for the release or extinguishment of the notice and the district court shall enter a judgment extinguishing the lien notice or releasing the personal or real property or beneficial interest in it from the lien notice.

M. In the event a civil proceeding is pending against a person named in a lien notice, the court upon motion by the person may grant the relief provided for in this section at a hearing held for that purpose:

1. If a sale of the personal or real property or beneficial interest in it is pending and the filing of the notice prevents the sale of the property or interest, the court shall immediately enter its order releasing from the lien notice any specific personal or real property or beneficial interest in it. The proceeds resulting from the sale of the personal or real property or beneficial interest in it shall be deposited with the clerk of the court, subject to the further order of the court; and
2. At the hearing, the court may release from the lien notice any personal or real property or beneficial interest in it upon the posting by such person of such security as is equal to the value of the personal or real property or beneficial interest in it owned by such person.

§ 1413. Duties of trustees regarding lien notice—Liability—Recovery of costs

A. A trustee, who acquires actual knowledge that a lien notice or a civil proceeding or criminal proceeding has been filed against any person for whom the trustee holds legal or record title to personal or real property, shall immediately furnish to the Attorney General the following:

1. The name and address of the person;
2. The name and address of all other persons for whose benefit the trustee holds title to the personal or real property; and
3. If requested by the Attorney General, a copy of the trust agreement or other instrument pursuant to which the trustee holds legal or record title to the personal or real property. Any trustee who fails to comply with the provisions of this section, upon conviction, is guilty of a felony.

B. Any trustee having notice of the filing of the lien notice, who transfers or conveys title to personal or real property on which said notice has been filed, shall not be liable to the Nation for the greater of:

1. The amount of proceeds received directly by the person named in the lien notice as a result of the transfer or conveyance;
2. The amount of proceeds received by the trustee as a result of the transfer or conveyance and distributed to the person named in the lien notice; or
3. The fair market value of the interest of the person named in the lien notice in the personal or real property transferred or conveyed; but if the trustee transfers or conveys the personal or real property for at least its fair market value and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or designee of the beneficiary, the liability of the trustee shall not exceed the amount of the proceeds held for so long as the proceeds are held by the trustee.

C. The filing of a lien notice shall not constitute a lien on the record title to personal or real property owned by the trustee except to the extent the trustee is named in the lien notice.

The Attorney General may bring a civil proceeding in the Cherokee Nation District Court against the trustee to recover from the trustee the amounts set forth in the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, and the Nation shall also be entitled to recover investigative costs and attorneys fees incurred by the Attorney General.

- D. The provisions of this section shall not apply to any transfer or conveyance by a trustee pursuant to a court order, unless the court order is entered in an action between the trustee and the beneficiary.

§ 1414. Foreign corporations failing to file report fall within act

Each foreign corporation doing business in this Nation that fails to file a report or fails to comply with the provisions of 18 CNCA § 130 shall be subject to the jurisdiction of the Cherokee Nation for purposes of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

§ 1415. Criminal investigation of prohibited acts

- A. When any person has engaged in, is engaged in, or is attempting or conspiring to engage in any conduct constituting a violation of any of the provisions of 21 CNCA § 1403, the Attorney General may conduct an investigation of the conduct. On approval of the court, the Attorney General in accordance with the provisions of 22 CNCA § 258 is authorized before the commencement of any civil or criminal proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any business papers or records by subpoena duces tecum, except that such evidence taken shall not be receivable in any civil proceeding.

- B. Any business papers and records subpoenaed by the Attorney General shall be available for examination by the person who produced the material or by any duly authorized representative of the person. Transcripts of oral testimony shall be available for examination by the person who produced such testimony, or counsel of the person.

Except as otherwise provided for in this section, no business papers or records or transcripts or oral testimony, or copies of it, subpoenaed by the Attorney General shall be available for examination by an individual other than another law enforcement official without the consent of the person who produced the business papers or records or transcript.

- C. All persons served with a subpoena by the Attorney General pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act shall be paid the same fees and mileage as paid witnesses in the courts of the Cherokee Nation.

- D. No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the Attorney General pursuant to the provisions of this section, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any business papers or records that are the subject of the subpoena ducus tecum. A violation of the provisions of this subsection, upon conviction, is a misdemeanor.

§ 1416. Reserved

§ 1417. Specialized education and training for judges

Each judicial district shall select one or more of its district judges or associate district judges and if deemed necessary may also select one or more special judges to receive specialized education and training in applying the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

A program of judicial education and training shall be prepared and administered by the Administrator of the Cherokee Nation Courts. Such program and any materials shall be made available as needed to assist Cherokee Nation judges in applying the provisions of this act.

When available, the funds described in 21 CNCA § 1411 may be used to help defray the expenses of such program.

§ 1418. Annual audit

Any monies received by the Nation under this act shall be subject to an annual audit by the Treasurer.

§ 1419. Federal law construction of act governs

When the language of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act is the same or similar to the language of Title 18 U.S.C., Sections 1961 through 1968, the courts of the Cherokee Nation in construing the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act may follow the construction given to federal law by the federal courts, provided that nothing in this section shall be deemed to provide for any private right of action or confer any civil remedy except as specifically set out in this act.

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.

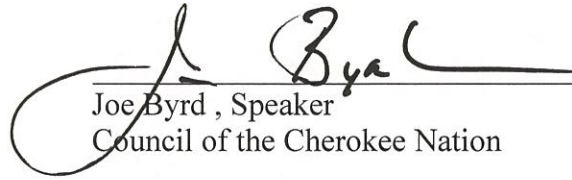
Section 7. Effective Date/Emergency Declared

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 14th day of June, 2021.


Joe Byrd, Speaker
Council of the Cherokee Nation

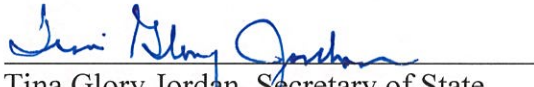
ATTEST:


Janees Taylor, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 18th day of June, 20 .


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 E. ... 5/12/2021
Signature/Initial Date

LEGISLATIVE CLEARANCE:

Legal & Legislative Coordinator:

Stoke 5/12/21
Signature/Initial Date

Standing Committee & Date:

Rules 5/27/21

Chairperson:

Boyd
Signature/Initial Date

**Cherokee Nation
Act/Resolution Proposal Form**

Act Resolution

TITLE:

**AN ACT AMENDING TITLE 22 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, Daryl Legg, EO
Smith, Rex Jordan, Keith Austin
Joe Deere

NARRATIVE:

The purpose of this Act is to establish the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, to inhibit criminal enterprises operating within the Cherokee Nation.

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