

AN ACT

Legislative Act 08-18

A LEGISLATIVE ACT AMENDING TITLE 12 OF THE CHEROKEE NATION CODE ANNOTATED – CIVIL PROCEDURE

BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION

This Act shall be known as the “Civil Code Modernization and Anti-Trust Act of 2017” and codified under Title 12 of the Cherokee Nation Code Annotated (CNCA).

SECTION 2. PURPOSE

The purpose of this Act is to modernize the laws and the Cherokee Nation and to protect elders, disabled and all other Cherokee citizens from unfair and deceptive business practices, unsafe products and unfair competition.

SECTION 3. SUBSTANTIVE LAW

The following sections shall be inserted as Sections 27 and 28 of the Comprehensive Access to Justice Act of 2016 as Amended by Legislative Act 16-16.

§ 27 Product Liability Actions

- A. A manufacturer or seller shall be liable for any loss caused by the manufacturer’s or seller’s negligence, intentional misconduct, recklessness, or other act or omission, such as negligently modifying or altering a product.
- B. For purposes of this section, “loss” includes actual damages, punitive damages, consequential damages, court costs and other reasonable expenses, reasonable attorneys’ fees, and reasonably foreseeable harm.
- C. Damages awarded by the trier of fact shall, on final judgment, be deemed reasonable for purposes of this section.
- A-D. For purposes of this section, a wholesale distributor or retail seller who completely or partially assembles a product in accordance with the manufacturer’s instructions shall be considered a seller.

- A. As used in this section The Cherokee Nation Antitrust Act shall be referred to as the "Antitrust Act."

B. Definitions

As used in the Antitrust Act:

(1) "Attorney General" means the Attorney General of the Cherokee Nation, any attorney employed by the Office of the Attorney General designated by the Attorney General to act on his behalf and/or any other person retained or employed by the Attorney General as a duly authorized representative.

(2) "District Court" means the District Court for the Cherokee Nation.

(3) "Nation" means The Cherokee Nation.

(4) "Person" includes corporations, partnerships, and associations existing under or authorized by any state or territory of the United States, or any foreign state or nation.

(5) "Public office" means any organized body, office, agency, institution, or entity established by the laws or regulations of the Nation for the exercise of any function of government.

(6) "Trust" is a combination of capital, skill, or acts by two or more persons for any of the following purposes:

(a) To create or carry out any restrictions on trade or commerce;

(b) To limit or reduce the production of, or increase or reduce the price of, a product or service;

(c) To prevent competition in design, manufacturing, making, transportation, sale, purchase or providing of a product or service;

(d) To raise, fix, maintain, or stabilize the price at which a product or service is sold, offered for, or intended for sale, barter, use, or consumption to the Cherokee Nation, or to any citizen of or entity owned by the Cherokee Nation, or to persons within the territories of the Cherokee Nation;

(e) To make, enter into, execute, or carry out contracts, obligations, or agreements, oral or written, of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, consumption or a service below a common standard figure or fixed value, or by which they agree in any manner to keep the price of such article, commodity, or service at a fixed or graduated figure, or by which they shall in any manner establish or settle the

price of an article, commodity, or service between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale of such article, commodity or service, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or of such article, commodity or service, that its price might in any manner be affected;

(f) To refuse to buy from, sell to, or trade with any person because such person appears on a blacklist issued by, or is being boycotted by, any other person or persons.

(g) To restrain or prevent competition in the letting or awarding of any public contract in derogation of any statute, ordinance, or rule requiring the use of competitive bidding or selection in the letting or awarding of a public contract.

(h) A trust as defined in this division is unlawful and void.

C. Prohibition of Agreements in Restraint of Trade.

No person shall enter into a combination, contract, or agreement, the purpose, effect or intent of which is to limit or fix the price or lessen the production or sale of an article or service in commerce, use, or consumption; to prevent, restrict, or diminish the manufacture or output of such article or service; or refuse to buy from, sell to, or trade with any person to exclude such person, product or service from competing in commerce.

D. Conspiracy Against Trade Prohibited.

Every combination, contract, or agreement in the form of a trust is declared to be a conspiracy against trade and is illegal. No person shall engage in such conspiracy or take part therein, or aid or advise in its commission, or, as principal, manager, director, agent, servant, or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, or rates, or furnish any information to assist in carrying out such purposes, or orders thereunder, or in pursuance thereof, or in any manner violate the Antitrust Act. Each individual violation of this section is a separate offense.

E. Illegal Contracts.

Any contract or agreement in violation of the Antitrust Act is void *ab initio*.

F. Jurisdiction

The District Court is vested with jurisdiction and is the appropriate venue for the adjudication of any investigations, proceedings or claims brought for any violations of the Antitrust Act.

Any proceedings to restrain, enjoin or to seek damages for violations of the Antitrust Act, shall be instituted by the filing of a complaint setting forth the case and praying for all

such remedies requested. Any complaint and all subsequent proceedings thereafter shall comply with the Federal Rules of Civil Procedure and the Local Rules of the District Court.

Upon the filing of a complaint, and before final decree, the District Court may issue such temporary restraining order or prohibition as is just in the premises, including, but not limited to, restraining or enjoining the corporation and its officers and agents from continuing or committing, during the pendency of the action, the alleged actions upon which the complaint was brought.

G. Right to Civil Cause of Action

The Nation or any citizen of the Nation or any entity owned, in whole or in part, or controlled by the Nation who may be damaged or injured by any agreement, monopoly, trust, conspiracy, or combination in restraint of trade which is declared unlawful by this Antitrust Act shall have a cause of action as a Plaintiff against any person causing such damage or injury regardless of whether the Nation or such citizen or entity dealt directly or indirectly with the defendant, and without regard to the amount in controversy. Such action may be brought by the Attorney General on behalf of the Nation in its sovereign capacity as *parens patriae*, on behalf of any citizen or citizens of the Nation and/or on behalf of any corporation or other entity which is owned, in whole or in part, or controlled by the Nation.

H. Parties Defendant - Multiple Proceedings

In any action or proceeding in the District Court, all persons that are party to or participating in the trust or conspiracy against trade violative of the Antitrust Act may be made parties defendant, and shall be jointly and severally liable for any and all damages and attorney's fees and costs of Plaintiff. Actions or proceedings for damages and for an injunction may be instituted simultaneously, or while one or another of them is pending, such actions or proceedings being instituted in the District Court. No action or proceeding for an injunction is a bar to an action or proceeding for damages, nor is an action or proceeding for damages a bar to one instituted to restrain and enjoin.

I. Statute of Limitations

Any action or proceeding for a violation of the Antitrust Act shall be forever barred unless commenced within ten (10) years after the cause of action accrued, except for any such action brought by the Cherokee Nation Attorney General as *parens patriae*. For purposes of this Section, the cause of action shall have "accrued" on the date upon which the Plaintiff discovered sufficient facts to be able to determine that it was harmed by the specific violation or violations of the Act alleged in the complaint.

J. Evidence.

In any case brought for violation of the Antitrust Act it is sufficient to prove that a trust, combination or conspiracy exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing

an article of agreement, or a written instrument on which it may have been based; or that it was evidenced by a written instrument.

K. Remedies

In addition to the remedies described elsewhere in this Chapter, the Plaintiff in any action commenced hereunder in the District Court who is threatened with injury or additional injury by reason of any person's violation of such acts may commence an action in such district court to enjoin any such violation, and any damages suffered may be sued for and recovered in the same action in addition to injunctive relief.

L. Recovery of Fees and Costs

In any action commenced under this section, upon judgment entered by the District Court in its favor, the Plaintiff will be entitled to the recovery of reasonable attorney's fees and costs. Costs for purposes of this section shall include all of the costs incurred by Plaintiff for investigation and proceedings related to any violation of this Antitrust Act, including but not limited to, the e-discovery costs for processing and hosting electronically produced and stored information obtained through subpoena and/or discovery whatever the source.

M. Damages

The Plaintiff in any action commenced hereunder, may sue for and recover damages for the entire time period in which damages were suffered as a result of any violation of this Antitrust Act, at Plaintiff's election, either:

- (1) treble the damages sustained, or
- (2) damages in the amount equal to \$10,000 USD for each transaction affected by any actions forbidden or declared unlawful by this Antitrust Act, or
- (3) the full sales price for all products or services affected by any actions forbidden or declared unlawful by this Antitrust Act.

These damages remedies are in addition to any other remedies provided by law or in equity, and these remedies shall not diminish or offset any other remedy.

A. — The Cherokee Nation declares that the purpose of this section is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented;

B. — As used in this Act, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any other act prohibited by this Act;

~~C. Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this section, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others or they may be brought by the Attorney General of the Cherokee Nation;~~

N. INJUNCTIVE RELIEF

~~D.A. The court may, in its discretion, include in any judgment for relief an injunction against a violation of this chapter or such other restraint as it may deem expedient in order to deter the defendant from, and insure against, his committing a future violation of this Act;~~

~~E.B. Any injunction against a violation of this Act, whether interim or final, shall cover every article or product and not merely the particular article or product involved in the action;~~

~~F.C. It is not necessary for the plaintiff, in any action under this chapter, to provide or file any undertaking or bond for the issuance of any interim or final injunction;~~

~~G. Acts of selling or giving away any article or product below cost or at discriminatory prices together with proof of the injurious effect of such acts, is presumptive evidence of the purpose or intent to injure competitors or destroy competition;~~

~~H. Any violation of the provisions of this act is punishable by a fine of ten thousand dollars (\$10,000) for each instance of violation or each individual transaction that constitutes a violation in addition to any other remedy provided by law; except in the instances in which a senior Citizen or a Disabled Person is the victim of such violation in which case the fine shall be twenty five thousand dollars (\$25,000)~~

~~I. In any action under this Act in which judgment is entered against the defendant the plaintiff shall be awarded a reasonable attorney fee together with the costs of suit;~~

~~J.D. The remedies or penalties provided by this Act are cumulative to each other and to the remedies or penalties available under all other laws of Cherokee Nation.~~

Section 4. NO WAIVER

Nothing in this Act shall be deemed as a waiver of the Nation's sovereign immunity for any purpose

Section 5. PROVISIONS NOT CUMULATIVE

The provisions of this Act shall not be cumulative to existing law and shall supersede any existing law in conflict therewith.

Section 6. SEVERABILITY

The provisions of this Act are severable and if any part of the provisions hereof, or their application to any person or circumstance, shall be held unconstitutional the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

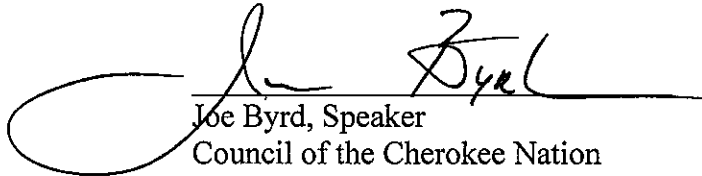
Section 7. EFFECTIVE DATE

The provisions of this Act shall become effective thirty (30) days from and after the date of its passage and approval.

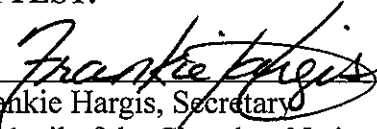
Section 8. SELF-HELP CONTRIBUTIONS

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 16th day of April, 2018.


Joe Byrd, Speaker
Council of the Cherokee Nation

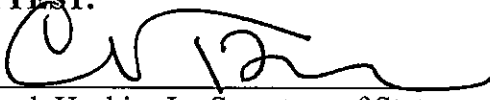
ATTEST:


Frankie Hargis, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 18th day of April, 2018.


Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:


Chuck Hoskin, Jr., Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Rex Jordan	<u>Yea</u>	Victoria Vazquez	<u>Yea</u>
David Walkingstick	<u>Yea</u>	Dick Lay	<u>Nay</u>
Joe Byrd	<u>Yea</u>	Keith Austin	<u>Yea</u>
Shawn Crittenden	<u>Nay</u>	Janees Taylor	<u>Yea</u>
Bryan Warner	<u>Absent</u>	Frankie Hargis	<u>Yea</u>
Mike Shambaugh	<u>Yea</u>	Harley Buzzard	<u>Nay</u>
E.O. "Junior" Smith	<u>Yea</u>	Wanda Hatfield	<u>Absent</u>
Mike Dobbins	<u>Yea</u>	Mary Baker Shaw	<u>Yea</u>
Buel Anglen	<u>Yea</u>		

ADMINISTRATIVE CLEARANCE	
Dept/Program: OAG	
Signature/Initial <i>[Signature]</i>	Date 1/30
Executive Director: Chrissi Nimmo for Todd Hembree	
Signature/Initial	Date
Treasurer: (Required: Grants/Contracts/Budgets)	
Signature/Initial	Date
Government Relations:	
Signature/Initial	Date
Administration Approval: <i>[Signature]</i>	
Signature/Initial	Date
LEGISLATIVE CLEARANCE:	
Legal & Legislative Coordinator: <i>[Signature]</i>	
Signature/Initial	Date 2/2/18
Standing Committee & Date: Rules 2/2/18	
Chairperson: <i>[Signature]</i>	
Signature/Initial	Date
Returned to Presenter: _____	
	Date

Cherokee Nation Act/Resolution Proposal Form

Act Resolution

TITLE: Civil Code Modernization Act and Anti-Trust Act of 2017

DEPARTMENT CONTACT: M. Todd Hembree and/or Chrissi Ross Nimmo

RESOLUTION PRESENTER: John C. Young

COUNCIL SPONSOR: Victoria Vazquez

NARRATIVE:

The Civil Code Modernization Act and Anti-Trust Act of 2017 is intended to help protect against fraud, price-fixing, deceptive marketing practices and unsafe products. This Act will allow the Attorney General to investigate and prevent the following:

- Overcharging elders unfair or inflating prices for consumer products.
- Charging inflated prices for drugs, medical devices, and other equipment commonly used by elders and disabled (i.e., wheelchairs).
- Investigating behavior that is fraudulent amongst hospitals or other medical providers that results in citizens, especially elders, being charged more for care, or not having certain care available to them.
- Investigating behavior that is fraudulent because two or more companies are working together to take advantage of citizens, especially elders, in any way that causes them to pay more than they should, or not get what they are paying for.
- Investigating companies that engage in credit card scams, charging improper fees, etc.
- Investigating companies that engage in reverse mortgages or predatory loan practices, annuities, and other financial products in a way that is harmful to Cherokee citizens.
- Investigating life insurance companies who engage in conduct that misleads consumers, especially elders, about what the products really offer and the costs.
- Charging inflated prices for transportation and automobile parts.