

# An Act

Legislative Act 49 -98

AMENDMENTS PROPOSED  
OCTOBER 23, 1998

TITLE AND ACT RELATING TO CHEROKEE NATION OF OKLAHOMA LAW  
REGARDING REGULATION AND LICENSING OF GAMING ON  
TRIBAL LANDS: UNCODIFIED: AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

## Chapter 1

### General Provisions

#### Section 4-1-1 Title

This enactment shall be known as the "Cherokee Nation Tribal Gaming Act."

#### Section 4-1-2 Purpose

The purpose of this Act is:

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

~~2) To provide a basis under tribal law for the operation of gaming on tribal lands as a means for promoting tribal economic developments, self-sufficiency, and a strong tribal government.~~

3) 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 is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by the tribe, its agents and the players.

#### Section 4-1-3 Definitions

For the purposes of this Title:

(a) The "Commission" means the Cherokee Nation Gaming Commission as defined herein.

(b) The "Nation" means the Cherokee Nation of Oklahoma.

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

(d) "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 exercises governmental power.

(e) "Tribal 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.

(f) 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.

(g) Class II Gaming means:

The game commonly known as bingo (whether or not electronic, computer or other technology are used in connection therewith) and which is played with prizes including monetary prizes with cards bearing numbers or other designations, and in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, or drawn or are electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including pull tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo. This class of gaming also includes card games that are explicitly authorized by state laws or are not explicitly prohibited by state laws and are played at any location in the state.

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

#### Section 4-1-4 Severability

If any provision of this Title or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or application of this Title which can be given effect without the invalid provision or application and to this end the provisions of this Title are severable.

#### Section 4-1-5 Effective Date

This Title shall be effective beginning 30 days after enactment of this Title by the Tribal Council of the Cherokee Nation.

~~-subchapter-2-~~

~~--Administration-and-Enforcement--~~

~~-Section-4-2-1--Establishment-of-Tribal-Gaming-Office-and-Commission-~~

~~-There-is-hereby-established-the-Cherokee-Nation-Tribal-Gaming-Office-and-the-Cherokee-Nation-Gaming-Commission-which-shall-have-the-duties-and-powers-as-hereinafter-described-~~

## Chapter 2

### Cherokee Nation Gaming Commission Administration and Enforcement Procedures

#### Section 4-2-1 Establishment

The Cherokee Nation Gaming Commission is hereby established as a part of the executive branch of the government of the Nation.

#### Section 4-2-2. Membership

(a) The ~~committee~~ commission shall consist of no less than ~~five (5)~~ ~~three (3)~~ ~~not more than ten (10)~~ 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. ~~Committee-Commission~~ members will serve for a period of ~~two (2)~~ years ~~one (1), two (2), and three (3) years.~~ ~~Half of the committee-commission-member positions will be filled on odd years and the remaining half on even years.~~ ~~The committee commission shall elect from among its members a director, who shall be approved by the Principal Chief and the tribal council.~~

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

(c) The Principal Chief shall, at the time of making the initial appointments 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 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.

(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 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 Commission shall be a member of any tribal or local commission of a political party, or an officer or 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 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 ~~committee~~ commission shall have the power to generally oversee the director and the tribal gaming office and review its actions for approval to ensure compliance with this Act and any regulations adopted and orders issued by the commission. The commission shall submit to a conflict of interest provision disclosing potential unethical situations.

(h) The ~~committee-commission~~ shall be charged with the sole responsibilities of administering and enforcing the provisions of this Act.

(i) It shall be the responsibility of the ~~committee-commission~~ to promulgate regulations necessary to administer the provisions of this Act. The duties 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) Supervise 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.
- 7) Reviewing all records, documents and anything else necessary and pertinent to the financial accountabilities of licensees or enforcement of any provision of this ordinance.
- 8) Review for approval or denial any application or licensee, and to limit conditions to suspend or restrict any license.
- 9) Propose fines as needed.

#### Section 4-2-3 Procedures

The ~~committee-commission~~ shall afford an applicant for a license an opportunity for hearing prior to 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 final action resulting in denying, terminating, revoking, suspending, or limiting a license or any other adverse action the ~~committee-commission~~ deems appropriate; provided, the director 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. In cases where a license is suspended prior to hearing, an opportunity for a hearing shall be provided.

#### Section 4-2-4 Preliminary Determination

Whenever, upon preliminary factual finding, the ~~committee-commission~~ determines that any person has failed to comply with the provision of this Act or any regulations promulgated hereunder, the ~~committee-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 shall have an opportunity to be heard and present evidence. The ~~committee-commission~~ shall have the specific right to enjoin and restrain illegal activities.

#### Section 4-2-5 Hearing

At such hearing it shall be the obligation of the subject 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, or to show cause why any other action regarding any other person or persons subject to any action should not be taken.

#### Section 4-2-6 Additional Powers

The commission shall be empowered with all necessary powers of control over all such entities as would normally fall within the purview of such commission, or of those entities over which specific control is granted to the commission by the council. Without limiting the generality of the foregoing statement, the 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 this code 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 4-2-7 Limitations; Recommendations

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

#### Section 4-2-8 Salaries

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

#### Section 4-2-9 Appeals

(a) The Judicial Appeals Tribunal shall have exclusive jurisdiction to hear appeals from final decisions of the Commission.

(b) Any party may appeal any final decision of the Commission within 30 days after such decision by filing a notice of appeal with the Commission and serving a copy to the Nation. Thereafter the 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 Commission. The Judicial Appeals Tribunal shall not set aside, modify or remand any determination by the 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 4-2-10

Finality of Commission or Judicial  
Appeals Tribunal Action

Any final finding or determination of the Commission which is not timely appealed, and any final determination of the Judicial Appeals Tribunal in proceedings pursuant to Section 2-9 shall be final and binding in any other proceeding against or by the same person before the Commission or the Judicial Appeals Tribunal.

SUBCHAPTER 3

LICENSING

Section 4-3-1 License required

Any agent of the Cherokee Nation conducting public gaming operations for the benefit of the Cherokee Nation on property of the Cherokee Nation 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 the Cherokee Nation gaming commission are 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 or under control and operated by the Cherokee Nation of Oklahoma. The commission shall have the right to enjoin and restrain illegal activities.

Section 4-3-2 Classes and fees

There shall be three (3) different classes of gaming, each characterized by its separate requirements and fees. These classes are created in compliance with the Indian Gaming Regulation Act, Public Law 100-497, October 17, 1988.

Section 4-3-3 Class I Gaming

No license requirement.

Section 4-3-4 Class II Gaming

Only a wholly owned Cherokee Nation tribal enterprise or its designated and approved agent or employee 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 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:

- (i) to fund tribal government operations or programs;
- (ii) to provide for the general welfare of the Cherokee Tribe and its members;
- (iii) 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 \$2,500.00 will be charged for any Class II gaming license.

### Section 3-5 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:

- (i) to fund tribal government operations or programs;
- (ii) to provide for the general welfare of the Cherokee Tribe and its members.

## SUBCHAPTER 4

### RULES OF OPERATION AND GENERAL ACCOUNTABILITY

#### Section 4-1 Records, Returns and Audits

It shall be the responsibility of the Cherokee Nation Gaming Commission to promulgate regulations establishing proper accounting procedures and methods of operations for all licensees of Class II and Class III gaming activities so that all monies or things of value received and paid out may be properly monitored and accounted for. All licensees 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 committee. 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 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 or commission, or shall otherwise interfere, with any proper and lawful efforts by the director or the commission to produce such information. The 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 suspension or revocation of any license or management contract.

#### Section 4-2 Rules of the Game

It shall be the responsibility of the Cherokee Nation Gaming commission to promulgate regulations establishing the particular rules of any give Class II or Class III gaming in order that said gaming will be conducted with fairness and uniformity.

#### Section 4-3 Age Limit For All Gaming

No person who is under the age of 18 shall operate or be allowed to participate in any manner in the operation of any Class II or Class III gaming activities. It shall be the responsibility of any manager or licensed agent of the Cherokee Nation to insure compliance with this age limit requirement.


Section 4-4 Inherent Sovereignty of the Cherokee Nation of Oklahoma

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 of Oklahoma.


Passed by the Cherokee Nation Tribal Council on this 22nd day of OCTOBER, 1990.

  
John A. Ketcher, President  
Cherokee Nation Tribal Council

Approved and signed by the Principal Chief this 22nd day of OCTOBER, 1990.

  
Wilma P. Mankiller, Principal Chief  
Cherokee Nation of Oklahoma

ATTEST:

  
Gary D. Chapman, Secretary/Treasurer  
Cherokee Nation of Oklahoma

Roll Call:

Amon Baker	<u>ABSENT</u>	Betty Buckhorn	<u>YES</u>
Sam Ed Bush	<u>YES</u>	Joe Grayson, Sr.	<u>ABSENT</u>
Joe Byrd	<u>YES</u>	Stann Hummingbird	<u>YES</u>
Gary Chapman	<u>YES</u>	Robert McSpadden	<u>YES</u>
Sam Daugherty	<u>YES</u>	Patsy Morton	<u>YES</u>
James Eagle	<u>ABSENT</u>	Jeff Muskrat	<u>YES</u>
		Harold Phillips	<u>ABSENT</u>
		Goodlow Proctor	<u>ABSENT</u>
		Woodrow Proctor	<u>YES</u>