

ACT OF UNION BETWEEN THE EASTERN AND WESTERN CHEROKEES

Whereas our Fathers have existed, as a separate and distinct Nation, in the possession and exercise of the essential and appropriate attributes of sovereignty, from a period extending into antiquity, beyond the records and memory of man: AND WHEREAS these attributes, with the rights and franchises which they involve, remain still in full force and virtue, as do also the national and social relations of the Cherokee people to each other and to the body politic, excepting in those particulars which have grown out of the provisions of the treaties of 1817 and 1819 between the United States and the Cherokee nation, under which a portion of our people removed to this country and became a separate community: But the force of circumstances having recently compelled the body of the Eastern Cherokees to remove to this country, thus bringing together again the two branches of the ancient Cherokee family, it has become essential to the general welfare that a union should be formed, and a system of government matured, adapted to their present condition, and providing equally for the protection of each individual in the enjoyment of all his rights:

Therefore we, the people composing the Eastern and Western Cherokee Nation, in National Convention assembled, by virtue of our original and inalienable rights, do hereby solemnly and mutually agree to form ourselves into one body politic, under the style and title of the Cherokee Nation.

In view of the union now formed, and for the purpose of making satisfactory adjustments of all unsettled business which may have arisen before the consummation of this union, we agree that such business shall be settled according to the provisions of the respective laws under which it originated, and the courts of the Cherokee nation shall be governed in their decisions accordingly. Also, that the delegation authorized by the Eastern Cherokees to make arrangements with Major General Scott for their removal to this country shall continue in charge of that business, with their present powers, until it shall be finally closed. And also that all rights and title to public Cherokee lands on the east or west of the river Mississippi, with all other public interests which may have vested in either branch of the Cherokee family, whether inherited from our Fathers or derived from any other source, shall henceforward vest entire and unimpaired in the Cherokee Nation, as constituted by this union.

Given under our hands, at Illinois Camp-ground, this 12th day of July, 1839.

By order of the National Convention:

GEORGE LOWREY,
President of the Eastern Cherokees.
GEORGE GUESS, his x mark,
President of the Western Cherokees.

EASTERN CHEROKEES
R. TAYLOR, V.P.,
JAMES BROWN, V.P.,

WESTERN CHEROKEES
TOBACCO WILL, V.P.,
DAVID MELTON, V.P.,

TE-KE-CHU-LASKEE, V.P.,
GEORGE HICKS,
JOHN BERGE,
THOMAS FOREMAN,
ARCHIBALD CAMPBELL,
JESSE BUSHYHEAD,
LEWIS ROSS,
EDWARD GUNTER,
TE NAH-LA WESTAH,
STEPHEN FOREMAN,
DANIEL McCOY.

By order of the National Convention:

JNO. ROSS,
Principal Chief Eastern Cherokees.
GOING SNAKE,
Speaker of Council.

JOHN DREW, V.P.,
GEORGE BREWER,
THOMAS CANDY,
MOSES PARRIS,
JAMES CAMPBELL,
LOONEY RILEY,
CHARLES GOARD,
LEWIS MELTON,
YOUNG WOLF,
CHARLES COODEY,
AH-STO-LA-TA,
JACK SPEARS,
LOONEY PRICE.

By order of the Nat'l Convention:
August 23, 1839.

JOHN LOONEY, his x mark,
Acting Principal Chief Western Cherokees.

The foregoing instrument was read, considered, and approved by us this 23d day of August, 1839:

Aaron Price, Major Pullum, Young Elders, Deer-track, Young Puppy, Turtle Fields, July, The Eagle, The Crying Buffalo, and a great number of respectable old settlers and late emigrants, too numerous to be copied.

CONSTITUTION OF THE CHEROKEE NATION 1839

Constitution of 1839

The Eastern and Western Cherokees having again reunited, and become one body politic, under the style and title of the Cherokee nation; Therefore,

We, the people of the Cherokee nation, in National Convention assembled, in order to establish justice, insure tranquility, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom—acknowledging, with humility and gratitude, the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring His aid and guidance in its accomplishment—do ordain and establish this Constitution for the government of the Cherokee Nation.

ARTICLE I.

Sec. 1. The boundary of the Cherokee Nation shall be that described in the treaty of 1833 between the United States and Western Cherokees subject to such extension as may be made in the

adjustment of the unfinished business with the United States.

Sec. 2. The lands of the Cherokee nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the Nation, are the exclusive and indefeasible property of the citizens respectively who made, or may rightfully be in possession of them: *Provided*, That the citizens of the Nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that, whenever any citizen shall remove with his effects out of the limits of this Nation, and become a citizen of any other Government, all his rights and privileges as a citizen of this Nation shall cease: *Provided, nevertheless*, That the National Council shall have power to re-admit, by law, to all the rights of citizenship, any such person or persons who may, at any time, desire to return to the Nation, on memorializing the National Council for such readmission.

Moreover, the National Council shall have power to adopt such laws and regulations as its wisdom may deem expedient and proper to prevent citizens from monopolizing improvements with the view of speculation.

ARTICLE II.

Sec. 1. The power of this Government shall be divided into three distinct departments—the Legislative, the Executive, and the Judicial.

Sec. 2. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE III.

Sec. 1. The Legislative power shall be vested in two distinct branches—a National Committee, and Council; and the style of their acts shall be—*Be it enacted by the National Council*.

Sec. 2. The National Council shall make provision, by law, for laying off the Cherokee Nation into eight districts; and if subsequently it should be deemed expedient, one or two may be added thereto.

Sec. 3. The National Committee shall consist of two members from each district, and the Council shall consist of three members from each district, to be chosen by the qualified electors in their respective districts for two years; the elections to be held in the respective districts every two years, at such times and places as may be directed by law.

The National Council shall, after the present year, be held annually, to be convened on the first Monday in October, at such place as may be designated by the National Council, or, in case of emergency, by the Principal Chief.

Sec. 4. Before the districts shall be laid off, any election which may take place shall be by general vote of the electors throughout the Nation for all officers to be elected.

The first election for all the officers of the Government—Chiefs, Executive Council, members of the National Council, Judges, and Sheriffs—shall be held at Tah-le-quah before the rising of this Convention; and the term of service of all officers elected previous to the first Monday in October, 1839, shall be extended to embrace, in addition to the regular constitutional term, the time intervening from their election to the first Monday in October, 1839.

Sec. 5. No person shall be eligible to a seat in the National Council but a free Cherokee male citizen who shall have attained to the age of twenty-five years.

The descendants of Cherokee men by all free women except the African race, whose parents may have been living together as man and wife, according to the customs and laws of this nation, as well as the posterity of Cherokee women by all free men. No person who is of negro or mulatto parentage, either by the father or mother's side, shall be eligible to hold any office of profit, honor, or trust under this Government.

Sec. 6. The electors and members of the National Council shall in all cases, except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and at the national Council, in going to and returning.

Sec. 7. In all elections by the people, the electors shall vote *viva voce*.

All free male citizens who shall have attained to the age of eighteen years shall be equally entitled to vote at all public elections.

Sec. 8. Each branch of the National Council shall judge of the qualifications and returns of its own members; and determine the rules of its proceedings; punish a member for disorderly behavior, and, with the concurrence of two thirds, expel a member; but not a second time for the same offence.

Sec. 9. Each branch of the National Council, when assembled, shall choose its own officers; a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalty as each branch may prescribe.

Sec. 10. The members of the National Council, shall each receive from the public Treasury a compensation for their services which shall be three dollars per day during their attendance at the national Council; and the members of the Council shall each receive three dollars per day for their services during their attendance at the National Council, provided that the same may be increased or diminished by law, but no alteration shall take effect during the period of service of the members of the National Council by whom such alteration may have been made.

Sec. 11. The National Council shall regulate by law by whom and in what manner, writs of

election shall be issued to fill the vacancies which may happen in either branch thereof.

Sec. 12. Each member of the National Council, before he takes his seat, shall take the following oath, or affirmation: I, A. B. do solemnly swear (or affirm, as the case may be,) that I have not obtained my election by bribery, threats, or any undue and unlawful means used by myself or others by my desire or approbation for that purpose; that I consider myself constitutionally qualified as a member of ____, and that on all questions and measures which may come before me I will so give my vote and so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of this Nation, and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power observe, conform to, support and defend the Constitution thereof.

Sec. 13. No person who may be convicted of felony shall be eligible to any office or appointment of honor, profit or trust within this Nation.

Sec. 14. The National Council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the Nation, which shall not be contrary to this Constitution.

Sec. 15. It shall be the duty of the National Council to pass such laws as may be necessary and proper to decide differences by arbitration, to be appointed by the parties, who may choose that summary mode of adjustment.

Sec. 16. No power of suspending the laws of this Nation shall be exercised, unless by the National Council or its authority.

Sec. 17. No retrospective law, nor any law impairing the obligation of contracts, shall be passed.

Sec. 18. The National Council shall have power to make laws for laying and collecting taxes, for the purpose of raising a revenue.

Sec. 19. All bills making appropriations shall originate in the National Committee, but the Council may propose amendments or reject the same; all other bills may originate in either branch, subject to the concurrence or rejection of the other.

Sec. 20. All acknowledged treaties shall be the supreme law of the land, and the National Council shall have the sole power of deciding on the construction of all treaty stipulations.

Sec. 21. The Council shall have the sole power of impeaching. All impeachments shall be tried by the National Committee. When sitting for that purpose the member shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

Sec. 22. The Principal Chief, assistant Principal Chief, and all civil officers shall be liable to impeachment for misdemeanor in office; but judgment in such cases shall not extend further than

removal from office and disqualification to hold any office of honor, trust, or profit under the Government of this Nation.

The party whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

ARTICLE IV.

Sec. 1. The Supreme Executive Power of this Nation shall be vested in a Principal Chief, who shall be styled the Principal Chief of the Cherokee Nation.

The Principal Chief shall hold his office for the term of four years; and shall be elected by the qualified electors on the same day and at the places where they shall respectively vote for members to the national Council. The returns of the election for Principal Chief shall be sealed up and directed to the president of the national Committee, who shall open and publish them in the presence of the national Council assembled. The person having the highest number of votes shall be Principal Chief; but if two or more shall be equal and highest in votes, one of them shall be chosen by joint vote of both branches of the Council. The manner of determining contested elections shall be directed by law.

Sec. 2. No person except a natural born citizen shall be eligible to the office of principal Chief; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years.

Sec. 3. There shall also be chosen at the same time by the qualified electors in the same manner for four years an assistant Principal Chief, who shall have attained to the age of thirty-five years.

Sec. 4. In case of the removal of the Principal Chief from office, or of his death or resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the assistant Principal Chief until the disability be removed or the vacancy filled by the National Council.

Sec. 5. The National Council may by law provide for the case of removal, death, resignation, or disability of both the Principal and assistant Principal Chief, declaring what officer shall then act as Principal Chief until the disability be removed or a Principal Chief shall be elected.

Sec. 6. The Principal Chief and assistant Principal Chief shall, at stated times, receive for their services a compensation which shall neither be increased nor diminished during the period for which they shall have been elected; and they shall not receive within that period any other emolument from the Cherokee Nation or any other Government.

Sec. 7. Before the Principal Chief enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear, or affirm, that I will faithfully execute the duties of Principal Chief of the Cherokee Nation, and will, to the best of my ability, preserve, protect, and defend, the Constitution of the Cherokee Nation."

Sec. 8. He may, on extraordinary occasions, convene the National Council at the seat of Government.

Sec. 9. He shall, from time to time, give to the National Council information of the state of the Government, and recommend to their consideration such measures as he may deem expedient.

Sec. 10. He shall take care that the laws be faithfully executed.

Sec. 11. It shall be his duty to visit the different districts at least once in two years, to inform himself of the general condition of the country.

Sec. 12. The assistant Principal Chief shall, by virtue of his office, aid and advise the Principal Chief in the administration of the government, at all times during his continuance in office.

Sec. 13. Vacancies that may occur in offices, the appointment of which is vested in the National Council shall be filled by the Principal Chief, during the recess of the National Council, by granting commissions which shall expire at the end of the next session thereof.

Sec. 14. Every bill which shall pass both branches of the National Council shall, before it becomes a law, be presented to the Principal Chief; if he approve, he shall sign it, but if not, he shall return it, with his objections to that branch in which it may have originated, who shall enter the objections at large on their journals, and proceed to reconsider it; if, after such reconsideration, two-thirds of that branch shall agree to pass the bill, it shall be sent, together with the objections, to the other branch, by which it shall likewise be reconsidered, and if approved by two-thirds of that branch, it shall become a law. If any bill shall not be returned by the Principal Chief within five days (Sundays excepted) after the same has been presented to him, it shall become a law, in like manner as if he had signed it, unless the National Council, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

Sec. 15. Members of the National Council, and all officers, Executive and Judicial, shall be bound by oath to support the Constitution of this Nation, and to perform the duties of their respective offices with fidelity.

Sec. 16. In case of disagreement between the two branches of the National Council, with respect to the time of adjournment, the Principal Chief shall have power to adjourn the same to such a time as he may deem proper; provided, it be not to a period beyond the next constitutional meeting thereof.

Sec. 17. The Principal Chief shall, during the session of the National Council, attend at the seat of Government.

Sec. 18. There shall be a council composed of five persons to be appointed by the National Council, whom the Principal Chief shall have full power at his discretion to assemble; he, together with the assistant Principal Chief, and the counsellors, or a majority of them, may, from time to time, hold and keep a Council for ordering and directing the affairs of the Nation according to law;

provided the National Council shall have power to reduce the number, if deemed expedient, after the first term of service, to a number not less than three.

Sec. 19. The members of the Executive Council shall be chosen for the term of two years.

Sec. 20. The resolutions and advice of the Council shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either branch of the National Council, and any counsellor may enter his dissent to the majority.

Sec. 21. The Treasurer of the Cherokee Nation shall be chosen by a joint vote of both branches of the National Council for the term of four years.

Sec. 22. The Treasurer shall, before entering on the duties of his office, give bond to the nation with sureties to the satisfaction of the National Council, for the faithful discharge of his trust.

Sec. 23. No money shall be drawn from the Treasury but by warrant from the Principal Chief, and in consequence of appropriations made by law.

Sec. 24. It shall be the duty of the Treasurer to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys, at the annual session of the National Council.

ARTICLE V.

Sec. 1. The Judicial powers shall be vested in a Supreme Court, and such Circuit and Inferior courts as the National Council may, from time to time, ordain and establish.

Sec. 2. The Judges of the Supreme and Circuit courts shall hold their commissions for the term of four years, but any of them may be removed from office on the address of two-thirds of each branch of the National Council to the Principal Chief, for that purpose.

Sec. 3. The Judges of the Supreme and Circuit courts shall, at stated times, receive a compensation which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the Government of this Nation or any other Power.

Sec. 4. No person shall be appointed a Judge of any of the courts until he shall have attained to the age of thirty years.

Sec. 5. The Judges of the Supreme and Circuit courts shall be elected by the National Council, and there shall be appointed in each district as many justices of the peace as it may be deemed expedient for the public good, whose powers, duties, and duration in office, shall be clearly designated by law.

Sec. 6. The Judges of the Supreme Court and of the Circuit courts shall have complete criminal

jurisdiction in such cases and in such manner as may be pointed out by law.

Sec. 7. No Judge shall sit on trial of any cause when the parties are connected by affinity or consanguinity, except by consent of the parties.

In case all the Judges of the Supreme Court shall be interested in the issue of any cause, or related to all or either of the parties, the National Council may provide by law for the selection of a suitable number of persons of good character and knowledge for the determination thereof, and who shall be specially commissioned for the adjudication of such case by the Principal Chief.

Sec. 9. All writs and other process shall run "in the name of the *Cherokee Nation*," and bear test, and be signed by the respective clerks.

Sec. 10. The Supreme court shall, after the present year, hold its session annually at the seat of Government, to be convened on the first Monday of October, in each year.

Sec. 11. In all criminal prosecutions, the accused shall have the right of being heard; of demanding the nature and cause of the accusation; of meeting the witnesses face to face; of having compulsory process for obtaining witnesses in his or their favor; and in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage; nor shall the accused be compelled to give evidence against himself.

Sec. 12. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without good cause supported by oath or affirmation.

Sec. 13. All persons shall be bailable by sufficient securities, unless for capital offences, where the proof is evident, or presumption great.

ARTICLE VI.

Sec. 1. No person who denies the being of a God, or a future state of reward and punishment, shall hold any office in the civil department in this Nation.

Sec. 2. The free exercise of religious worship, and serving God without distinction shall, forever, be enjoyed within the limits of this Nation: provided, that this liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this Nation.

Sec. 3. When the National Council shall determine the expediency of appointing delegates, or other public agents, for the purpose of transacting business with the Government of the United States, the Principal Chief shall recommend, and, by the advice and consent of the National Committee, appoint and commission such delegates or public agents accordingly. On all matters of interest, touching the rights of the citizens of this Nation, which may require the attention of the United

States Government, the Principal Chief shall keep up a friendly correspondence with that Government, through the medium of its proper officers.

Sec. 4. All commissions shall be "in the name, and by the authority of the Cherokee Nation;" and be sealed with the seal of the nation, and signed by the Principal Chief. The Principal Chief shall make use of his private seal until a National seal shall be provided.

Sec. 5. A Sheriff shall be elected in each district, by the qualified electors thereof, who shall hold his office two years, unless sooner removed. Should a vacancy occur, subsequent to an election, it shall be filled by the Principal Chief, as in other cases; and the person so appointed, shall continue in office until the next regular election.

Sec. 6. No person shall for the same offence be twice put in jeopardy of life or limb; nor shall the property of any person be taken and applied to public use without a just and fair compensation: *Provided*, That nothing in this clause shall be so construed as to impair the right and power of the National Council to lay and collect taxes.

Sec. 7. The right of trial by jury, shall remain inviolate; and every person, for injury sustained in person, property, or reputation, shall have remedy by due course of law.

Sec. 8. The appointment of all officers, not otherwise directed by this Constitution, shall be vested in the National Council.

Sec. 9. Religion, morality, and knowledge, being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged in this Nation.

Sec. 10. The National Council may propose such amendments to this Constitution, as two-thirds of each branch may deem expedient; and the Principal Chief shall issue a proclamation, directing all civil officers of the several districts to promulgate the same as extensively as possible within their respective districts, at least six months previous to the next general election. And if, at the first session of the National Council, after such general election two-thirds of each branch shall, by ayes and noes, ratify such proposed amendments, they shall be valid to all intent and purposes, as parts of this Constitution: *Provided*, That such proposed amendments shall be read on three several days in each branch, as well when the same are proposed, as when they are ratified.

Done in Convention at Tah-le-quah, Cherokee Nation, this sixth day of September, 1839.

GEORGE LOWREY,

President of the National Convention.

Hair Conrad, his x mark,
John Benge, his x mark,
Thomas Candy

Young Wolf,
Joseph Martin Lynch,
George Brewer, his x mark,

Archibald Campbell, his x mark
John Drew
George Guess, his x mark,
Walter Scott Adair
Young Elders, his x mark,
Will. Shorey Coodey
Thomas Foreman
Richard Taylor
Thomas Fox Taylor
O-kan-sto-tah Logan, his x mark,
James Spears, his x mark,
John Spears
Stephen Foreman
Sal-la-tee-skee Watts, his x mark,
Young Glass, his x mark,
Looney Price
Tobacco Will, his x mark,
Major Pullum, his x mark,
Moses Parris
George Washington Gunter
Kenah Logan, his x mark,

Joshua Buffington,
Jesse Bushyhead,
Jesse Russell,
John Fletcher Boot, his x mark,
Crying Buffalo, his x mark,
Bark Flute, his x mark,
Oo-la-yo-a, his mark,
Soft-shell Turtle, his x mark,
Edward Gunter,
Daniel Colston, his x mark,
Lewis Ross,
George Hicks,
Turtle Fields, his x mark,
Elijah Hicks,
Tah-lah-see-nee, his x mark,
James Brown,
Charles Coodey,
Riley Keys,
Daniel McCoy,
Lewis Melton,

CONSTITUTION OF THE CHEROKEE NATION OF OKLAHOMA 1975

PREAMBLE

We, the people of the Cherokee Nation, in order to preserve and enrich our tribal culture, achieve and maintain a desirable measure of prosperity the blessings of freedom, acknowledging, with humility and gratitude, the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring his aid and guidance in its accomplishment—do ordain and establish this Constitution for the government of the Cherokee Nation. The term "Nation" as used in this Constitution is the same as "Tribe."

Article I. Federal Relationship

The Cherokee Nation is an inseparable part of the Federal Union. The Constitution of the United States is the Supreme law of the land; therefore, the Cherokee Nation shall never enact any law which is in conflict with any Federal law.

Article II. Bill of Rights

Section 1. The judicial process of the Cherokee Nation shall be open to every member of the Cherokee Nation. Speedy and certain remedy shall be afforded under the terms of this Constitution

for every wrong and injury to person, property or reputation wherein said remedy does not conflict with the laws of the United States. The Council shall prescribe the procedures pertinent thereto. The appropriate protections guaranteed by the Indian Civil Rights Act of 1968 shall apply to all members of the Cherokee Nation.

Article III. Membership

Section 1. All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8th day of May, 1867, and the Shawnee Cherokees as of Article III of the Shawnee Agreement dated the 9th day of June, 1869, and/or their descendants.

Section 2. There shall be established a Cherokee Register, to be kept by the Registrar, for the inclusion of any Cherokee for membership purposes in the Cherokee Nation who presents the necessary evidence of eligibility for registration.

(a) A Registration Committee shall be established. It shall be the duty of the Registration Committee to consider the qualifications and to determine the eligibility of those applying to have their names entered in the Cherokee Register. The Registration Committee shall consist of a Registrar and two (2) assistants. All members shall be appointed by the Principal Chief, and confirmed by the Council.

(b) There shall be a number assigned to every name which is approved and entered into the Cherokee Register. This number shall be preceded by the three words, "Cherokee Registry Number".

(c) The decisions of the Registration Committee shall be subject to review by the Tribunal created by Article VII.

Section 3. Registration as used in this article refers to the process of enrolling as a member of the Cherokee Nation and is not the same as the registration for voting purposes.

Article IV. Distribution of Powers

The powers of the government of the Cherokee Nation shall be divided into three (3) separate departments: Legislative, Executive and Judicial; and except as provided in this Constitution, the Legislative, Executive and Judicial departments of government shall be separate and distinct and neither shall exercise the powers properly belonging to either of the others.

Article V. Legislative

Section 1. The legislature shall consist of one legislative body to be called the Council of the Cherokee Nation. The initial election of members to the Council pursuant to this Constitution shall occur within 120 days from the date of its ratification on a day to be announced by the Principal Chief.

Section 2. The Council shall establish its rules for its credentials, decorum, and procedure.

Section 3. The Council shall consist of fifteen (15) members, who are members by blood of the Cherokee Nation of Oklahoma. Each Council member shall be elected in the general election for a term of four (4) years and until his successor is duly elected and installed.

The Council shall establish representative districts which shall be within the historical boundaries of the Cherokee Nation of Oklahoma. These districts shall be apportioned to afford a reasonably equal division of tribal membership among the districts.

Section 4. There shall be at least one regular session of the Council in the calendar year which shall convene on the second Monday in each January or at such other date as the Council shall determine. No business shall be conducted by the Council unless at least two-thirds (2/3) of members thereof regularly elected and qualified shall be in attendance, which number shall constitute a quorum. The session may not exceed a maximum of thirty (30) calendar days for pay purposes.

Section 5. Special meetings of the Council may be called: (A) by the Principal Chief, (B) by the Deputy Principal Chief when he has the full powers of the Principal Chief as elsewhere defined, (C) upon written request of fifty-one percent (51%) of the members of the Council, or (D) upon the written request of ten percent (10%) of the registered voters of the Cherokee Nation. The purposes of said meeting shall be stated in a notice published not less than ten (10) days prior to the meeting, and the Council may not consider any other subject not within such purposes. No special meetings may convene until thirty (30) days have elapsed after the adjournment of a prior session or meeting, unless called pursuant to (A) and (B) above.

Section 6. All meetings of the Council and of its committees shall be open to the public except: (A) When the discussion shall concern employment, retention or discharge of personnel; (B) When the question of the moral turpitude of any member of the Tribe is discussed; or (C) When the decorum of the audience shall prejudice orderly administration of business. In the event that consideration of a subject shall take place in Executive Session, the vote shall take place in an open meeting.

Section 7. The Council shall have the power to establish laws which it shall deem necessary and proper for the good of the Nation, which shall not be contrary to the provisions of this Constitution. Laws or enactments which are required by Federal statutes to be approved shall be transmitted immediately upon enactment as provided by Section 11 of this Article to the President of the United States or his authorized representative.

The style of all bills shall be: "Be It Enacted By The Cherokee Nation". The style of all resolutions shall be "Be It Resolved By The Cherokee Nation".

Section 8. No laws passed by the Council shall have retroactive effect or operation.

Section 9. The Council shall have the power of removal and said removal must be conducted in accordance with Article XI of this Constitution. Nothing herein is intended to abrogate or limit the authority of the President of the United States or any person or agency to which the President or Congress of the United States shall delegate authority therefore, to remove the Principal Chief or his subordinates.

Section 10. Members of the Council and all Executive Officers shall be bound by oath, provided in Article XIII, to support the Constitution of the Cherokee Nation, the Constitution of the United States of America, do everything within the individual's power to promote the culture, heritage and traditions of the Cherokee Nation and to perform the duties of their respective offices with fidelity.

Section 11. Every enactment which shall have been approved by a majority of the members in attendance at the Council shall, before it becomes effective be presented to the Principal Chief, if he approves, he shall sign it; if not, he shall return it with his objections to the Council, which shall enter the objections in the Journal and proceed to reconsider it. If, after such reconsideration, two-thirds (2/3) of the entire council shall agree to pass the enactment, it shall become fully effective and operational notwithstanding the objections of veto of the principal chief. In all such cases, the vote of the Council shall be determined by yeas and nays, and the names of the members voting shall be entered on the Council's Journal. If any enactment shall not be returned by the Principal Chief within five (5) days (Sundays and holidays excepted) after it shall have been presented to him, the same shall be law in like manner as if he had signed it, unless the Council shall, by its adjournment, prevent its return, in which case, it shall become a law without the approval of the Principal Chief. No enactment shall become law after the final adjournment of the Council, unless approved by the Principal Chief within fifteen (15) days after such adjournment.

Article VI. Executive

Section 1. The executive power shall be vested in a Principal Chief, who shall be styled "The Principal Chief of the Cherokee Nation". The Principal Chief shall hold his office for the term of four (4) years; and shall be elected by the qualified voters on the same day and in the same manner, except as otherwise provided by this Constitution, as they shall respectively vote for members of the Council for that particular year, provided, the Principal Chief in office when this Constitution is ratified shall continue in office until his successor is duly elected in the 1979 election and installed.

The returns of the election for the Principal Chief shall be sealed and directed by the lawfully appointed election officials to the Secretary-Treasurer, who shall, immediately after the organization of the Council, and before proceeding to other business, open and publish the same in the presence of a majority of the Council. The person having the highest number of votes shall be the Principal Chief; but if two (2) or more shall be equal and highest in votes, one of them shall be chosen by a vote of the Council. The manner of determining contested elections shall be as directed by Cherokee law.

Section 2. The Principal Chief of the Cherokee Nation shall be a citizen of the Cherokee Nation of Oklahoma in accordance with Article III. He shall have been born within boundaries of the United States of America, its territories or possessions; and he shall have obtained the age of thirty (30)

years at the time of his election and be a member by blood of the Cherokee Nation of Oklahoma.

Section 3. The qualified electors shall elect a Deputy Principal Chief, who shall possess the same qualifications as the Principal Chief, for a term of four (4) years at the same time and in the same manner as herein provided for the election of the Principal Chief, provided, that the initial election of the Deputy Principal Chief shall take place in conjunction with the first Council election pursuant to this Constitution and in accordance with Section 1 of this Article.

Section 4. In case of the absence of the Principal Chief from office due to his death, resignation, removal or inability to discharge the powers and duties of the said office, the same shall devolve upon the Deputy Principal Chief for the remaining portion of the four (4) year term to which the Principal Chief has been elected. In case of disability, such powers shall continue during the term of such disability. Vacancies in the office of the Deputy Principal Chief shall be filled by the Council.

Section 5. The Council may, in the case of removal, death, resignation or disability of both the Principal Chief and the Deputy Principal Chief, provide by law what officer shall then act as Principal Chief until the disability be removed or a successor shall be elected.

Section 6. The Principal Chief and Deputy Principal Chief shall, at stated times, receive for their service a compensation not inconsistent with Article X.

Section 7. Before the Principal Chief assumes his office, he shall take the oath or affirmation as provided for in Article XIII.

Section 8. The Principal Chief may on extraordinary occasions convene the Council at the seat of government pursuant to Article V, Section 5, and such notice and other laws as may be prescribed by the Council. The purpose of said meetings must be stated and the Council may consider only such matters as are specified in the call of the extraordinary meetings. Before the extraordinary meetings may be legally sufficient to conduct business, a quorum of the Council must be present.

Section 9. At every session of the Council, and immediately upon its organization, the Principal Chief shall communicate by message, delivered to the Council upon the condition of the Cherokee Nation; and shall recommend such matters to the Council as he shall judge expedient.

Section 10. The Principal Chief shall cause the laws of the Cherokee Nation to be faithfully executed, and shall conduct in person and in such manner as shall be prescribed by law, all communications and business of the Cherokee Nation. The Principal Chief may cause to be formed and operated, trusts, the beneficiary of which shall be the Cherokee Nation and these trusts shall be granted such powers as provided by law for public trusts. Authorization for these trusts, however, must be approved by a majority vote of the Council.

Section 11. The Deputy Principal Chief shall, by virtue of his office, aid and advise the Principal Chief in the administration of the government and shall be President of the Council but shall vote only for the purpose of breaking a tie vote.

Section 12. Nothing in this Constitution shall be construed as preventing the Principal Chief from appointing such administrative assistants as he deems proper.

Article VII. Judicial

There is hereby created a Judicial Appeals Tribunal composed of three (3) members all of whom must be admitted to practice law before the highest Court of the State of which they are residents, and all of whom shall be members of the Cherokee Nation, appointed by the Principal Chief and approved by the Council for such terms as the Council may provide. The purpose of this Tribunal shall be to hear and resolve any disagreements arising under any provisions of this Constitution or any enactment of the Council. The Council shall provide for a procedure which shall insure that any litigant receives due process of law together with prompt and speedy relief, and shall generally follow that portion of the Oklahoma Statutes known as the Administrative Procedures Act, Title 75 Oklahoma Statutes § 301 et seq. The decision of the Judicial Appeal Tribunal shall be final insofar as the judicial process of the Cherokee Nation is concerned.

Article VIII. Cabinet

There shall be a cabinet composed of the following persons who shall be members of the Cherokee Nation:

Secretary–Treasurer

Secretary of Health, Education and Welfare

Secretary of Commerce and Industrial Development

General Counsel

Secretary of Communications

These persons shall be appointed by the Principal Chief and approved by the Council. The Council, on recommendation of the Chief only, may create additional cabinet positions and departments. The Chief shall prescribe the duties and responsibilities of cabinet members. Cabinet members shall be authorized to appoint such staff and other assistants as they deem necessary. The Council may, with recommendation of the Principal Chief, abolish any established cabinet position or function or revise the title or responsibilities of any foregoing department or function.

Article IX. Election

Section 1. The Council shall enact an appropriate law not inconsistent with the provisions of this Constitution that will govern the conduct of all elections, provided that the initial election of the Council and Deputy Principal Chief shall be conducted pursuant to rules and regulations promulgated by the Principal Chief and the provision set forth in Articles V and VI of this

Constitution, notwithstanding, the Principal Chief or Council may adopt rules requiring a majority vote for any elective office.

Section 2. Any member by blood of the Cherokee Nation at least twenty-five (25) years of age on that date of the election may be a candidate for the Council. No person who shall have been convicted of or has pled guilty or has pled no defense to a felony charge under the laws of United States of America, or of any State, Territory, or Possession thereof, shall be eligible to hold any office or appointment of honor, profit or trust within this Nation unless such person has received a pardon. Any person who holds any office of honor, profit or trust in any other tribe of Indians, either elective or appointive shall be ineligible to hold simultaneously any office of honor, profit or trust of the Cherokee Nation unless approved by the Council.

Section 3. All elections shall be determined by secret balloting.

Article X. Fiscal

Section 1. The fiscal year shall commence on the first day of July in each year, unless otherwise provided by law.

Section 2. The Council shall provide by law for annual expenditure of funds, and the source from which funds are to be derived to defray the estimated expenses of the Executive, Council, Cabinet and Departments of Government of the Cherokee Nation for each fiscal year. The budget shall not exceed estimated revenues.

Section 3. At least thirty (30) days prior to the convening of each regular session of the Council, the Secretary–Treasurer shall make and present to the Council an itemized estimate of revenue to be received by the Cherokee Nation, together with a statement of the sources from which revenues are to be received, under the laws, grants, judgments, interests, and any other sources in effect at the time such estimate is made for the next ensuing fiscal year. The Secretary–Treasurer shall prepare annual financial statements reflecting the results of operations of all tribal activities and shall prepare a consolidated balance sheet in conformity with generally accepted accounting principles within sixty (60) days after the end of the fiscal year.

Section 4. The Council shall require that the records be maintained of all funds, monies, accounts and indebtedness and all other accounts bearing upon the fiscal interests of the Cherokee Nation by the use of a uniform system of accounting which records and financial statements shall be audited by a Certified Public Accountant or as otherwise may be prescribed by the Council prior to the submission of said accounts to the Council.

Section 5. The Secretary–Treasurer shall be authorized to accept all grants, donations of money, interest of funds of the Cherokee Nation, judgments and any and all other sources of monies available to the Cherokee Nation, for uses and purposes and upon the conditions and limitations for which the same are granted or donated; and the faith of the Cherokee Nation is hereby pledged to preserve such grants and donations as a sacred trust, and to keep the same for the use and purposes for which they were granted or donated.

Section 6. The Council shall have the authority to invest funds or money of the Cherokee Nation and the preference to be given to the security for such investments, the manner of selecting the securities, prescribing the rules, regulations, restrictions and conditions upon which the funds shall be loaned or invested, provided that no investment shall be in mortgages other than first mortgages only, and do all things necessary for the safety of the funds and permanence of the investments. If required by law, such investments would be subject to the approval of the Secretary of the Interior.

Section 7. The credit of the Cherokee Nation shall not be given, pledged, or loaned to any individual, firm, company, corporation, or association without the approval of the Council. The Cherokee Nation shall not make any donations by gift, or otherwise, to any individual, firm, company, corporation, or association without the approval of the Council.

Section 8. All laws authorizing the expenditures of money by and on behalf of the Cherokee Nation shall specify the purpose for which the money is to be used, and the money so designated shall be used for no other purpose. Annual expenditures shall not exceed the available funds.

Section 9. General laws shall be enacted by the Council providing for the deposit of funds of the Cherokee Nation, and the depository thereof, and such funds shall be under the control of the Secretary–Treasurer, under such terms and conditions as shall be designated by said Council and under such laws which shall provide for the protection of said funds.

Section 10. No official, member or officer of the Council, Cabinet Member, employee of any official, Council, Cabinet, or subdivisions thereof, or any person employed in any capacity by the Cherokee Nation shall receive from any individual, partnership, corporation, or entity doing business with the Cherokee Nation directly or indirectly, any interest, profit, benefits or gratuity, other than wages, salary, per diem, or expenses, specifically provided by law.

Section 11. All officers, elected or appointed, who are authorized by this Constitution or any subsequent legislation to a position of trust over any land, property, accounts or monies, shall execute an official surety bond in the amount as may be required by the Council, and such surety bonds shall inure to the benefit of and be paid for by the Cherokee Nation for whose protection or surety the same shall be required and in no event shall said surety bond be other than by a Licensed Insurance Company, authorized to do business in the State of Oklahoma.

Article XI. Removal From Office

Section 1. The Principal Chief and the Deputy Principal Chief shall be subject to removal from office for willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any conviction involving moral turpitude committed while in office.

Section 2. All other elective officers shall be subject to removal from office in such manner and for such causes as may be provided by laws passed by the Council.

Section 3. The Council shall pass such laws as are necessary for carrying into effect the provisions

of this Article, insuring therein that due process is afforded the accused.

Article XII. Employee Rights

No employee, who having served in a position at least one (1) year, shall be removed from the employment of the Cherokee Nation except for cause. The employee shall be afforded a hearing by the Judicial Appeals Tribunal under such rules and procedures as may be prescribed by the Council. These rules and procedures, however, must follow, as nearly as practicable, the provisions of the Oklahoma Administrative Procedures Act, Title 75 Oklahoma Statutes § 301 et seq.

Article XIII. Oath

Section 1. All officers elected or appointed shall, before entering upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

"I do solemnly swear, or affirm, that I will faithfully execute the duties of ____ of the Cherokee Nation, and will, to the best of my ability, preserve, protect and defend the Constitutions of the Cherokee Nation, and the United States of America. I swear or affirm further, that I will do everything within my power to promote the culture, heritage and traditions of the Cherokee Nation."

Section 2. The foregoing oath shall be administered by any person authorized by the Council to administer oaths. The oath shall be filed in the Office of the Secretary–Treasurer.

Article XIV.

Nothing in this Constitution shall be construed to prohibit the right of any Cherokee to belong to a recognized clan or organization in the Cherokee Nation.

Article XV. Initiative, Referendum and Amendment

Section 1. Notwithstanding the provisions of Article V, the people of the Cherokee Nation reserve to themselves the power to propose laws and amendments to this Constitution and to enact or reject the same at the polls independent of the Council, and also reserve power at their own option to approve or reject at the polls any act of the Council.

Section 2. Any amendment or amendments to this Constitution may be proposed by the Council, and if the same shall be agreed to by a majority of all the members of the Council, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered into the Journal and referred by the Secretary–Treasurer to the people for their approval or rejection, at the next regular general election, except when the Council, by a two-thirds (2/3) vote, shall order a special election for that purpose. If a majority of all the registered voters voting at such election shall vote in favor of any amendment thereto, it shall thereby become a part of this Constitution.

Section 3. The first power reserved by the people of the Cherokee Nation is the initiative and ten

percent of the registered voters shall have the right to propose any legislative measures by petition and fifteen percent (15%) of the registered voters shall have the right to propose amendments to the Constitution by petition, and every such petition shall include the full text of the measure so proposed. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by petition signed by five percent of the registered voters or by the Council as other enactments are effectuated. The ratio and percent of registered voters hereinbefore stated shall be based upon the total number of votes cast at the last general election for the officer receiving the highest number of votes at such election.

Section 4. Referendum petitions shall be filed with the Secretary–Treasurer not more than ninety (90) days after the final adjournment of the session or meeting of the Council which passed the bill on which the referendum is demanded. The veto power of the Principal Chief shall not extend to measures voted on by the people. All elections on measures referred to the people of the Cherokee Nation shall be had at the next regular general election except when the Council or the Principal Chief shall order a special election for the express purpose of making such reference. Any measure referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and provided that no measure which is required to be approved by the President of the United States or his authorized representative shall be effective until approved.

Section 5. Petitions and orders for the initiative and for the referendum shall be filed with the Secretary-Treasurer and addressed to the Principal Chief of the Cherokee Nation, who shall submit the same to the people. The Council shall make suitable provisions for carrying into effect the provisions of this Article.

Section 6. The referendum may be demanded by the people against one or more items, sections or parts of any enactment of the Council in the same manner in which such power may be exercised against a complete enactment. The filing of a referendum petition against one or more items, sections or parts of an enactment shall not delay the remainder of such act from becoming operative.

Section 7. If two or more amendments are proposed they shall be submitted in such manner that electors may vote for or against them separately.

Section 8. No proposal for the amendment of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace a general subject, each proposed article shall be deemed a single proposal or proposition.

Section 9. No convention shall be called by the Council to propose a new Constitution, unless the law providing for such convention shall first be approved by the people on a referendum vote at a regular or special election. Any amendments, alterations, revisions or new Constitution, proposed by such convention, shall be submitted to the electors of the Cherokee Nation at a general or

special election and be approved by a majority of the electors voting thereon before the same shall become effective. The question of such proposed convention shall be submitted to the members of the Cherokee Nation at least once in every twenty (20) years.

Section 10. No amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative.

Article XVI. Supersedes Old Constitution 1839

The provisions of this Constitution overrule and supersede the provisions of the Cherokee Nation Constitution enacted the 6th day of September 1839.

Article XVII. Seat of Government

The Seat of Government of the Cherokee Nation shall be at Tahlequah, Oklahoma.

Article XVIII. Adoption

This Constitution shall become effective when approved by the President of the United States or his authorized representative and when ratified by the qualified voters of the Cherokee Nation at a election conducted pursuant to rules and regulations promulgated by the Principal Chief. It shall be engrossed on parchment and signed by the Principal Chief and the Secretary of the Interior. It shall be filed in the office of the Cherokee Nation and sacredly preserved as fundamental law of the Cherokee Nation.

APPROVED FOR REFERENDUM BY THE COMMISSIONER MORRIS THOMPSON ON SEPTEMBER 5, 1975 SECOND BY THE PRINCIPAL CHIEF OF THE CHEROKEE NATION, ROSS O. SWIMMER ON OCTOBER 2, 1975

CONSTITUTION OF THE CHEROKEE NATION 1999

Preamble

We, the People of the Cherokee Nation, in order to preserve our sovereignty, enrich our culture, achieve and maintain a desirable measure of prosperity and the blessings of freedom, acknowledging with humility and gratitude the goodness, aid and guidance of the Sovereign Ruler of the Universe in permitting us to do so, do ordain and establish this Constitution for the government of the Cherokee Nation.

Article I. Federal Relationship

The Cherokee Nation reaffirms its sovereignty and mutually beneficial relationship with the United States of America.

Article II. Territorial Jurisdiction

The boundaries of the Cherokee Nation territory shall be those described by the patents of 1838 and 1846 diminished only by the Treaty of July 19, 1866, and the Act of March 3, 1893.

Article III. Bill of Rights

The People of the Cherokee Nation shall have and do affirm the following rights:

Section 1. The judicial process of the Cherokee Nation shall be open to every person and entity within the jurisdiction of the Cherokee Nation. Speedy and certain remedy, and equal protection, shall be afforded under the laws of the Cherokee Nation.

Section 2. In all criminal proceedings, the accused shall have the right to: counsel; confront all adverse witnesses; have compulsory process for obtaining witnesses in favor of the accused; and, to a speedy public trial by an impartial jury. The accused shall have the privilege against self-incrimination; and the Cherokee Nation shall not twice try or punish an accused for the same offense. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Section 3. The right of trial by jury shall remain inviolate, and the Cherokee Nation shall not deprive any person of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.

Section 4. The Council shall make no law prohibiting the free exercise of religion or abridging the freedom of speech, or the press, or the right of the People to peaceably assemble, or to petition the Nation for a redress of grievances.

Article IV. Citizenship

Section 1. All citizens of the Cherokee Nation must be original enrollees or descendants of original enrollees listed on the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8th day of May, 1867, and the Shawnee Cherokees of Article III of the Shawnee Agreement dated the 9th day of June, 1869, and/or their descendants.

Notwithstanding any provisions of the Cherokee Nation Constitution approved on October 2, 1975, and the Cherokee Nation Constitution ratified by the people on July 26, 2003, upon passage of this Amendment, thereafter citizenship of the Cherokee Nation shall be limited to those originally enrolled on, or descendants of those enrolled on, the Final Rolls of the Cherokee Nation, commonly referred to as the Dawes Rolls, for those listed as Cherokees by blood, Delaware Cherokees pursuant to Article II of the Delaware Agreement dated the 8th day of May, 1867, and the Shawnee Cherokees pursuant to Article III of the Shawnee Agreement dated the 9th day of June, 1869.

The Cherokee Nation recognizes the basic rights retained by all distinct People and groups affiliated with the Cherokee Nation, retained from time immemorial, to remain a separate and

distinct People. Nothing in this Constitution shall be construed to prohibit the Cherokee–Shawnee or Delaware–Cherokee from pursuing their inherent right to govern themselves, provided that it does not diminish the boundaries or jurisdiction of the Cherokee Nation or conflict with Cherokee law.

Section 2. There shall be established a Cherokee Register, to be kept by the Registrar, for the inclusion of any Cherokee for citizenship purposes in the Cherokee Nation who presents the necessary evidence of eligibility for registration. The Council may empower the Registrar to keep and maintain other vital records.

(a) A Registration Committee shall be established. It shall be the duty of the Registration Committee to consider the qualifications and to determine the eligibility of those applying to have their names entered in the Cherokee Register. The Registration Committee shall consist of a Registrar and two (2) assistants. All members shall be appointed by the Principal Chief and confirmed by the Council.

(b) There shall be a number assigned to every name, which is approved and entered into the Cherokee Register. This number shall be preceded by the three words, "Cherokee Registry Number."

(c) The decisions of the Registration Committee shall be subject to de novo review by the lower courts created by Article VIII.

Section 3. Registration as used in this Article refers to the process of enrolling as a citizen of the Cherokee Nation and is not the same as registration for voting purposes.

Article V. Distribution of Powers

The powers of the government of the Cherokee Nation shall be divided into three (3) separate branches: Legislative, Executive and Judicial; and except as provided in this Constitution, the Legislative, Executive and Judicial branches of government shall be separate and distinct and no branch shall exercise the powers properly belonging to either of the others.

Article VI. Legislative

Section 1. The legislature shall consist of one legislative body to be called the Council of the Cherokee Nation.

Section 2. The Council shall establish rules for its credentials, decorum, and procedure, and shall elect a Speaker and a Deputy Speaker from its own membership to officiate over Council meetings. The Speaker may vote in all matters before the Council. The Speaker shall be third in line of succession to serve as Acting Principal Chief in case of removal, death, resignation or disability of both the Principal Chief and Deputy Principal Chief until the disability be removed or a successor shall be elected.

Section 3. The Council shall consist of seventeen (17) members, who are citizens by blood of the Cherokee Nation. Any citizen by blood of the Cherokee Nation at least twenty-five (25) years of age on that date of the election may be a candidate for the Council. Each Council member shall be elected in the general election for a term of four (4) years and until his or her successor is duly elected and installed. All Council members shall be limited to two (2) consecutive elected terms on the Council. All Council members having served two consecutive terms must sit out one (1) term before seeking any seat on the Council.

The Council shall establish representative districts which shall be within the boundaries of the Cherokee Nation. Fifteen of these seats shall be apportioned to afford a reasonably equal division of citizenship among the districts, and the remaining two shall be elected at-large by those registered voters residing outside the boundaries of the Cherokee Nation voting at-large in accordance with this section.

The Council members representing districts within the boundaries must be domiciled within their district. The Council shall, within sixty (60) days of this Constitution taking effect, select the two at-large Council members to serve until the next regularly scheduled election.

All registered voters residing outside the boundaries of the Cherokee Nation, may, at the time of the first election to fill at-large Council seats, choose to continue to be registered to vote in the district in which they were previously registered. In the absence of making that choice, they shall be registered to vote at-large. Notwithstanding the above, citizens under the age of twenty-five (25) who reside outside the boundaries and who have not previously registered to vote, may make a single choice to register to vote in the district of their choice at the time of their first registration, failing which their registration shall be to vote at-large. All citizens age twenty-five (25) or older residing outside the boundaries not registered to vote at the time of the first election to fill at-large Council seats may only register to vote at-large. Citizens residing outside the boundaries who relocate within a district shall be subject to the requirements to vote in that district. Those residing within the boundaries must vote within the district of their residence.

The Council shall, within one year of this Constitution taking effect, establish a system of staggered terms for all seats on the Council to be organized into elections every two years.

Section 4. There shall be at least one regular session of the Council in the calendar year which shall convene on the second Monday in each January or at such other date as the Council shall determine. No business shall be conducted by the Council unless at least two-thirds (2/3) of members thereof regularly qualified shall be in attendance, which number shall constitute a quorum. The session may not exceed a maximum of thirty (30) calendar days for pay purposes.

Section 5. Special meetings of the Council may be called: (A) by the Principal Chief, (B) by the Deputy Principal Chief when he or she has the full powers of the Principal Chief as elsewhere defined, (C) upon written request of fifty-one percent (51%) of the members of the Council, or (D) upon the written request of ten percent (10%) of the number of registered voters who voted in the last general election of the Cherokee Nation. The purposes of said meeting shall be stated in a notice published not less than ten (10) days prior to the meeting, and the Council may not consider

any other subject not within such purposes. No meetings may convene until thirty (30) days have elapsed after the adjournment of a prior session or meeting, unless called pursuant to Section 7 of Article VII.

Section 6. All meetings of the Council and of its committees shall be open to the public except: (A) when the discussion shall concern employment, retention or discharge of personnel; (B) when the question of the moral turpitude of any citizen is discussed; and (C) when the decorum of the audience shall prejudice orderly administration of business. In the event that consideration of a subject shall take place in executive session, the vote shall take place in an open meeting.

Section 7. The Council shall have the power to establish laws which it shall deem necessary and proper for the good of the Nation, which shall not be contrary to the provisions of this Constitution. The style of all bills shall be: "Be It Enacted By The Cherokee Nation". The style of all resolutions shall be "Be It Resolved By The Cherokee Nation".

Section 8. No laws passed by the Council shall have retroactive effect or operation.

Section 9. The Council shall have the power to remove elected and appointed officials in the Cherokee Nation and said removal must be conducted in accordance with Article XI of this Constitution.

Section 10. Every enactment which shall have been approved by a majority of the members in attendance at the Council shall, before it becomes effective be presented to the Principal Chief, who may approve the enactment by signing it; if not, the Principal Chief shall return it with objections to the Council, which shall enter the objections in the Journal and proceed to reconsider it. If, after such reconsideration, two-thirds (2/3) of the entire council shall agree to pass the enactment, it shall become fully effective and operational notwithstanding the objections of veto of the Principal Chief. In all such cases, the vote of the Council shall be determined by yeas and nays, and the names of the members voting shall be entered on the Council's Journal. If any enactment shall not be returned by the Principal Chief within five (5) days (Sundays and holidays excepted) after it shall have been presented, the same shall be law in like manner as if approved by the Principal Chief.

Section 11. The Council shall establish a continuing system of permanent publication for all laws of the Cherokee Nation and judicial opinions of the highest appellate court. The system shall provide for regular updating, indexing and digesting and shall be of public record at all times. The text of all laws, resolutions, judicial opinions and orders, except otherwise protected by law, and all other governmental publications, except those by Nation-owned entities, shall be in the public domain and free from encumbrances against use by the Citizens. This shall not constrain the Nation from copyrighting other aspects of governmental publications, except that citizens shall always have license for personal use of the copyrighted work without notice or fee.

Section 12. In accordance with Article 12 of the Treaty with the Cherokees, dated November 28, 1785 (Treaty of Hopewell), and Article 7 of the Treaty with the Cherokees dated December 29, 1835 (Treaty of New Echota), there shall be created the office of Delegate to the United States

House of Representatives, appointed by the Principal Chief and confirmed by the Council. The Delegate shall be a citizen of the Nation and upon recognition by the United States shall be seated in accordance with federal law. The Delegate shall endeavor to participate in congressional activities and shall at all times advocate the best interests of the Cherokee People. The Delegate shall make regular reports to the Council and Principal Chief on congressional activities and administrative matters relating to federal law and policy and shall produce an annual report to the Cherokee People.

Section 13. In the case of removal, death, resignation or disability of any of Council member, such seat shall be filled by the candidate having the next highest number of votes in that district, who is available and willing to serve and whose eligibility is confirmed by the Election Commission. In the event no such candidate exists, the Council shall fill the vacated seat in the following manner: If a majority of the four-year term remains to be served, the Council shall authorize a special election in the district of the vacated seat to be conducted within ninety days; if a minority of the four-year term remains to be served, the Council shall elect a replacement who would otherwise be qualified to serve from the district of the vacated seat.

Section 14. Members of the Council and all Executive Officers shall be bound by oath, provided in Article XIII, to support the Constitutions of the Cherokee Nation and the United States of America, do everything within the individual's power to promote the culture, heritage and traditions of the Cherokee Nation and to perform the duties of their respective offices.

Article VII. Executive

Section 1. The executive power shall be vested in a Principal Chief, who shall be styled "The Principal Chief of the Cherokee Nation". The Principal Chief shall hold office for a term of four (4) years. No person having been elected to the office of Principal Chief in two (2) consecutive elections shall be eligible to file for the office of Principal Chief in the election next following his or her second term of office. The Principal Chief shall be elected by the registered voters on the same day and in the same manner, except as otherwise provided by this Constitution, as they shall respectively vote for members of the Council in the year 2003 and every four years thereafter. The Principal Chief shall be elected by a majority of votes. The manner of determining contested elections shall be as directed by Cherokee law.

Section 2. The Principal Chief of the Cherokee Nation shall be a citizen of the Cherokee Nation in accordance with Article IV; shall be domiciled within the boundaries of the Cherokee Nation for no less than 270 days immediately preceding the day of general election in which he or she seeks election; and, shall have obtained the age of thirty (30) years at the time of his or her election and be a citizen by blood of the Cherokee Nation.

Section 3. The registered voters shall elect a Deputy Principal Chief, who shall possess the same qualifications as the Principal Chief, for a term of four (4) years at the same time and in the same manner as herein provided for the election of the Principal Chief. The Deputy Chief shall be subject to the same term limitations as provided for the Principal Chief in this Constitution.

Section 4. In case of the absence of the Principal Chief from office due to death, resignation, removal or inability to discharge the powers and duties of the office, the same shall devolve upon the Deputy Principal Chief for the remaining portion of the four (4) year term to which the Principal Chief had been elected. In case of disability, such powers shall continue during the term of such disability.

In the event of the death, resignation, or removal of the Deputy Principal Chief, or his or her inability to discharge the powers and duties of the office, the person who is then the Speaker of the Council shall succeed to the office of the Deputy Principal Chief for the balance of the term. In the case of temporary disability, said person shall serve as Acting Deputy Principal Chief for the duration of the disability and thereafter shall reassume the office of Speaker.

Section 5. The Council may, in the case of removal, death, resignation or disability of the Principal Chief, Deputy Principal Chief and the Speaker of the Council, provide by law what officer shall then act as Principal Chief until the disability be removed or a successor shall be elected.

Section 6. The Principal Chief and Deputy Principal Chief shall, at stated times, receive for their service a compensation not inconsistent with Article X.

Section 7. The Principal Chief may, on extraordinary occasions, convene the Council at the seat of government pursuant to Article VI, Section 5, and such notice and other laws as may be prescribed by the Council. The purposes of said meetings must be stated and the Council may consider only such matters as are specified in the call of the extraordinary meetings. Before the extraordinary meetings may be legally sufficient to conduct business, a quorum of the Council must be present.

Section 8. At one session of the Council annually, the Principal Chief shall deliver and communicate to the Council a message upon the condition of the Cherokee Nation; and shall recommend such matters to the Council as he or she shall judge expedient.

Section 9. The Principal Chief shall cause the laws of the Cherokee Nation to be faithfully executed, and shall conduct in person and in such manner as shall be prescribed by law, all communications and business of the Cherokee Nation. The Principal Chief may cause to be formed and operated, trusts, the beneficiary of which shall be the Cherokee Nation and these trusts shall be granted such powers as provided by law for public trusts. Authorization for these trusts, however, must be approved by a majority vote of the Council.

Section 10. The Deputy Principal Chief shall, by virtue of the office, aid and advise the Principal Chief in the administration of the government.

Section 11. Nothing in this Constitution shall be construed as preventing the Principal Chief from employing such administrative assistants as deems proper.

Section 12. There shall be a cabinet composed of the following persons who shall be citizens of the Cherokee Nation: (1) Secretary of State, (2) Treasurer, (3) Secretary of Natural Resources. These persons shall be appointed by the Principal Chief and confirmed by the Council. The Council, on

recommendation of the Principal Chief only, may create additional cabinet positions and departments. The Principal Chief shall prescribe the duties and responsibilities of cabinet members. Cabinet members shall be authorized to appoint such staff and other assistants as they deem necessary. The Council may, with recommendation of the Principal Chief, abolish any established cabinet position or function or revise the title or responsibilities of any foregoing department or function.

Section 13. There shall be created an office of Attorney General. The Attorney General shall be a citizen of the Cherokee Nation, admitted to practice law before the highest court of any state of the United States. The Attorney General shall represent the Nation in all criminal cases in the courts of the Nation, and in all civil actions wherein the Cherokee Nation is named as a party, and shall have such other duties as the Council may prescribe by law. The Attorney General shall be appointed by the Principal Chief and confirmed by the Council for a term of five (5) years. The Attorney General shall be authorized to designate such prosecutors and other assistants as deemed necessary to carry out the duties of office, and may only be removed from office in conformance with Article XI.

Section 14. There shall be created an office of Marshal. The Marshal shall be a citizen of the Cherokee Nation and possess such training and experience in law enforcement as prescribed by law. The duties and authority of the Marshal shall be prescribed by law. The Marshal shall be authorized to deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation. The Marshal shall be appointed by the Principal Chief and be confirmed by the Council for a term of five (5) years. The Marshal may only be removed from office in conformance with Article XI.

The terms of the Marshal and the Attorney General shall not be concurrent.

Section 15. A vacancy of an elected office by reason of removal, death, resignation or disability of the elected official, for which this Constitution does not provide a process for seating a replacement to serve out the term, shall be filled by appointment by the Principal Chief with confirmation by the Council.

Article VIII. Judicial

Section 1. The Judicial powers of the Cherokee Nation shall be vested in a Supreme Court and such lower courts as the Council shall from time-to-time ordain and establish. The Judicial Appeals Tribunal shall become known as the Supreme Court of the Cherokee Nation. The Supreme Court shall be composed of five (5) members all of whom must be citizens of the Cherokee Nation and be admitted to practice law before the highest Court of any state of the United States.

Section 2. Justices of the Supreme Court shall be appointed by the Principal Chief and confirmed by the Council to serve terms of ten (10) years each after expiration of the initial terms as follows: Seat 1: ending 12/31/2000, Seat 2: ending 12/31/2002, Seat 3: ending 12/31/2004, Seat 4: ending 12/31/2006, Seat 5: ending 12/31/2008. An appointment to the Supreme Court shall take place once every two (2) years, except in the case of filling a vacated seat on the Court for the remainder

of that term. The Council shall, within six (6) months of this Constitution taking effect, pass such laws as are necessary for carrying into effect the provisions of this section.

Section 3. Judges of the District Court shall be citizens of the Cherokee Nation, and shall be admitted to practice law before the highest Court of any state of the United States, and shall be appointed by the Principal Chief and confirmed by the Council to serve terms of four (4) years each. In the event of a judicial vacancy due to death, resignation, or removal from said office, any successor duly appointed and confirmed shall only serve the balance of the term of the vacancy being filled.

Section 4. The original jurisdiction of the Supreme Court shall extend to a general supervisory control over all lower courts. General supervisory control does not include suspension, removal, or disciplinary action of any member of the judiciary. These powers are specifically reserved for the Court on the Judiciary as prescribed in Section 5 and/or Article XI.

The Supreme Court shall employ an Administrator, who shall have general administrative duties in the judicial branch. The Justices of the Supreme Court shall have supervisory authority over the Administrator.

In support of its original and appellate jurisdiction, the Supreme Court shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by law and may exercise such other jurisdiction as may be conferred by statute. The appellate jurisdiction of the Supreme Court shall extend to all cases at law and in equity arising under the laws or Constitution of the Cherokee Nation.

The Supreme Court shall promulgate rules of procedure relating to its original and appellate jurisdiction to insure any litigant appearing before it receives due process of law and impartial justice, together with prompt and speedy relief. Decisions of the Supreme Court shall be published and indexed and shall be final insofar as the judicial process of the Cherokee Nation is concerned.

Section 5. There is hereby created a Court on the Judiciary. Each branch of the government shall select two members of the Court; one of whom shall be a member of the Cherokee Nation Bar Association and the other shall be a non-lawyer. The six members shall appoint a seventh member. The members of the Court on the Judiciary shall promulgate its own rules of procedure, assuring due process, to be submitted to the Council for review and approval. The authority of the Court shall include suspension, sanction, discipline or recommendation of removal. The members shall not be employees of the Cherokee Nation or any entities thereof. The Council shall pass such laws as are necessary for carrying into effect the provisions of this section. All members of the Court shall be citizens of the Cherokee Nation.

Section 6. The District Courts of the Cherokee Nation shall be courts of general jurisdiction and shall be vested with original jurisdiction, not otherwise reserved to the Supreme Court, to hear and resolve disputes arising under the laws or Constitution of the Cherokee Nation in both law and equity, whether criminal or civil in nature. The Council shall enact, with advice from the judiciary, rules of procedure which shall insure that all litigants receive due process of law and impartial

justice, together with prompt and speedy relief.

Section 7. The Justices of the Supreme Court and Judges of the District Court shall receive a compensation which shall not be diminished during their continuance in office, but shall receive no other fee, gratuity or perquisite of office, nor hold any other position of title, trust or profit within the Cherokee Nation or any entity thereof, either directly or indirectly.

Section 8. Members of the judiciary shall be subject to removal from office only for willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any conviction of a felony, a crime under the laws of the Cherokee Nation that if committed in some other jurisdiction would be a felony, or a misdemeanor involving moral turpitude or offenses against the Cherokee Nation committed while in office.

Article IX. Election

Section 1. There is hereby created a Cherokee Nation Election Commission. The Commission shall be an autonomous and permanent entity charged with the administration of all Cherokee Nation elections, in accordance with election laws. The Council shall enact an appropriate law not inconsistent with the provisions of this Constitution that will govern the conduct of all elections.

Section 2. No person who shall have been convicted of a felony charge under the laws of United States, or of any State, Territory, or Possession thereof, or a crime under the laws of the Cherokee Nation that if committed in some other jurisdiction would be a felony, shall be eligible to hold any office or appointment of honor, profit or trust within this Nation unless such person has received a pardon from the appropriate jurisdiction. Any person who holds any office of honor, profit or trust in any other tribe or Nation of American Indians, either elective or appointive shall be ineligible to hold simultaneously any office of honor, profit or trust of the Cherokee Nation unless approved by the Council.

Section 3. All elections shall be determined by secret balloting.

Article X. Fiscal

Section 1. The fiscal year shall commence on the first day of October in each year, unless otherwise provided by law.

Section 2. The Council shall provide by law for annual expenditure of funds, and the source from which funds are to be derived, to defray the estimated expenses of the Executive, Legislative, and Judicial branches and the departments of government of the Cherokee Nation for each fiscal year. The budget shall not exceed estimated revenues.

Section 3. At least forty-five (45) days prior to the beginning of each fiscal year, the Treasurer shall cause to be made and presented to the Council an itemized estimate of revenues and expenditures for the ensuing fiscal year adhering to Generally Accepted Accounting Principles (GAAP).

Section 4. The Council shall require that records be maintained and provided to the Council of all funds, monies, accounts and indebtedness and all other accounts bearing upon the fiscal interests, including but not limited to, any and all outside business interests, both for-profit and not-for-profit, of the Cherokee Nation by the use of an accounting system adhering to Generally Accepted Accounting Principles (GAAP). The annual financial statement shall be audited by a Certified Public Accountant and presented to the Council within six months following the end of each fiscal year. Unaudited reports will be submitted as required by the Council.

Section 5. The Treasurer shall be authorized to accept all grants, donations of money, interest of funds of the Cherokee Nation, judgments and any and all other sources of monies available to the Cherokee Nation, for uses and purposes and upon the conditions and limitations for which the same are granted or donated. The faith of the Cherokee Nation is hereby pledged to preserve such grants and donations as a sacred trust, and, if or when designated, to keep the same for the use and purposes for which they were granted or donated.

Section 6. The Council shall authorize the Treasurer to invest funds or money of the Cherokee Nation and determine the preference to be given to the security for such investments, the manner of selecting the securities, prescribing the rules, regulations, restrictions and conditions upon which the funds shall be loaned or invested, provided that no investment shall be in mortgages other than first mortgages only, and do all things necessary for the safety of the funds and permanence of the investments. If required by law, such investments would be subject to the approval of the Secretary of the Interior.

Section 7. The credit of the Cherokee Nation shall not be given, pledged, or loaned to any individual, firm, company, corporation, or association without the approval of the Council. The Cherokee Nation shall not make any donations by gift, bonus, or otherwise, to any individual, firm, company, corporation, or association without the approval of the Council.

Section 8. All laws authorizing the expenditures of money by and on behalf of the Cherokee Nation shall specify the purpose for which the money is to be used, and the money so designated shall be used for no other purpose. No monies or resources of the Cherokee Nation or any of its entities shall be used to pay for representation of a defendant in a criminal matter, except where a public defender is authorized under Cherokee law. Annual expenditures shall not exceed the available funds.

Section 9. General laws shall be enacted by the Council providing for the deposit of funds of the Cherokee Nation, and the depository thereof, and such funds shall be under the control of the Treasurer, under such terms and conditions as shall be designated by the Council and under such laws which shall provide for the protection of said funds.

Section 10. No official, member or officer of the Council, Cabinet Member, employee of any official, Council, Cabinet, or subdivisions thereof, or any person employed in any capacity by the Cherokee Nation shall receive from any individual, partnership, corporation, or entity doing business with the Cherokee Nation directly or indirectly, any interest, profit, benefits or gratuity,

other than wages, salary, per diem, or expenses specifically provided by law.

Section 11. All officers, elected or appointed, who are authorized by this Constitution or any subsequent legislation to a position of trust over any land, property, accounts or monies, shall execute an official surety bond in the amount as may be required by the Council. Such surety bonds shall inure to the benefit of, and be paid for by, the Cherokee Nation for whose protection or surety the same shall be required. In no event shall said surety bond be other than by a Licensed Insurance Company, authorized to do business in the State of Oklahoma.

Article XI. Removal From Office

Section 1. The Principal Chief, Deputy Principal Chief, members of the Council, Attorney General and Marshal shall be subject to removal from office for willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any conviction of a felony, or a crime under the laws of the Cherokee Nation that if committed in some other jurisdiction would be a felony, or a misdemeanor involving moral turpitude or offenses against the Cherokee Nation committed while in office.

Section 2. Except as otherwise provided in this Constitution, all other appointed officials shall be subject to removal for cause, as prescribed by law.

Section 3. No official may be removed under Sections 1 or 2 of this Article or Section 8 of Article VIII except after trial before the Council, with the accused having been afforded due process and opportunity to be heard. Provided, removal under Sections 1 or 2 of this Article or Section 8 of Article VIII shall require a two-thirds (2/3) vote of the members of the Council.

Section 4. Separate from the Council's removal powers, the People of the Cherokee Nation reserve unto themselves the exclusive power to recall any elected official through petition and recall referendum. A petition must be signed by Cherokee citizens registered to vote. In the case of Principal Chief or Deputy Principal Chief, signatures must total a number equaling or exceeding fifteen percent (15%) of the total number of registered voters in the previous general election. In the case of district offices, signatures must total the greater of five hundred (500) or twenty-five percent (25%) of the total number of registered voters in that district in the previous general election. The signed petition shall be filed with the Election Commission to determine whether the signatures are valid. Said determination shall be made within thirty (30) days after the filing of same. Upon verification of the requisite number of signatures the Election Commission shall certify the petition as valid and notify the Council and the Secretary of State. Upon notification of a valid certified petition the Council shall immediately call for and approve a special recall election for the office in question within sixty (60) days. The special recall election shall be limited in scope to the voting populace for the elected office in question. Votes cast shall be tabulated and the results certified in the same manner as in general elections. A majority vote to affirm the official shall retain the official in office. A majority vote to recall shall immediately remove the official from office. In the event of a tie-vote the Council shall call a special meeting to conduct a tie-breaking vote. Elected offices vacated under this section shall be filled as otherwise provided in this Constitution.

Article XII. Employee Rights

No employee, who having served in a position at least one (1) year, shall be removed from the employment of the Cherokee Nation except for cause, and only after being afforded pre-termination due process. Provided, the right of such employee to seek redress in the Cherokee Nation courts shall not be abridged.

Article XIII. Oath

Section 1. All officers elected or appointed shall, before entering upon the duties of their respective offices, take and subscribe to the following oath or affirmation: "I do solemnly swear, or affirm, that I will faithfully execute the duties of _____ of the Cherokee Nation, and will, to the best of my ability, preserve, protect and defend the Constitutions of the Cherokee Nation, and the United States of America. I swear or affirm further, that I will do everything within my power to promote the culture, heritage and traditions of the Cherokee Nation."

Section 2. The foregoing oath shall be administered by any person authorized by the Council to administer oaths. The oath shall be filed in the Office of the Secretary of State.

Article XIV. Clans

Nothing in this Constitution shall be construed to prohibit the right of any Cherokee to belong to a recognized clan or organization in the Cherokee Nation.

Article XV. Initiative, Referendum and Amendment

Section 1. Notwithstanding the provisions of Article VI, the People of the Cherokee Nation reserve to themselves the power to propose laws and amendments to this Constitution and to enact or reject the same at the polls independent of the Council, and also reserve power at their own option to approve or reject at the polls any act of the Council.

Section 2. Any amendment or amendments to this Constitution may be proposed by the Council, and if the same shall be agreed to by a majority of all the members of the Council, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered into the Journal and referred by the Secretary of State to the People for their approval or rejection, at the next regular general election, except when the Council, by a two-thirds (2/3) vote, shall order a special election for that purpose. If a majority of all the registered voters voting at such election shall vote in favor of any amendment thereto, it shall thereby become a part of this Constitution.

Section 3. The first power reserved by the People of the Cherokee Nation is the initiative, and ten percent (10%) of the registered voters shall have the right to propose any legislative measures by petition and fifteen percent (15%) of the registered voters shall have the right to propose amendments to the Constitution by petition, and every such petition shall include the full text of the measure so proposed.

The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by petition signed by five percent (5%) of the registered voters or by the Council as other enactments are effectuated. The ratio and percent of registered voters hereinbefore stated shall be based upon the total number of votes cast in the last general election involving the office of Principal Chief.

Section 4. Referendum petitions shall be filed with the Secretary of State not more than ninety (90) days after the final adjournment of the session or meeting of the Council which passed the bill on which the referendum is demanded. The veto power of the Principal Chief shall not extend to measures voted on by the People. All elections on measures referred to the People of the Cherokee Nation shall be had at the next regular general election except when the Council or the Principal Chief shall order a special election for the express purpose of making such reference. Any measure referred to the People by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon.

Section 5. Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State and addressed to the Principal Chief of the Cherokee Nation, who shall submit the same to the People. The Council shall make suitable provisions for carrying into effect the provisions of this Article.

Section 6. The referendum may be demanded by the People against one or more items, sections or parts of any enactment of the Council in the same manner in which such power may be exercised against a complete enactment. The filing of a referendum petition against one or more items, sections or parts of an enactment shall not delay the remainder of such act from becoming operative.

Section 7. If two or more amendments are proposed they shall be submitted in such manner that registered voters may vote for or against them separately.

Section 8. No proposal for the amendment of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace a general subject, each proposed article shall be deemed a single proposal or proposition.

Section 9. No convention shall be called by the Council to propose a new Constitution, unless the law providing for such convention shall first be approved by the People on a referendum vote at a regular or special election. Any amendments, alterations, revisions or new Constitution, proposed by such convention, shall be submitted to the registered voters of the Cherokee Nation at a general or special election and be approved by a majority of the registered voters voting thereon before the same shall become effective. The question of such proposed convention shall be submitted to the citizens of the Cherokee Nation at least once every twenty (20) years.

Article XVI. Supersedes Constitutions of 1839 and 1976

The provisions of this Constitution overrule, supersede, and repeal the provisions of the Cherokee Nation Constitution enacted the 6th day of September, 1839, and the provisions of the Constitution of the Cherokee Nation of Oklahoma enacted the 26th day of June, 1976.

Article XVII. Seat of Government

The Seat of Government of the Cherokee Nation shall be at Tahlequah, Oklahoma.

Article XVIII. Adoption

This Constitution shall become effective when ratified by the registered voters of the Cherokee Nation. It shall be engrossed on parchment and signed by the Principal Chief and the President of the United States, or his authorized representative. It shall be filed in the office of the Cherokee Nation and sacredly preserved as the fundamental law of the Cherokee Nation. The Constitution shall be printed in both Cherokee and English, provided however, that the English version shall be controlling for all governmental and legal purposes. The Council shall enact laws in conformance with this Constitution within eighteen (18) months of its ratification, provided that the provisions for Article XI shall be enacted within six (6) months of its ratification.

TITLE 1

ADMINISTRATIVE PROCEDURE

CHAPTER 1

GENERAL PROVISIONS

§ 101. Short title

This act shall be known and may be cited as the Cherokee Nation Administrative Procedure Act.

§ 102. Definitions

As used in this act:

1. "**Agency**" means the Environmental Protection Commission, Gaming Commission, and Tax Commission, including the agency head, and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head. The term does not include the Tribal Council or the Courts, or the Principal Chief in the exercise of powers derived directly and exclusively from the Constitution. The term does not include Cherokee Nation Election Commission in the exercise of powers derived directly and exclusively from the Constitution. The term does not include tribal-owned commercial businesses.

2. "**Agency action**" means:

- a. the whole or a part of a rule or an order;
 - b. the failure to issue a rule or an order; or
 - c. an agency's performance of, or failure to perform, any other duty, function, or activity, discretionary or otherwise.
3. "**Agency head**" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.
 4. "**Electronic**" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 5. "**Emergency adjudication**" means an agency adjudication taken in a situation in which there is an immediate danger to the public health, safety, or welfare that requires immediate action.
 6. "**Filing**" means delivery of a record or electronic transmission of a record to a place and in a manner designated by the agency by rule for receipt of official records, or in the absence of such designation, at the office of the agency head.
 7. "**Index**" means an alphabetical list of items by subject and title in a record with a page number, hyperlink, or any other connector that links the alphabetical list with the record to which it refers.
 8. "**Law**" means the whole or a part of the Constitution, or of any statute, case law, common law, rule of court, executive order, or rule or order of an agency.
 9. "**License**" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.
 10. "**Licensing**" means an agency process relating to the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.
 11. "**Mail**" for purposes of any notice means 1st class mail of the United States Postal Service, a reputable carrier other than the United States Postal Service, or electronic distribution, where electronic distribution has been designated by agency rule as an acceptable means for transmission or receipt of records.
 12. "**Notice**" means to take such steps as may be reasonably required to inform another person in the ordinary course, whether or not the other person actually comes to know of it.
 13. "**Order**" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.
 14. "**Party to agency proceedings,**" or "**party**" in context so indicating, means:

- a. a person to whom the agency action is specifically directed;
- b. a person named as a party to an agency proceeding or allowed to intervene or participate as a party in the proceeding; or
- c. properly seeking and entitled by law to participate, in an individual proceeding.

15. **"Party to judicial review or civil enforcement proceedings"** or **"party"** in context so indicating, means:

- a. a person who files a petition for judicial review or civil enforcement; or
- b. a person named as a party in a proceeding for judicial review or civil enforcement or allowed to participate as a party in the proceeding.

16. **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, instrumentality, or agency, public corporation, or any other legal or commercial entity.

17. **"Public notice"** means conspicuously posting on the official Cherokee Nation website, delivering to persons who have requested routine notification, and any other method.

18. **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

19. **"Rule"** means the whole or a part of an agency statement of general applicability that implements, interprets, or prescribes (i) law or policy, or (ii) the organization, procedure, or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule. The term **"rule"** does not include:

- a. the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license;
- b. the approval, disapproval or prescription of rates;
- c. statements and memoranda concerning internal management not affecting private rights or procedures available to the public;
- d. declaratory rulings issued pursuant this title;
- e. orders by the Principal Chief or his designee; or
- f. press releases.

20. **"Rule-making"** means the process for formulation and adoption of a rule.

21. **"Website"** means the official internet website of Cherokee Nation, www.cherokee.org, or reasonably accessible via hyperlinks from the website.

22. **"Written"** means inscribed on a tangible medium.

CHAPTER 2

DECLARATIONS BY AGENCY

§ 201. [Agency declarations]

A. Any interested person may petition an agency for a declaration of the applicability of any rule or prior order issued by the agency.

B. Each agency may adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. In the absence of declaratory order procedural rules petitioners shall generally follow the rules of the District Court. The provisions of this act for formal, informal, or other applicable hearing procedure do not apply to an agency proceeding for a declaration, except to the extent provided in this chapter or to the extent the agency so provides by rule or order.

C. Within sixty days after receipt of a petition pursuant to this section, an agency shall either decline to issue a declaration in writing or schedule the matter for hearing.

D. If the agency declines to consider the petition, it shall promptly notify the person who filed the petition of its decision, including a brief statement of the reasons therefore. An agency decision to decline to issue a declaration is not subject to judicial review.

E. If the agency issues a declaration, the agency declaration shall contain the names of all parties to the proceeding, the particular facts on which it is based, and the reasons for its conclusion. A declaratory order has the same status and binding effect as any other order issued in an adjudication.

CHAPTER 3

PROCEDURAL RULES

§ 300. Required procedures

The following procedures shall be followed to promulgate a rule.

§ 301. Current rulemaking docket

A. Except for 1 CNCA §§ 311, 312, 313, 314 and 315, as used in this chapter, "rule" does not include an emergency rule adopted under 1 CNCA § 309(A) or a fast-track rule adopted under 1 CNCA § 309(B).

B. The Information Systems Department shall maintain a current rulemaking docket for the agencies.

C. A current rulemaking docket must list each pending rulemaking proceeding. The docket must indicate or contain:

1. the subject matter of the proposed rule;
2. notices related to the proposed rule;
3. where written or electronic comments may be inspected;
4. the time within which written or electronic comments may be made;
5. electronic and written requests for public hearing;
6. appropriate information about the public hearing, if any, including the names of the persons making the request;
7. how comments may be made in writing and electronically; and
8. the timetable for action.

§ 302. Agency record in rulemaking proceeding

A. An agency shall maintain an official rulemaking record for each rule it proposes to adopt. The record and materials incorporated by reference must be available for public inspection online via the Internet.

B. The agency rulemaking record must contain:

1. copies of all public notices with respect to the rule or the proceeding upon which the rule is based;
2. copies of any portions of the agency's public rulemaking docket containing entries relating to the rule or the proceeding upon which the rule is based;
3. all written or electronic petitions, requests, submissions, and comments received by the agency and all other written or electronic materials or records considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based;

4. any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by the agency official who presided over the hearing, summarizing the contents of those presentations;
5. a copy of the rule and explanatory statement filed in the office of the Principal Chief; and
6. all petitions for exceptions to, or amendment, repeal or suspension of the rule.

§ 303. Advice on possible rules before notice of proposed rule adoption

A. In addition to seeking information by other methods, an agency may solicit comments from the public on a subject matter of possible rulemaking under active consideration within the agency by giving public notice of the subject matter and indicating where, when, and how persons may comment.

B. Each agency may also appoint committees to comment on the subject matter of a possible rulemaking under active consideration within the agency. The membership of those committees must be given public notice within thirty (30) days of their formation or change of membership.

§ 304. Notice of proposed rule adoption

A. Following internal agency approval of a proposed rule, an agency shall cause notice of its contemplated action to be published on the website. The notice of the proposed adoption of a rule must include:

1. a short explanation of the purpose of the rule proposed;
2. the specific legal authority authorizing the rule proposed;
3. the text of the rule proposed, or if a rule is being amended the text shall plainly indicate the insertions and deletions;
4. where, when, and how persons may present their views on the rule proposed;
5. where persons may obtain copies of the full text of the regulatory analysis of the rule proposed; and
6. where, when, and how persons may present their views on the rule proposed and demand an oral proceeding thereon if one is not already provided.

B. Within three (3) days after publication of the notice of the proposed adoption of a rule on the website, the agency shall cause a copy of the notice to be mailed or sent electronically to each person that has made a timely request to the agency for a mailed or electronic copy of the notice. An agency may charge a person for the actual cost of providing written mailed copies if the person

has made a request for a written copy.

C. A copy of the proposed rule and public notice shall be provided to the Tribal Council and the Office of the Principal Chief.

§ 305. Public participation

A. For at least thirty (30) days after publication of the notice of the proposed adoption of a rule, an agency shall allow persons to submit information and comment on a rule proposed by the agency. The information or comments may be submitted electronically or in writing.

B. Persons requesting public hearings or submitting comments must include their name, address, phone number, and e-mail address if submission is electronic, but may request that this identifying information be kept confidential.

C. Comments

1. Comments shall concisely address the proposed rule and contain relevant data, argument, and authorities supporting the position of the comment.

2. The agency may disregard anonymous, irrelevant or abusive submissions.

3. The agency shall consider fully all proper information and comments submitted respecting a rule proposed to be adopted by the agency.

4. A response to each comment shall be prepared and delivered to the person making the comment and given public notice. A single response may be addressed to groups of similar comments.

D. Public hearings

1. Recognizing that comments and responses may generate demand for a public meeting, the time to request a public meeting shall not end before fifteen (15) days following the public notice of all responses to written comments.

2. A request for a public meeting shall include a statement of the issues desired to be discussed and a summary of the argument supporting the person's position on the issues.

3. A public hearing on a rule proposed to be adopted may not be held earlier than twenty (20) days after notice of its location and time is published on the website.

4. Public hearings may be held only from 8:00 A.M. to 10:00 P.M. on Monday thru Saturday.

5. An agency official shall preside at a public hearing on a rule proposed to be adopted. If the presiding agency official is not the agency head, the official shall prepare a memorandum for consideration by the agency head summarizing the contents of the presentations made at the oral

proceeding.

6. Public hearings must be open to the public and recorded by audio, audio and video, stenographic or other means.

7. Persons requesting an opportunity to comment at a public meeting may be required to register by name and indicate whether they support or oppose the rule or a part of the rule.

8. The agency shall employ its best efforts to allow equal time to both sides of an issue. If present, not less than five persons for each side shall be allowed not less than three minutes each to present verbal comments and records. Registered persons may yield their time to another registered person.

E. Rule adoption following notice and comment period

1. If no public meeting is timely requested, and no comments are filed, the rule as submitted shall be a final rule after ten (10) days from the deadline for requesting a public meeting.

2. If written comments are received or a public meeting is held, and the agency makes no substantive amendments, then the rule shall be final.

3. If written comments are received or a public meeting is held, and the agency makes substantive amendments to the rule, the agency shall invite public participation as required by this section for a new rule.

F. Copies of final rules shall be given public notice and provided to the public upon request.

§ 306. Emergency rules

A. If the Principal Chief finds that an urgent commercial issue or an imminent peril to the public health, safety, or welfare requires immediate adoption of a rule and states in writing the reasons for that finding, the agency, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, may adopt an emergency rule.

B. The agency shall give public notice within a reasonable time and take appropriate measures to make an emergency rule known to the persons who may be affected by it.

C. The concurrent or subsequent adoption of an identical or similar rule under this chapter is not precluded.

D. An emergency rule may be effective for no longer than the threat of or actual existence of the commercial issue or the imminent peril requiring the rule.

E. An emergency rule shall not be effective longer than ninety (90) days unless previously a notice of proposed rule adoption is given pursuant to 1 CNCA § 304 and the agency diligently proceeds to adopt a rule pursuant to this chapter. Such rule shall be identical to or cover the same issue as the

emergency rule that it replaces.

F. An emergency rule must be placed on the agenda of the next special or regularly scheduled meeting of the agency. Reasonable public comment shall be allowed concerning the emergency rule.

G. An emergency rule may not be adopted if a substantially similar emergency rule addressing a continuing threat has been adopted within the preceding ninety (90) days.

§ 307. Required rulemaking

In addition to other rulemaking requirements imposed by law, each agency shall:

1. within ninety (90) days of the enactment of this act, adopt as a rule a description of the organization of the agency which states the general course and method of its operations and where and how the public may obtain information or make submissions or requests;
2. within ninety (90) days of the enactment of this act, adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available to the public, including a description of all forms and instructions that are to be used by the public in dealing with the agency;
3. as soon as feasible and to the extent practicable, adopt rules, in addition to those otherwise required by this act, embodying appropriate standards, principles, and procedural safeguards that the agency will apply to the law it administers; and
4. as soon as feasible and to the extent practicable, adopt rules to supersede principles of law or policy lawfully declared by the agency as the basis for its decisions in particular cases.

§ 308. Contents of rule

Each rule adopted by an agency must contain the text of the rule and be accompanied by a record containing:

1. the date the agency adopted the rule;
2. a concise statement of the purpose of the rule;
3. a reference to all rules repealed, amended, or suspended by the rule;
4. a reference to the specific statutory or other authority authorizing the rule;
5. any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule; and

6. the effective date of the rule.

§ 309. Concise explanatory statement

A. At the time it adopts a rule, an agency shall issue a concise explanatory statement containing:

1. its reasons for adopting the rule, which shall include an explanation of the principal reasons for and against its adoption, and its reasons for overruling substantial arguments and considerations made in oral testimony and comments; and

2. the reasons for any change between the text of the proposed rule contained in the published notice of proposed rule adoption and the text of the rule as finally adopted.

B. Only the reasons contained in the concise explanatory statement required by subsection (A) may be used by any party as justifications for the adoption of the rule in any proceeding in which its validity is at issue.

§ 310. Incorporation by reference

An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, or rule that has been adopted by Cherokee Nation, an agency of the United States, another state, or by a nationally recognized organization or association, if:

1. incorporation of its text in agency rules would be unduly cumbersome, expensive, or otherwise inexpedient;

2. the reference in the agency rules fully identifies the incorporated matter by location, date, and otherwise,

3. the reference in the agency rules states whether the rule does or does not include any later amendments or editions of the incorporated matter;

4. the agency, organization, or association originally issuing that matter makes copies of it readily available to the public. The rules must state where copies of the incorporated matter are available at cost from the agency issuing the rule, and where copies are available from Cherokee Nation, the agency of the United States, a state, or the organization or association originally issuing that matter; and

5. the rule is of limited public interest, as determined by the agency.

§ 311. Compliance, time limitation and effect

A. No rule adopted under this act is valid unless adopted in substantial compliance with the procedural requirements of this act.

B. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this act must be commenced within two years from the effective date of the rule.

C. Rules shall be valid and binding on persons they affect, and shall have the force of law.

D. Except as otherwise provided by law, rules shall be prima facie evidence of the proper interpretation of the matter to which they refer.

§ 312. Declaratory judgment

A. The validity or applicability of a rule may be determined in an action for declaratory judgment in the District Court if it is alleged the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.

B. The agency shall be made a party to the action.

C. Rules promulgated pursuant to the provisions of the Administrative Procedure Act are presumed to be valid until declared otherwise by a District Court of the Nation.

D. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

CHAPTER 4

ADJUDICATION

§ 401. When Chapter 4 applies—Disputed cases

This chapter applies to an adjudication made by an agency if, under Cherokee Nation or federal law, an opportunity for an evidentiary hearing is required for the formulation and issuance of an order. If the requirements for informal adjudication under 1 CNCA §§ 405 and 406 or an emergency adjudication under 1 CNCA § 407 are met, a disputed case hearing may be conducted following the procedures in those sections.

§ 402. Presiding officers

A. In a disputed case, a presiding officer shall preside over the conduct of the hearing and shall regulate the course of the proceedings in a manner that will promote their orderly and prompt resolution.

B. The agency head, one or more members of the agency head, one or more persons designated by the agency head, in the discretion of the agency head, may serve as the presiding officer.

C. An individual who has served as investigator, prosecutor, or advocate at any stage in a disputed

case, including investigation, may not serve as a presiding officer or assist or advise any presiding officer in the same proceeding.

D. An individual who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate at any stage in a disputed case, including investigation, may not serve as presiding officer or assist or advise a presiding officer in the same proceeding.

E. A presiding officer is subject to disqualification for bias, prejudice, financial interest, or any other cause for which a judge is or may be disqualified.

F. A party may request the disqualification of a presiding officer by filing an affidavit, promptly after discovery of grounds, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule or canon of practice or ethics that requires disqualification.

G. A presiding officer whose disqualification is requested shall determine whether to grant the position, and state facts and reasons for the determination in writing.

H. If a substitute presiding officer is required, the substitute must be appointed by:

1. the Principal Chief, if the original presiding officer is the agency head; or
2. the agency, if the original presiding officer was designated by the agency.

I. Any party to agency proceedings or any party to judicial review or civil enforcement proceedings shall have a matter decided by administrative judges en banc.

§ 403. Disputed case procedure

A. Except for emergency adjudications and except as otherwise provided in 1 CNCA § 406, this section applies to disputed cases.

B. Except as provided in 1 CNCA § 407(C) for emergency adjudications, the agency shall give to the person to which the agency action is directed notice that is consistent with 1 CNCA § 404.

C. The agency shall make available to the person to which the agency action is directed a copy of the governing procedure.

D. The following rules apply in a disputed case:

1. Relevant evidence must be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Evidence may not be excluded solely because it is hearsay.

2. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence except that on timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

3. Upon proper objection the presiding officer shall exclude evidence that is immaterial, irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of Cherokee Nation. In the absence of proper objection, the presiding officer may exclude evidence that is objectionable.

a. Evidence is unduly repetitious under this subsection if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

b. A presiding officer's determination that evidence is unduly repetitious may be overturned only for abuse of discretion.

c. An objection is timely if made before submission of the case or on reconsideration.

4. In a disputed case, any part of the evidence may be received in written form, if doing so will expedite the hearing without substantial prejudice to the interests of a party. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

5. All evidence must be made part of the hearing record of the case, including, if the agency desires to avail itself of information or it is offered into evidence by a party, records in the possession of the agency which contain information classified by law as not public. No factual information or evidence may be considered in the determination of the case unless it is part of the agency record. If the agency record contains information that is not public, the presiding officer may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record.

6. In a disputed case the presiding officer may take official notice of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the agency.

a. Parties must be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data.

b. The parties must be afforded an opportunity to contest any judicially noticed facts before the decision is announced, unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

7. The experience, technical competence, and specialized knowledge of the presiding officer may be used in the evaluation of the evidence.

E. Except for informal hearings under 1 CNCA §§ 405 and 406 and emergency hearings under 1

CNCA § 407, in a disputed case, the presiding officer, at appropriate stages of the proceedings, shall give all parties the opportunity to file pleadings, motions, objections, and offers of settlement in a timely manner. The presiding officer, at appropriate stages of the proceeding, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed, recommended or final orders. If available, the original of all records must be filed with the agency, and copies of all filings shall be sent to all parties.

F. Except for informal hearings under 1 CNCA §§ 405 and 406 and emergency hearings under 1 CNCA § 407, in a disputed case, to the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

G. Unless prohibited by law, if each party to a hearing has an opportunity to hear, speak and be heard in the proceeding as it occurs, the presiding officer may conduct all, or part of, an evidentiary hearing, or a pre-hearing conference, by telephone, television, or other electronic means;

H. All testimony of parties and witnesses must be given under oath or affirmation and the presiding officer may administer an oath or affirmation for that purpose;

I. The hearing in a disputed case is open to public observation, except for a hearing or part of a hearing that the presiding officer states to be closed on the same basis and for the same reasons that a Cherokee Nation court is empowered to close a hearing or states to be closed pursuant to a statutory provision other than this act that authorizes closure. To the extent that a hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency.

J. Unless prohibited by law other than this [act], at the party's expense, any party may be represented by counsel or may be advised, accompanied or represented by another individual.

K. The decision in a disputed case must be in writing, based on the record, and include a statement of the factual and legal bases of the decision.

L. This section applies to agency procedure in disputed cases without further action by the agency, and prevails over a conflicting or inconsistent provision of the agency's rules.

M. The rules by which an agency conducts a disputed case may include provisions equivalent to, or more protective of, the rights of the person to which the agency action is directed than the requirements of this section.

§ 404. Notice

A. Except for emergency adjudication under 1 CNCA § 407, an agency shall give reasonable notice of the right to a hearing in a disputed case.

B. In case of applications or petitions submitted by persons other than the agency, within a reasonable time after filing the agency shall give an initial notice to all parties that an action has been commenced which must include:

1. the official file or other reference number; the name of the proceeding, and a general description of the subject matter;
2. the name, official title, mailing address, e-mail address, fax address and telephone number of the presiding officer;
3. a statement of the time, place and nature of the pre-hearing conference or hearing, if any;
4. the name, official title, mailing address and telephone number of any attorney or employee who has been designated to represent the agency; and
5. any other matter that the presiding officer considers desirable to expedite the proceedings.

C. In case of actions initiated by the agency that may or will result in an order, the agency shall give an initial notice to the party or parties against which the action is brought by personal service in a manner appropriate under the rules of civil procedure for the service of process in a civil action in Cherokee Nation which includes:

1. notification that an action that may result in an order has been commenced against them; and
2. a short and plain statement of the matters asserted, including the issues involved; and
3. a statement of the legal authority and jurisdiction under which the hearing is held that includes identification of the statutory sections involved; and
4. the official file or other reference number, the name of the proceeding and a general description of the subject matter; and
5. the name, official title, mailing address [e-mail address] [fax address] and telephone number of the presiding officer, or, if no officer has been appointed at the time the first notice is given, the name, official title, mailing address [e-mail address] [fax address] and telephone number of any attorney or employee designated to represent the agency; and
6. a statement that a party who fails to attend any subsequent proceeding in a disputed case may be held in default.
7. a statement that the party served may request a hearing and instructions in plain language about how to request a hearing; and
8. the names and last known addresses of all parties and other persons to which notice is being given by the agency.

D. When a pre-hearing, hearing or other hearing, meeting or conference is scheduled, the agency shall give notice that shall contain the pre-hearing information described in this subsection at least fourteen (14) days before the hearing.

E. Any notice may include other matters that the presiding officer considers desirable to expedite the proceedings.

§ 405. Informal adjudication in disputed cases

Unless prohibited by law other than this act, an agency may use the informal hearing procedure as provided in 1 CNCA § 406 in a disputed case if:

1. there is no disputed issue of material fact; or
2. the matter at issue is limited to any of the following:
 - a. a monetary amount of not more than One Thousand Dollars (\$1,000.00) whether liquidated in a sum certain or as periodic payments over no more than twelve (12) months;
 - b. a disciplinary sanction against a student that does not involve expulsion from an academic institution or suspension for more than ten (10) days or an employee that does not involve discharge from employment, demotion, or suspension for more than five (5) days;
 - c. a disciplinary sanction against a licensee that does not involve an actual revocation of a license or an actual suspension of a license for more than five (5) days;
 - d. a proceeding in which an opportunity for an evidentiary hearing is not required by Cherokee Nation or federal constitution or statute, common law, court rule, or executive order, and the agency by rule authorizes use of an informal hearing procedure under this section;
 - e. a proceeding where the Cherokee Nation or federal constitution requires an evidentiary hearing, but the hearing is not required to follow the adjudication procedures of 1 CNCA § 404; or
 - f. the parties by written agreement consent to an informal hearing under this section.

§ 406. Informal adjudication procedure

A. Except as otherwise provided in subsection (B), the adjudication procedures required under 1 CNCA § 403 in a disputed case apply to an informal adjudication.

B. In an informal adjudication, the presiding officer shall regulate the course of the proceeding. The presiding officer shall permit the parties and their representatives, and may permit others, to offer written or oral comments on the issues. The presiding officer may limit the use of witnesses, testimony, evidence, and argument and may limit or eliminate the use of pleadings, intervention,

discovery, pre-hearing conferences, and rebuttal. Where appropriate in the discretion of the presiding officer, an informal adjudication may be in the nature of a conference.

C. In regulating the course of the informal adjudication proceedings, the presiding officer shall recognize the rights of the parties:

1. to notice that includes the decision to proceed by informal adjudication;
2. to protest the choice of informal procedure, and that protest must be promptly decided by the presiding officer;
3. to participate in person or by a representative;
4. to have notice of any contrary factual material in the possession of the agency that can be relied on as the basis for adverse decision; and
5. to be informed briefly in writing, of the basis for adverse decision in the case.

D. The agency record for review of informal adjudication consists of the official transcript of oral testimony and any records that were considered, prepared by, or submitted to, the presiding officer for use in the informal adjudication or by or to the agency on review. The agency shall maintain these records as its record of the informal adjudication.

§ 407. Emergency adjudication

A. Unless prohibited by law other than this act, an agency may conduct an emergency adjudication in a disputed case under the procedure provided in this section.

B. An agency may issue an order under this section only to deal with an immediate danger to the public health, safety, or welfare. The agency may take only action that is necessary to deal with the immediate danger to the public health, safety or welfare. The emergency action must be limited to temporary, interim relief.

C. Before issuing an order under this section, the agency, if practicable, shall give notice and an opportunity to be heard to the person to which the agency action is directed. The notice and hearing may be oral or written and may be communicated by telephone, facsimile, or other electronic means. The hearing may be conducted in the same manner as an informal hearing under this chapter.

D. Any order issued under this section must contain an explanation that briefly explains the factual and legal basis for the emergency decision.

E. An agency shall give notice of an order to the extent practicable to the person to which the agency action is directed. The order is effective when issued.

F. After issuing an order pursuant to this section, an agency shall proceed as soon as feasible to conduct an adjudication following disputed case procedure under 1 CNCA § 403, or, if appropriate under this article, informal adjudication under 1 CNCA §§ 405 and 406, in order to resolve the issues underlying the temporary, interim relief.

G. The agency shall take reasonable and appropriate steps to document the emergency and the agency response, including the use of field notes, audio, video, or photography.

H. The agency record in an emergency adjudication consists of any testimony or records concerning the matter that were considered or prepared by the agency. The agency shall maintain those records as its official record.

I. On issuance of an order under this section, the person against which the agency action is directed may obtain judicial review without exhausting administrative remedies.

§ 408. Ex parte communications

While a disputed case is pending, the presiding officer shall not receive any communication, direct or indirect, from any person regarding any issue in the proceeding, without notice and opportunity for all parties to participate in the communication.

§ 409. Intervention

A. A presiding officer shall grant a petition for intervention in a disputed case if the petitioner has a statutory right to initiate the proceeding in which intervention is sought.

B. A presiding officer may grant a petition for intervention if the petitioner has an interest that will or may be adversely affected by the outcome of the proceeding and that interest is not adequately represented.

C. When intervention is granted or at any subsequent time, the presiding officer may impose conditions upon the intervenor's participation in the proceedings.

D. A presiding officer may permit intervention conditionally, and, at any time later in the proceedings or at the end of the proceedings, may revoke the conditional intervention.

E. The presiding officer, at least twenty-four (24) hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer shall promptly give notice to the petitioner for intervention and to all parties of an order granting, denying, or modifying intervention.

§ 410. Subpoenas

A. In a disputed case, upon request of a party, the presiding officer may issue subpoenas for the attendance of witnesses and the production of books, records and other evidence.

B. After the commencement of a disputed case, when a written request for a subpoena to compel attendance by a witness or to produce books, papers, records, or records that are relevant and reasonable is made by a party, the presiding officer shall issue subpoenas.

C. Subpoenas and orders issued under this subsection may be enforced pursuant to the rules of civil procedure.

§ 411. Discovery

A. For purposes of this section, "statement" includes records signed by a person of his oral statements, and records that summarize these oral utterances.

B. Except in an emergency hearing under 1 CNCA § 407, a party, upon written notice to another party at least ten (10) days before an evidentiary hearing, is entitled to:

1. obtain the names and addresses of witnesses to the extent known to the other party; and

2. inspect and make a copy of any of the following material in the possession, custody, or control of the other party:

i. a statement of a person named in the initial pleading or any subsequent pleading if it is claimed that respondent's act or omission as to that person is the basis for the adjudication;

ii. a statement relating to the subject matter of the adjudication made by any party to another party or person;

iii. statements of witnesses then proposed to be called and of other persons having knowledge of facts that are the basis for the proceeding;

iv. all writings, including reports of mental, physical and blood examinations and objects which the party then proposes to offer in evidence; and

v. investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the adjudication, to the extent that these reports contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions, or events that are the basis for the adjudication or reflect matters perceived by the investigator in the course of the investigation, or contain or include by attachment any statement or writing described in this section.

§ 412. Conversion

A. The adjudication in a disputed case of one type may be converted to an adjudication of another type under this chapter provided that:

1. the adjudication at the time of conversion no longer meets the requirements under this chapter for adjudication of the type for which it was originally commenced; and

2. at the time it is converted it meets the requirements under this chapter for the type of adjudication to which it is being converted.

B. To the extent practicable and consistent with the rights of the parties and the requirements of this chapter relative to the new proceeding, the record of the original proceeding must be used in the new proceeding.

C. The agency may adopt rules to govern the conversion of one type of proceeding under this chapter to another. The rules may include an enumeration of the factors to be considered in determining whether and under which circumstances one type of proceeding will be converted to another.

§ 413. Default

Unless displaced or modified by law other than this act, if a party fails to attend or participate in a pre-hearing conference, hearing, or other stage of a disputed case, the presiding officer at his discretion may issue a default order.

§ 414. Licenses

A. This chapter applies when an opportunity for an evidentiary hearing is required by law to formulate an order granting, denying, renewing, revoking, suspending, annulling, withdrawing, limiting, transferring, or amending a license.

B. If an opportunity for an evidentiary hearing is not required by law for agency action on an application for a license, the agency shall give prompt notice of its action in response to the application. If the agency denies the application under this section, the agency shall include an explanation of the reasons for denial.

C. When a licensee has made timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally acted upon by the agency and, if the application is denied or the terms of the new license are limited, the last day for seeking review of the agency decision or a later date fixed by order of the reviewing court.

§ 415. Orders—Initial and final

A. If the presiding officer is the agency head, the presiding officer shall render a final order.

B. If the presiding officer is not the agency head, the presiding officer shall render an initial order, which becomes a final order in thirty (30) days, unless reviewed within the thirty (30) days by the agency head on its own motion or on petition of a party.

C. Unless the time is extended by stipulation, waiver, or upon a showing of good cause, an initial or final order must be served in a record within ninety (90) days after conclusion of the hearing or after submission of memos, briefs, or proposed findings, whichever is later.

D. An initial or final order must include, separately stated, findings of fact and conclusions of law on all material issues of fact, law, or discretion; on the remedy prescribed, and, if applicable, the action taken on a petition for stay of effectiveness. If a party has submitted proposed findings of fact, the order must include a ruling on the proposed findings. The order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative or judicial relief. An initial order must include a statement of any circumstances under which the initial order, without further notice, may become a final order.

E. Findings of fact must be based exclusively upon the evidence of record in the disputed case and on matters judicially noticed.

F. A presiding officer shall cause copies of the initial or final order to be delivered to each party and to the agency head within the time limits set in subsection (C).

§ 416. Agency review of initial orders

A. An agency head, upon its own motion, may review an initial order. A party may appeal an initial order. Upon appeal by any party, the agency head shall review an agency order, except to the extent that:

1. a provision of law precludes or limits agency review of the initial order; or
2. the agency head, in the exercise of discretion conferred by a provision of law, declines to review the initial order.

B. An appeal from an initial order must be filed with the agency head, or with any person designated for this purpose by rule of the agency, within ten (10) days after the initial order is rendered. If the agency head on its own motion decides to review an initial order, the agency head shall give written notice of its intention to review the initial order within ten (10) days after it is rendered. The ten (10) day period for a party to file an appeal or for the agency head to give notice of its intention to review an initial order is tolled by the submission of a timely petition for reconsideration of the initial order pursuant to 1 CNCA § 415. A new ten (10) day period starts to run upon disposition of the petition for reconsideration. If an initial order is subject both to a timely petition for reconsideration and to a petition for appeal or to review by the agency head on its own motion, the petition for reconsideration must be disposed of first, unless the agency head determines that action on the petition for reconsideration has been unreasonably delayed.

C. An agency head that reviews an initial order shall exercise all the decision-making power that the agency head would have had if the agency head had conducted the hearing that produced the initial order, except to the extent that the issues subject to review are limited by a provision of law or by the agency head upon notice to all the parties. In reviewing findings of fact in initial orders

by presiding officers, the agency head shall give due regard to the presiding officer's opportunity to observe the witnesses. The agency head shall personally consider the whole record or such portions of it as may be cited by the parties.

D. An agency head may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the presiding officer who rendered the initial order. Upon remanding a matter, the agency head may order such temporary relief as is authorized and appropriate.

E. A final order or an order remanding the matter for further proceedings under this section must identify any difference between this order and the initial order and shall state the facts of record which support any difference in findings of fact, state the source of law which supports any difference in legal conclusions, and state the policy reasons which support any difference in the exercise of discretion. A final order under this section must include, or incorporate by express reference to the initial order, all the matters required by 1 CNCA § 415(D). The agency head shall cause an order issued under this subsection to be delivered to the presiding officer and to all parties.

§ 417. Reconsideration

A. Any party, within 15 days after notice of an initial or final order is rendered, may file a petition for reconsideration that states the specific grounds upon which relief is requested. The place of filing and other procedures, if any, shall be specified by agency rule.

B. Filing a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

C. No petition for reconsideration may stay the effectiveness of an order.

D. If a petition for reconsideration is timely filed, and the petitioner has complied with the agency's procedural rules for reconsideration, if any, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration as provided in 1 CNCA § 504(D).

E. If a petition is filed under subsection (A), the presiding officer shall render a written order within 20 days denying the petition, granting the petition and dissolving or modifying the initial or final order, or granting the petition and setting the matter for further proceedings. The petition may be granted only if the presiding officer states findings of facts, conclusions of law, and the reasons for granting the petition.

§ 418. Stay

Except as otherwise provided by law other than this act, a party may request an agency to stay an initial or final order within five days after it is rendered.

§ 419. Availability of orders—Index

- A. Except as otherwise provided in subsection (B), an agency shall index, by caption and subject, all final orders in disputed cases and give public notice of the index and orders.
- B. Final orders privileged by law or order of court and final orders, the disclosure of which would constitute an unwarranted invasion of privacy or release of trade secrets, are not public records and may not be indexed.
- C. In each case in which a final order is excluded under subsection (B), the justification for the exclusion must be explained in writing and attached to the order.
- D. An agency may not rely on a final order as precedent in future adjudications unless the order has been indexed and given public notice.
- E. An agency may not change, repeal, alter or modify a rule that the agency has enacted under Chapter 3 through adjudication under this chapter.

§ 420. Agency record in disputed case

- A. An agency shall maintain an official record of each disputed case.
- B. The agency record consists only of:
 - 1. notices of all proceedings;
 - 2. any pre-hearing order;
 - 3. any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
 - 4. evidence received or considered;
 - 5. a statement of matters judicially noticed;
 - 6. proffers of proof and objections and rulings thereon;
 - 7. proposed findings, requested orders, and exceptions;
 - 8. the record prepared for the presiding officer at the hearing, and any transcript of all or part of the hearing considered before final disposition of the proceeding;
 - 9. any final order, initial order, or order on reconsideration; and
 - 10. all memoranda, data or testimony prepared under 1 CNCA § 410.

C. Except to the extent that this act or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in a disputed case and for judicial review of the case.

CHAPTER 5

JUDICIAL REVIEW

§ 501. Judicial review generally

A. Except as otherwise provided by this chapter, a person is entitled to judicial review of final agency action affecting that person.

B. Final agency action for purposes of this chapter is agency action that imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process.

C. A person otherwise qualified under this chapter is entitled to judicial review of agency action not subject to review under subsection (A) if postponement of judicial review would result in:

1. an inadequate remedy or substantial and irreparable harm to that person that outweighs the public benefit derived from postponement; and

2. it appears likely that the person will prevail in judicial review of the agency action.

D. The District Court shall conduct judicial review.

E. Venue shall be in Tahlequah unless allowed elsewhere in Cherokee Nation by court rule and agreed by the parties.

§ 502. Review of agency action other than order

A person otherwise qualified under this chapter is entitled to judicial review of agency rules and agency action other than an order if:

1. the agency action is intended to be final or is the completion of action on that issue;

2. postponement of judicial review of that issue would subject the person affected to a risk of substantial harm; and

3. the issue involved is fit and appropriate for judicial resolution; and

4. the judicial action does not substantially interfere with development of agency policy.

§ 503. Rules of procedure

A. Subject to this section, judicial review of agency action may be taken only by proceeding as provided by Cherokee Nation Rules of Civil Procedure.

B. A petition for review must be filed with the Clerk of the Court.

C. Fees shall be paid as established by the Court.

D. A petition for review must set forth:

1. the name and mailing address of the petitioner;
2. the name and mailing address of the agency whose action is at issue;
3. identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;
4. identification of persons who were parties in any adjudicative proceedings that led to the agency action;
5. facts to demonstrate that the petitioner is entitled to obtain judicial review;
6. the petitioner's reasons for believing that relief should be granted; and
7. a request for relief, specifying the type and extent of relief requested.

E. A petition for review must be served by personal delivery or first-class mail with evidence of delivery on the agency, the Office of the Principal Chief, and all other parties in any adjudicative proceedings that led to the agency action.

§ 504. Time for seeking judicial review of agency action

A. Judicial review of a rule may be sought at any time after the date thirty (30) days before the effective date of the rule.

B. Judicial review of an order or other agency action other than a rule must be commenced within thirty (30) days after issuance of the order or other agency action if the record of the action provides notice that it is a final agency action and notes the thirty- (30) day time limit for judicial review.

C. If a final agency action other than a rule does not provide notice as required in subsection (B), then judicial review may be sought within two (2) years of the action becoming final.

D. A time for seeking judicial review under this section is tolled during any time a party is pursuing an administrative remedy before the agency which must be exhausted as a condition of judicial review.

E. A party may not file or petition for judicial review while seeking reconsideration under 1 CNCA § 417. During the time that a petition for reconsideration is pending before an agency, the time for seeking judicial review in subsection (B) is tolled.

§ 505. Stays pending appeal

The initiation of judicial review does not automatically stay a decision of the agency appealed from. An appellant may petition the reviewing court for a stay upon a showing of immediate, unavoidable, irreparable harm, and a colorable claim of error in the agency proceedings. The reviewing court may grant a stay whether or not the appellant first sought a stay from the agency.

§ 506. Standing

The following persons have standing to obtain judicial review of an agency action:

1. a person to which, or against which, the agency action is specifically directed;
2. a person that was a party to the agency proceedings that led to the agency action;
3. a person eligible for standing under law of Cherokee Nation other than this act; and
4. a person aggrieved or adversely affected by the agency action.

§ 507. Exhaustion of administrative remedies

A. Except as otherwise provided in subsection (B), a person may file a petition for judicial review under this act only after exhausting all administrative remedies available within the agency whose action is being challenged and within any other agency authorized to exercise administrative review, except a petition for reconsideration.

B. A petitioner for judicial review of a rule need not have participated in the rulemaking proceeding upon which that rule is based.

C. If the issue that a petitioner for judicial review under this subsection challenges was not raised and considered in a rulemaking proceeding:

1. before bringing a petition for judicial review, the petitioner must petition the agency to initiate rulemaking under 1 CNCA § 317 to take action to resolve or cure the issue or issues that the petitioner is challenging; and
2. in the petition for judicial review the petitioner must disclose the petition to the agency for rulemaking and the final agency action on that petition.

D. A petitioner need not have exhausted his administrative remedies if this act or a statute other

than this act provides that exhaustion is not required.

E. The Court may relieve a petitioner of the requirement to exhaust any or all administrative remedies to the extent that the administrative remedies are inadequate or would result in irreparable harm.

§ 508. Agency record on judicial review

A. Judicial review of adjudication and rulemaking is confined to the agency record except as allowed by this section.

B. Within thirty (30) days after service of the petition, or within further time allowed by the Court or by other provision of law, the agency shall transmit to the Court the original or a certified copy of the agency record for judicial review of the agency action.

C. By stipulation of all parties to the review proceedings, the record may be shortened, summarized, or organized.

D. The Court may tax the cost of preparing transcripts and copies for the record against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record.

E. The Court may admit additional evidence when:

1. explanation or background of the decision is required;
2. a party alleges that the administrative record presented to the Court fails to disclose evidence or factors considered by the agency;
3. no record exists in cases where agencies are sued for a failure to take action; or

F. The Court may receive additional evidence if it is needed to decide disputed issues regarding:

1. improper constitution as a decision-making body, or improper motive or grounds for disqualification, of those taking the agency action;
2. unlawfulness of procedure or of decision-making process;
3. any material fact that was not required by any provision of law to be determined exclusively on an agency record of a type reasonably suitable for judicial review;
4. a failure to consider adequately a matter required to be considered by the agency's statute;
5. a factor not considered that is well known and relevant enough to be judicially noticeable as requiring consideration; or

6. whether the explanation or the record made by the appropriate agency procedures raises issues irrationally neglected by the agency.

§ 509. Scope of review—Grounds for invalidity

A. Except to the extent that this act or another statute provides otherwise, the validity of agency action must be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.

B. The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

C. The Court shall make a separate and distinct ruling on each material issue on which the Court's decision is based.

D. The Court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by any one or more of the following:

1. The agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

2. The agency has acted beyond the jurisdiction conferred by any provision of law;

3. The agency has not decided all issues requiring resolution;

4. The agency has erroneously interpreted or applied the law;

5. The agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

6. The persons taking the agency action were improperly constituted as a decision-making body, motivated by an improper purpose, or subject to disqualification;

7. The agency action is based on a determination of fact, made or implied by the agency, that is not supported by evidence that is substantial when viewed in light of the whole record before the Court, which includes the agency record for judicial review, supplemented by any additional evidence received by the Court under this act;

8. The agency action is subject to agency discretion which has been abused by one or more of the following:

a. agency reliance on factors that may not be taken into account under, or ignored factors that must be taken into account under law;

b. agency action does not bear a reasonable relationship to statutory purposes or requirements;

- c. necessary factual premises of the action do not withstand scrutiny under the relevant standard of review;
- d. agency action is unsupported by any explanation or rests upon reasoning that is seriously flawed;
- e. the agency failed, without adequate justification, to give reasonable consideration to an important aspect of the problems presented by the action;
- f. the agency action is, without legitimate reason and adequate explanation, inconsistent with prior agency policies or precedents;
- g. without an adequate justification, to consider or adopt an important alternative solution to the problem addressed in the action;
- h. the agency failed to consider substantial arguments, or respond to relevant and significant comments, made by the participants in the proceeding that gave rise to the agency action;
- i. the agency has imposed a sanction that is greatly out of proportion to the magnitude of the violation;
- j. or the action fails in other respects to rest upon reasoned decision making.

E. The Court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the Court considers necessary and that the agency take such further action on the basis thereof as the Court directs, if:

- 1. the agency was required by this act or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;
- 2. the Court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover, or did not know and was under a duty to discover but could not reasonably have discovered, until after the agency action, and (ii) the interests of justice would be served by remand to the agency;
- 3. the agency improperly excluded or omitted evidence from the record; or
- 4. a relevant provision of law changed after the agency action and the Court determines that the new provision may control the outcome.

TITLE 2

AGRICULTURE AND ANIMALS

Reserved for Future Use

TITLE 3

AIRCRAFT AND AIRPORTS

Reserved for Future Use

TITLE 4

AMUSEMENTS AND SPORTS¹

CHAPTER 1

GENERAL PROVISIONS

§ 1. Short title

This enactment shall be known and may be cited as the Cherokee Nation Tribal Gaming Act of 2011.

§ 2. Purpose

The purpose of this act is:

1. To repeal Legislative Act 30–89, as amended by Legislative Acts 9–90, 1–94, 126–95 (resolution), 29–03, 37–03, 44–04, 20–06, and 15–07; and amend Legislative Act 26–10.
2. To regulate the conduct of all gaming owned and operated by the Cherokee Nation, or its officially licensed agents, on Indian lands as defined by the Indian Gaming Regulatory Act and any other lands owned by the Cherokee Nation (hereafter referred to as Cherokee Nation) in compliance with Public Law 100–497, October 17, 1988, as amended, and in compliance with any tribal–state compact between Cherokee Nation and the State of Oklahoma or that the State has authorized by enactment.
3. To provide a basis under tribal law for the regulation of all gaming by Cherokee Nation adequate to shield it from organized crime and other corrupting influences; to insure that Cherokee Nation is the sole beneficiary 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"), as amended, the regulations of the National Indian

¹ At the time of printing, LA 26–10 and LA 10–11 are pending approval by the National Gaming Commission.

Gaming Commission ("NIGC") at 25 C.F.R. Parts 500 et seq., as amended, and in compliance with any tribal-state compact between Cherokee Nation and the State of Oklahoma or that the State has authorized by enactment.

4. To authorize and regulate all forms of gaming as defined by this act and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., as amended, for which the Nation has duly compacted with the State of Oklahoma or the State has authorized by enactment.

5. To authorize and regulate gaming on Indian lands as defined by the Indian Gaming Regulatory Act and any other lands owned by the Cherokee Nation, for which the Nation has compacted with the State of Oklahoma or that the State has authorized by enactment. Provided, however that license requirements and regulations promulgated by the Gaming Commission shall be in addition to and shall not conflict with any and all regulations issued by the Oklahoma Horse Racing Commission.

§ 3. 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 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.

E. On April 11, 1994, Cherokee Nation amended the Gaming Act with LA 1–94.

F. On October 16, 1995, Cherokee Nation adopted Resolution 126–95 to authorize Class III gaming on Indian lands under its jurisdiction in the State of Kansas and other states where such gaming is permitted.

G. On October 2, 2003, Cherokee Nation amended the act with LA 29–03 to authorize and provide for the regulation of Class III gaming which had been compacted for with the State of Oklahoma and/or authorized by legislative action.

H. On November 10, 2003, Cherokee Nation amended the Gaming Act with LA 37–03 to clarify

the activities that fall under the jurisdiction of the Cherokee Nation Gaming Commission.

I. On November 15, 2004, Cherokee Nation amended the Gaming Act with LA 44-04 to provide technical amendments to the Gaming Act and provide for the regulation of Class III gaming that had been compacted for with the State of Oklahoma and/or authorized by legislative acts.

J. On August 21, 2006, Cherokee Nation amended the Gaming Act with LA 20-06 relating to gaming on lands within the jurisdiction of Cherokee Nation.

K. On March 12, 2007, Cherokee Nation amended the Gaming Act with LA 15-07 to clarify that the Cherokee Nation Gaming Commission shall issue a separate license to each place, facility, or location in which Class II or Class III gaming is conducted.

§ 4. Definitions

For the purposes of this title, and unless a different code meaning is clearly indicated, the terms used in this title shall have the same meaning as defined in the Indian Gaming Regulatory Act, Public Law 100-497, codified at 25 U.S.C. § 2701 et seq., as amended.

1. "**Agent**" and "**officially licensed agent**" means any entity/corporation, wholly- or majority-owned by the Nation, its parent, subsidiary, and/or affiliate companies that conducts or has responsibility for gaming activities.

2. "**Class I gaming**" means social games solely for prized 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.

3. "**Class II gaming**" means:

a. Bingo or lotto (whether or not electronic, computer, or other technological aids are used) when players:

i. play for prizes with cards bearing numbers or other designations;

ii. cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined; and

iii. win the game by being the first person to cover a designated pattern on such cards.

b. If played in the same location as bingo or lotto, Class II gaming includes:

i. pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo; and

ii. non-banking games that:

(a) state law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and

(b) players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes.

c. Class II gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

4. "**Class III gaming**" includes all those forms of gaming that are not Class I or Class II gaming.

5. "**Compact**" means any agreement entered into between the Cherokee Nation and the State of Oklahoma, as approved by the Secretary of the Interior, for the purposes of conducting Class III gaming. Any such agreement shall only affect the scope of Class III gaming activities.

6. "**Facility license**" means a separate license issued by the Gaming Commission to each place, facility or location on Indian lands and any other lands owned by the Cherokee Nation where Class II or Class III gaming may be conducted.

7. "**Gaming commission**" means the Cherokee Nation Gaming Commission.

8. "**Gaming commissioner**" means any member of the Gaming Commission duly appointed by the Principal Chief and confirmed by the Tribal Council.

9. "**Gaming equipment**" means all electronic, electro-mechanical, mechanical, or other physical components utilized in the play of Class II and Class III games.

10. "**Gaming facility**" means any premises, buildings, facilities, improvements, and/or equipment used or maintained in connection with the conduct of gaming, including but not limited to the storage of gaming equipment and/or materials and directly tied to the gaming operation/facility.

11. "**Gaming facility employee**" means any employee of a gaming facility.

12. "**Gaming public**" or "**patron**" means any natural person that is on the premises of a gaming facility acting or serving in the capacity as a customer or guest for the purpose of gaming.

13. "**Gaming system**" means all components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games or any Class III games, inclusive of any and all support systems, player tracking and gaming accounting functions.

14. "**Gaming vendor**" means any person or entity who provides, through the sale, lease, rental or otherwise, any games, parts, maintenance or service in connection therewith to the Officially Licensed Agent in any amount.

15. **"IGRA"** means the Indian Gaming Regulatory Act of 1988, Public Law 100–497, as codified at 25 U.S.C. § 2701 et seq., as amended.

16. **"Indian lands"** means 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.

17. **"Jurisdiction"** means all lands owned by the Nation or over which the Nation exercises commercial and/or governmental authority or control.

18. **"Key employee"** means:

a. A person who performs one or more of the following functions:

i. Bingo caller;

ii. Counting room supervisor;

iii. Security and surveillance;

iv. Custodian of gaming supplies or cash;

v. Floor manager;

vi. Pit boss;

vii. Dealer;

viii. Croupier;

ix. Approver of credit;

x. Information technology employee with access to gaming related systems and equipment; or

xi. Custodian of gambling devices including persons with access to cash and accounting records within such devices.

b. If not otherwise included, any other person whose total cash compensation is in excess of Fifty Thousand Dollars (\$50,000.00) per year; or

c. If not otherwise included, the four (4) most highly compensated persons in the gaming operation;

d. Any other person designated by the Nation as a key employee.

19. **"License"** means:

a. 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;

b. In connection with an individual person, a license or permit issued by the Cherokee Nation Gaming Commission authorizing the person to be engaged as a non-gaming employee, key employee, or primary management official of a licensed gaming facility; and

c. In connection with certain vendors, a license or permit issued by the Cherokee Nation Gaming Commission authorizing an individual or entity to conduct business and/or engage in activities that impact the operation of a gaming facility.

20. **"Nation"** or **"tribe"** means Cherokee Nation.

21. **"NIGC"** means the National Indian Gaming Commission.

22. **"Non-gaming employee"** means any employee of the gaming operation who is not a key employee or primary management official. Non-gaming employees shall also be licensed by the Gaming Commission in accordance with any limitations, restrictions, or regulatory requirements deemed appropriate by the Gaming Commission.

23. **"Non-gaming vendor"** means any person or entity who, directly or indirectly, provides or is likely to provide at least Twenty-Five Thousand Dollars (\$25,000.00) in goods or services to an officially licensed agent within the gaming facility's fiscal year. Provided, that attorneys or certified public accountants and their firms shall be exempt from this definition to the extent that they are providing services covered by their respective professional licenses.

24. **"Person"** means any natural individual, company, partnership, firm, joint venture, association, limited liability company (LLC), corporation, estate, political entity of Cherokee Nation, or other identifiable entity to which this Title can be applied.

25. **"Primary management official"** means:

a. The person having management responsibility for a management contract;

b. Any person who has authority:

- i. to hire and fire employees;
- ii. to set up working policy for the gaming operation;
- c. The chief financial officer or other person who has financial management responsibility; or
- d. Any other person designated by the Nation as a primary management official.

26. **"Working days"** means Monday through Friday, except for holidays recognized by Cherokee Nation and/or the federal government

§ 5. Protection of the environment, public health and safety

A. All gaming facilities licensed by the 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.

B. The Gaming Commission shall utilize and/or rely on the Nation's established regulatory systems or certifications by appropriately licensed professionals for the purposes of enforcing applicable codes or regulations at each gaming facility. Laws, codes, regulations, policies, standards or procedures shall cover, at a minimum:

1. Emergency preparedness, including but not limited to fire suppression, law enforcement, security, and ambulatory services;
2. Food and potable water;
3. Construction and maintenance;
4. Hazardous materials;
5. Sanitation (both solid waste and wastewater);
6. Other environmental or public health and safety standards adopted by the tribe in light of climate, geography, and other local conditions as may be applicable to the individually licensed gaming facilities; and
7. Other city, county, and/or state standards the Nation may elect to abide by.

The Gaming Commission shall recommend to the Principal Chief and the Council of the Cherokee Nation any revisions or additions to laws, regulations, policies, standards or procedures necessary to comply with IGRA.

C. Each facility shall be required to follow all applicable federal, tribal, and/or state codes or regulations provided in the Cherokee Nation Code Annotated, and any modifications or

amendments made thereto, and/or that may be recognized, adopted, or followed by an appropriate Nation commission or department. The Gaming Commission shall rely on and not duplicate the regulation of such commissions and departments to ensure compliance with all applicable codes or regulations.

§ 6. Words and terms

In constructing the provisions of this code, save when otherwise plainly declared or clearly apparent from the context:

1. Words in the present tense shall include the future tense;
2. Words in masculine, feminine and neutral genders shall include all genders, and;
3. Words in the singular shall include the plural, and in the plural shall include the singular.

§ 7. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

§ 8. 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.

§ 9. 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.

§ 10. Sovereign immunity

Notwithstanding 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.

§ 11. Emergency declared

It being immediately necessary for the welfare of 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.

§§ 12 to 19. Reserved

CHAPTER 2

GAMING COMMISSION ADMINISTRATION AND ENFORCEMENT PROCEDURES

§ 20. 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 the IGRA (as amended) and the NIGC's regulations at 25 C.F.R. § 501 et seq. (as amended) and to implement the provisions of this act. Provided, however, all actions and regulations of the Gaming Commission shall be consistent with the provisions of this act, all other laws and resolutions of the Cherokee Nation Tribal Council, and the Constitution of Cherokee Nation and any applicable laws and/or regulations of regulating agencies established by the State of Oklahoma either:

1. Pursuant to a compact on lands other than the lands defined in 4 CNCA § 4(P) and (Z) of this title; or
2. Applicable to facilities operating:
 - a. under the jurisdiction of the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq.; or
 - b. in connection with a horse racing facility under a license granted under the authority of 3A O.S. § 262.

§ 21. Membership

- A. The Gaming Commission shall consist of no less than five (5) members of the Cherokee Nation to be appointed by the Principal Chief of the Cherokee Nation and approved by the Tribal Council of Cherokee Nation.
- B. To be eligible to serve as a commissioner, a person must:
 1. Be at least twenty-five (25) years of age;
 2. Have a bachelor's degree from a college or university or equivalent experience;
 3. Be of high moral character or integrity;
 4. Be physically able to carry out the duties of office; and,
 5. Be able to pass a background investigation equivalent to that of a primary management official to obtain and maintain a gaming license.
- 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 Gaming Commission shall be three (3) years. Provided, however, the amendments set forth in this Legislative Act shall not affect the terms of office of the persons who are members of the Gaming Commission as of the effective date of this act.

E. At the expiration of their term, a Gaming Commissioner shall continue to serve until he or she is reappointed or replaced pursuant to subsection (G) of this section.

F. Gaming 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 Cherokee Nation District Court under such rules and procedures as prescribed by the Tribal 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 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 tribal political organization, candidacy or other tribal political purpose. No member of the Gaming Commission shall be a member of a committee of a partisan tribal 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 tribal political campaign, except to exercise his or her right as a private citizen privately to express his or her opinion and to cast his or her vote.

G. In the event of the expiration of a gaming commissioner's term or a vacancy in the membership of the Gaming Commission, the Principal Chief shall, within one hundred eighty (180) days of the occurrence of the vacancy, fill such vacancy for the unexpired term, subject to confirmation by a majority vote of the Tribal Council. In the case of filling a vacancy, such appointment shall only be for the unexpired term.

§ 22. Powers and duties of the Gaming Commission

A. The Gaming Commission shall have the power to regulate and generally oversee conduct of all gaming operations in order to ensure compliance with this act and any regulations adopted and orders issued by the commission. The gaming commissioners shall each execute a conflict of interest provision disclosing potential unethical situations.

B. The Gaming Commission shall be charged with the sole responsibilities of administering and enforcing the provisions of this act and any tribal-state compact to which the Nation may be a party.

C. It shall be the responsibility of the commission to promulgate regulations necessary to administer the relevant provisions of this act.

D. The powers and duties of the Gaming Commission shall include, but not be limited to, the following:

1. Making available application forms for all licenses and/or permits;
2. Supervising the collection of all fees prescribed by this act, Gaming Commission regulation, federal statutes or regulations, and any tribal-state compact to which the Nation may be a party;
3. Processing all license applications and tax returns, which will be submitted under oath;
4. Determining applicable fees;
5. Auditing and/or reviewing financial records to ensure proper accountability;
6. Reviewing all records, documents and anything else necessary and pertinent to the financial accountability of licensees or enforcement of any provision of this ordinance;
7. Assessing sanctions, fines, or other penalties as needed against all vendors and/or facilities under the jurisdiction of and as deemed proper by the Gaming Commission for any violation of applicable laws, rules, and/or regulations;
8. Establishing procedures for conducting background investigations on and licensing of key employees, primary management officials, other gaming facility employees, and vendors;
9. Establishing procedures for issuing licenses and permits to such employees, officials, and vendors;
10. Obtaining and processing fingerprints, or designating a law enforcement agency to obtain and process fingerprints;
11. Reviewing and approving all investigative work conducted and reporting any possible or suspected criminal violation to the Cherokee Nation Marshal Service;
12. Making license and/or permit suitability determinations;
13. Reporting background investigation results to the National Indian Gaming Commission, as required;
14. Inspecting, examining, and monitoring all gaming facility activities on a continuing basis;
15. Having immediate, unfettered access to all areas of a gaming facility to review, inspect, examine, photocopy and/or audit all records of the gaming facility;
16. Conducting civil/regulatory investigations of any suspected or reported violations of this act, Gaming Commission regulation, tribal and/or federal statutes or regulations, or any tribal-state

compact provision;

17. Establishing procedures for resolving disputes between the gaming public and a licensed gaming facility;

18. Holding hearings on patron complaints, in compliance with procedures established by the Gaming Commission and/or any tribal-state compact provision;

19. Complying with any and all reporting requirements under the IGRA, any tribal-state compact to which the Nation may be a party, and any other applicable law;

20. Promulgating, issuing, and enforcing regulations necessary to comply with the minimum internal control standards issued by the Gaming Commission or the National Indian Gaming Commission, as amended;

21. Promulgating, issuing, and enforcing regulations on levying of fines and/or denial, suspension, restriction, or revocation of a gaming license or—permit for violations of this act, any Gaming Commission regulation, or any other applicable tribal, federal, or state law or regulation. Fines may not be assessed on employees;

22. Ensuring compliance with National Indian Gaming Commission regulations requiring payment of annual fees to, and filing reports with, the National Indian Gaming Commission;

23. Ensuring that all gaming facilities are in compliance with the federal Privacy Act procedures as required by NIGC regulations;

24. The Gaming Commission or any member thereof, in the performance of its duties as defined by law, shall have the power to, in administrative proceedings administer oaths and conduct administrative hearings for the purpose of the enforcement of this act and/or any rules and regulations adopted by the Gaming Commission, assessment or collection of any fine, costs or other fees. The gaming facility shall provide 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 as necessary to show cause why action should not be taken by the Commission. Provided that the Cherokee Nation Marshal Service and Office of Attorney General have primary jurisdiction to enforce all criminal laws concerning gaming.

E. Dispute resolution.

1. The Gaming Commission shall promulgate regulations for resolving disputes between the gaming public and a gaming facility.

a. Separate regulations shall be provided for Class II and Class III gaming activities.

b. For Class III disputes, the Gaming Commission shall follow the parameters set forth in any tribal-state compact to which the Nation may be a party.

2. In resolving such disputes, the Gaming Commission may receive written statements, affidavits, or other materials from the parties of said dispute or their witnesses and, in its discretion, may order one or more hearings to take oral statements or testimony.

3. Any decision of the Gaming Commission in resolving such disputes shall be in writing and may be appealed by the parties to the Cherokee Nation District Court by filing an appeal, which shall contain a statement of the grounds for the appeal, within thirty (30) days of the date of receipt of the Gaming Commission's decision, in accordance with 4 CNCA § 67.

4. All decisions of the Gaming Commission for which a timely appeal has not been filed shall be final.

5. The dispute resolution procedures shall not apply to disputes governed by the regulations of the Oklahoma Horse Racing Commission.

§ 23. Restrictions on commissioners

A. To avoid potential conflicts of interest between the management and regulation of a gaming operation, the Nation hereby declares that:

1. No person, while actively serving in any of the following capacities may serve on the Gaming Commission: Principal Chief or Deputy Principal Chief, Member of the Tribal Council, Justice or Judge of the Nation's Courts, Nation employee, employee of the Gaming Commission, any employee of a gaming facility owned and operated by the Nation or its authorized agent or any appointed member thereof, or any vendor actively conducting business with a gaming facility.

2. No person who is ineligible to be a key employee or primary management official or any person convicted of a felony, embezzlement, theft or any other financially-related crime or honesty-related crime, such as fraud, may serve on the Gaming Commission.

3. Gaming Commissioners are prohibited from:

a. Gambling in any gaming facility owned and operated by the Nation or its authorized agents;

b. Providing contractual services of any kind to any gaming facility;

c. Providing any management services to any gaming facility pursuant to a management contract;

d. Accepting complimentary items from a gaming facility;

e. Accepting gratuities or any other thing of value that could be considered a bribe from any licensee or applicant for a license or permit; and

f. Engaging in outside employment or activities, including seeking or negotiating for future

employment, that conflicts with their official duties and responsibilities.

B. For purposes of subparagraphs (A)(3)(d) and (A)(3)(e) of this section, complimentary items and/or gratuities, shall not include ceremonial gifts or other items of nominal value, or meals provided at the expense of a gaming facility, provided that such items do not each exceed One Hundred Dollars (\$100.00) in value and are not offered as an inducement or for any action taken by the Gaming Commission.

§ 24. Financial interest

No Gaming Commissioner shall have any direct or indirect financial interest in any gaming facility or gaming vendor licensee. For purposes of this section, indirect financial interest shall not include ownership of any mutual funds or other non-self-directed investment fund which holds stock in a publicly-traded company but shall include direct ownership of such stock.

§ 25. Limitations; recommendations

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

§ 26. Budget and compensation

A. Commission funding and budget

1. Fees; general

a. The Gaming Commission shall be subject to the annual budgeting process as prescribed by the Principal Chief.

b. Each licensee under the jurisdiction of the Gaming Commission shall pay to the Nation fees as established and scheduled by the Gaming Commission.

c. The Gaming Commission, by a vote of not less than a majority of its members, shall adopt the rate of the fees imposed on any gaming vendor, employee, facility, and any other licensing fee schedule on a bi-annual basis.

d. The projected expenditures of the Gaming Commission shall be in an amount not to exceed the amount of funds projected to be derived from fee assessments made under this section.

e. Any increases to the Gaming Commission budget shall follow the established tribal budgetary process.

f. Any unexpended fees shall be considered gaming revenues and shall be used in accordance with 4 CNCA § 38.

2. Operational fees

- a. The Treasurer shall adopt preliminary rates for gaming operations fees prior to the beginning of each fiscal year based upon the approved budget for the Commission and, if deemed necessary, shall modify those rates at any time during the fiscal year.
- b. The Gaming Commission shall establish a schedule of fees to be paid to the Nation by each operation regulated under this act. Fees shall be paid to the Nation on a monthly basis.

3. Penalties

- a. Failure by any vendor or facility to pay the fees imposed under the schedules established by the Gaming Commission shall, subject to the regulations of the Gaming Commission, be grounds for denial or revocation of the approval of any permit or license issued the licensee.
- b. The Gaming Commission may assess a fine on any vendor or facility for failure to pay any prescribed license fee.

Any assessed fines shall be collected by the Nation to be used in accordance with 4 CNCA § 38 and shall not be considered a part of the Gaming Commission budget.

B. Gaming Commissioner compensation

1. The annual compensation, payable monthly, of the Gaming Commissioners shall be determined as a part of the annual budget appropriation.
2. In no event shall compensation be based on a percentage of net profits from gaming operations of the Nation.
3. Members are eligible to be reimbursed for actual expenses incurred for Gaming Commission business, including necessary travel expenses, in addition to their monthly compensation.

§ 27. Authorization of gaming

A. Prohibition of unauthorized gaming. No person licensed by the Gaming Commission shall engage, conduct or condone any game in a facility under the jurisdiction of the Gaming Commission unless such game is approved by the Gaming Commission and regulations for rules governing such game have been duly promulgated and approved by the Gaming Commission.

B. Authorization of gaming. The Gaming Commission may authorize the playing of any game not prohibited by the IGRA, any game not prohibited by a tribal-state compact, and/or not specifically prohibited by the laws of the State of Oklahoma. The Gaming Commission shall promulgate regulations for rules governing all authorized games, including regulations governing the equipment, whether electronic or manual (e.g., chips, cards, machines, computer systems, etc.) used in such game. Any provision in a tribal-state compact with the State of Oklahoma providing

for testing, notice to, and comment from the state shall be complied with before any game is authorized by the Gaming Commission.

C. Approval of gaming equipment. The Gaming Commission shall have the discretion to review and approve all gaming systems and other equipment used in the gaming facility as to quality, design, integrity, fairness, honesty, and suitability.

1. The Gaming Commission may require a prototype or sample of any model of gaming system or other equipment used in the gaming facility to be placed in the custody of the Gaming Commission and retained as a control for comparison purposes.

2. The Gaming Commission may rely on an independent outside testing laboratory or other professional expertise it deems necessary or appropriate to ensure the integrity of gaming systems, equipment, supplies, etc.

D. Rules and regulations of games.

1. It shall be the responsibility of the Gaming Commission to promulgate regulations establishing the particular rules of all classes of gaming for each authorized game in order that said gaming will be conducted with fairness and uniformity.

2. The rules of each authorized game offered at facilities licensed by the Gaming Commission shall be posted, and shall be clearly legible, in a conspicuous location and/or made available to patrons in pamphlet form. Such rules, and any modifications or amendments thereto, must be approved by the Gaming Commission prior to publication and implementation.

E. Gaming-related activity of the Nation. The Gaming Commission shall have full jurisdiction for regulatory compliance and enforcement of any other gaming-related activity that the Nation may elect to conduct. The Gaming Commission shall promulgate such regulations as it deems necessary to ensure the integrity of such activity and to ensure compliance with all applicable laws and regulations. Gaming Commission approval with regard to compliance with applicable gaming laws and regulations shall be required for any contracts related to any such gaming related activities. For the purposes of this section, such gaming related activities shall include, but are not limited to the following:

1. Manufacture, development, assembly, sales, or distribution of any gaming machines, devices, equipment, software, or components thereof;

2. Joint ventures with other tribes, entities, persons, etc. related to gaming activity;

3. Pre-licensure of any entity or individual providing loans, grants or similar financial arrangements related to gaming activity in excess of Fifty Thousand Dollars (\$50,000.00) in any twelve- (12) month period, subject to the exceptions set forth in the Compact between Cherokee Nation and the State of Oklahoma.

§ 28. Prohibited acts

A. In addition to other civil and criminal acts that may be regulated or prohibited by this act, any tribal-state compact to which the Nation may be a party, other Tribal law or applicable federal law, the following shall constitute prohibited activities and unauthorized gaming under this act and shall subject any perpetrator to Gaming Commission action including, but not limited to, the imposition of civil penalties, referral to appropriate law enforcement authorities for criminal proceedings, and license suspension or revocation. It is prohibited for any person:

1. To alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is determined but before it is revealed to the players;
2. To place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or knowledge of any event that affects the outcome of the game or knowledge that is the subject of the bet or wager;
3. To aid anyone in acquiring such knowledge as set forth in paragraph (2) above for the purpose of increasing or decreasing a bet or wager, or for the purpose of determining the course of play contingent upon that event or outcome;
4. To claim, collect, or take or attempt to claim, collect or take, money or anything of value in or from a gambling game with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;
5. To knowingly entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this act, with the intent that the other person play or participate in that gambling game;
6. To place or increase a bet or wager after acquiring knowledge of the outcome of the game or event which is the subject of the bet or wager, including past-posting and pressing bets;
7. To reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;
8. To manipulate with intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose of the components, with knowledge or hope that the manipulation affects the outcome of the game or prize or with knowledge of any event that affects the outcome of the game or prize;
9. To solicit funds or anything of value from any patron or employee for personal gain, such as panhandling, vagrancy, or prostitution.
10. To unlawfully take or attempt to take any chips, currency, machine redemption tickets, or anything of value from any patron or employee on the gaming facility premises;

11. To refuse to leave the gaming facility when appropriately advised to do so by a member of management, security, and/or the Gaming Commission;
12. To damage or attempt to damage, either intentionally or negligently, any property, gaming device or equipment, or any article belonging to the Tribe, patron, or employee;
13. Under the age of eighteen (18) to make any wager either directly or indirectly in any gaming facility;
14. To either intentionally or knowingly cause injury or harm to any patron, or employee or threaten to do so;
15. To possess any chips, cards, devices, paraphernalia, etc., that could reasonably be concluded as useful in cheating, defrauding, manipulating, or altering any game, gaming device, equipment, machine, computer, or supplies;
16. For any employee to aid, conspire, collude or assist in any way any other employee or patron to win or have an unfair advantage to win or otherwise acquire anything of value unfairly;
17. For any employee to knowingly provide false information or to misrepresent information contained in a gaming license application and/or during the course of a background investigation;
18. For any employee to knowingly make a false or misleading statement to the independent auditors or internal auditors, nor shall any employee conceal or intentionally fail to reveal any information necessary to make the statements to such auditors not false or misleading;
19. For any employee to knowingly make a false or misleading statement in connection with any contract for services or property or in response to any official inquiry by the Gaming Commission or its agents;
20. For any employee to knowingly make a false or misleading statement to any investigator or other representative of the Gaming Commission in the course of an investigation of a complaint or violation of this act, the Gaming Commission rules and regulations, or of any provision of a tribal-state compact to which the Nation may be a party;
21. For any employee to knowingly alter and/or destroy gaming records (e.g. surveillance footage, gaming paperwork, accounting/financial reports) without proper authorization and/or that is outside of prescribed policies and procedures for such records;
22. For any person to offer or attempt to offer anything of value to a licensee in an attempt to induce the licensee to act or refrain from acting in a manner contrary to the official duties of the licensee contained in this act, the Gaming Commission rules and regulations, any tribal-state compact to which the Nation may be a party, or any applicable law;
23. For any licensee to accept anything of value with the expectation that receipt of such thing of

value is intended, or that may be perceived as intended, to induce the licensee to act or refrain from acting in a manner contrary to the official duties of the licensee contained in this act, the Gaming Commission rules and regulations, any tribal-state compact to which the Nation may be a party, or any applicable federal law;

24. For any person to take any action which interferes with or prevents the Gaming Commission or its agents from fulfilling its duties and responsibilities under this act;

25. Any person possessing knowledge and/or any evidence that any gaming system or other equipment used in the gaming facility has been tampered with or altered in any way that would affect the integrity, fairness, honesty, or suitability of the system or equipment shall be immediately reported to the Gaming Commission;

26. Any action the Gaming Commission may take on an individual for engaging in any of the foregoing does not preclude the Cherokee Nation Marshal Service and/or the Office of the Attorney General from taking any action they may deem necessary.

B. Unauthorized gaming. Any person who commits any act of unauthorized gaming on any premises licensed by the Gaming Commission and/or owned and operated by the Tribe shall be in violation of this act and the Gaming Commission shall seek prosecution in the appropriate court of competent jurisdiction. Prosecution for such violations in other than a federal court is not meant to be exclusive; a finding of guilt or innocence shall not deprive the federal government from jurisdiction.

C. Prohibition against electronic aids. Except as specifically permitted by the Gaming Commission, it is a crime for any person to possess with the intent to use, or actually use, at any table game, either alone or in concert with others, any calculator, computer, or other electronic, electrical, or electromechanical device to assist in projecting an outcome at any table game, to keep track of or analyze the cards having been dealt, to change the probabilities of any table game or the playing strategies to be utilized. Violations are subject to Gaming Commission action and/or prosecution by the Nation and/or federal government under applicable laws.

D. Violations and sanctions.

1. Any patron, employee, vendor, or vendor agent who violates any part of this act or any applicable law or regulation either referenced or contained herein, shall be deemed to have committed a crime. All matters and occurrences which indicate that a criminal act under the Tribal Code, any tribal-state compact to which the Nation may be a party, and/or federal law may have occurred in or around any gaming facility shall be immediately reported to the appropriate law enforcement agency and the Gaming Commission.

2. Violations which are not covered under a criminal code shall be deemed a civil violation. The Gaming Commission is authorized to establish a civil violations list of penalties and fines which shall be imposed by the Gaming Commission for all such civil violations of a vendor or facility with the violator afforded the rights to a hearing as provided in Chapter 6 of this Title.

3. If the Gaming Commission should have reasonable cause to believe any such violation was committed, it may impose licensing sanctions, vendor or facility fines, seek prosecution and/or exclusion.

§ 29. Reserved

CHAPTER 3

LICENSING

§ 30. License required for gaming facilities

A. Any agent of Cherokee Nation conducting gaming operations for the benefit of Cherokee Nation on property of Cherokee Nation, including lands under the jurisdiction of Cherokee Nation other than the lands defined in 4 CNCA § 4(P), shall be required to have and display prominently an appropriate, valid and current license issued pursuant to provisions of this act.

B. The Gaming Commission shall issue a separate license to each place, facility, or location where Class II and/or Class III gaming is conducted under the jurisdiction of Cherokee Nation pursuant to this title. Said license shall be renewed annually as set out herein.

C. The Gaming Commission shall specify the form, conditions and content for the application for such licenses, which shall be submitted by the chief management official of the facility, and the initial application shall include a legal description of the lands whereon the facility is located, and a certification that said premises are lands under the jurisdiction of Cherokee Nation as defined by this title and shall identify the environmental, health, and public safety standards with which the place, facility, or location must comply, and a certification that the facility is in compliance therewith. Each subsequent application for the renewal of such facility license shall identify any changes or additions to said legal description and applicable environmental, health and safety standards, and include current certifications of compliance therewith. The Gaming Commission shall only issue such licenses if the applications therefore include the required information, certifications, and such further conditions as the Gaming Commission shall have specified.

D. Conducting gaming operations without the lawful written approval and licensure of the Gaming Commission is a crime, and is punishable under 21 CNCA § 10. The Cherokee Nation Marshal Service and Office of the Attorney General have primary authority to enforce tribal criminal laws concerning gaming.

§ 31. Classes and fees

There shall be four (4) 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, 25 U.S.C. § 2501 et seq., and the rules and regulations adopted pursuant to said act.

§ 32. Charitable gaming

Charitable gaming operations are not required to be licensed by the Gaming Commission provided that:

1. All proceeds are for the benefit of a charitable organization;
2. The Gaming Commission determines the charitable organization to be exempt from this act;
3. The charitable gaming operation is operated wholly by the charitable organization's employees and/or volunteers; and
4. The Gaming Commission, at its sole discretion, may require the charitable organization to adopt procedures that protect the integrity of the gaming offered and that safeguard the assets used in connection with the gaming operation.

§ 33. Class I gaming

There is no license requirement for Class I gaming.

§ 34. Class II gaming license

Only a tribal enterprise wholly-owned by Cherokee Nation or its designated and approved agent or employee may apply for and receive a Class II gaming license. Gaming operations must be conducted in facilities of Cherokee Nation. A separate license must be issued by the Gaming Commission for each place, facility or location in which Class II gaming is conducted.

§ 35. Class III gaming license

Only a tribal enterprise wholly-owned by Cherokee Nation or its designated and approved agent or employee may apply for and receive a Class III Gaming license. Gaming operations must be conducted in facilities of Cherokee Nation. A separate license must be issued by the Gaming Commission for each place, facility or location on which Class III gaming is conducted.

§ 36. Facility license

The Gaming Commission may issue a facility license, pursuant to regulations adopted by the Gaming Commission, to a gaming facility if the gaming facility:

1. Is adequate in all respects to accommodate the gaming intended to be carried on within the structure.
2. Is equipped with security and surveillance equipment meeting or exceeding provisions set forth in regulations established by the Gaming Commission.

3. Meets environmental, public health and safety standards of the Nation pursuant to 4 CNCA § 5.
4. Meets all requirements of applicable tribal, federal, and/or state law.
5. Has paid all applicable license fees and other costs.

§ 37. Vendor licensing

A. All gaming and non-gaming vendors as defined in 4 CNCA § 4 are required to apply for and obtain a vendor license from the Gaming Commission prior to conducting business with any gaming facility, unless exempted under subsection (B) of this section.

B. The requirement in subsection (A) above does not apply to the following vendor categories:

1. Tribal, local, state, or federal governments and associated agencies;
2. Cherokee Nation-owned and/or chartered companies;
3. Attorneys and certified public accountants and their firms, to the extent that they provide services covered by their respective professional licenses;
4. Sponsorships or charitable organizations;
5. Public utilities;
6. Entertainment;
7. Insurance companies;
8. Travel companies;
9. Fleet service providers;
10. Any person that qualifies for an exemption under the terms of any tribal-state compact to which the Nation may be a party; or
11. Any person otherwise specifically excluded by the Gaming Commission based on circumstances unique to that vendor or vendor category as determined by the Gaming Commission.

C. The Gaming Commission shall:

1. Promulgate regulations for the vendor licensing application, background investigation, and licensing process, which shall be in conformity with the terms of any tribal-state compact to which

the Nation may be a party;

2. Promulgate regulations that provide two tiers of licensure. The first tier shall cover non-gaming vendors, and the second tier shall cover gaming vendors;
3. Promulgate regulations that provide for due process for all license actions taken against a vendor and/or for any sanctions or fines levied against a vendor for violations of the Cherokee Nation gaming ordinance, Gaming Commission rules and regulations, the IGRA, NIGC rules and regulations, or any provision of any tribal-state compact to which the Nation may be a party;
4. Promulgate fee schedules applicable to gaming and non-gaming vendor licenses, provided the non-gaming vendors shall be assessed a fee not to exceed the cost of the required background check;
5. Require vendor agreements and/or contracts over Twenty-Five Thousand Dollars (\$25,000.00) to be included in the annual external audit.

§ 38. Use of gaming revenue

The Cherokee Nation will have the sole proprietary interest and responsibility for the conduct of any gaming activity under a Class II or Class III 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 Cherokee Nation and its tribal citizens;
3. To promote tribal economic development;
4. To donate to charitable organizations; or
5. To help fund operations of local government agencies.

§ 39. Reserved

CHAPTER 4

RULES OF OPERATION AND GENERAL ACCOUNTABILITY

§ 40. Records, returns and audits

A. It shall be the responsibility of the Gaming Commission to promulgate regulations and ensure the gaming operation establishes proper gaming accounting procedures and methods of operations for all licensees of Class II or Class III gaming activities so that all monies or things of value received and paid out may be properly monitored and accounted. All gaming facilities under the

jurisdiction of the Gaming Commission shall be required to keep an approved gaming accounting system that shall comply with, but not be limited to, all applicable provisions of this act and/or regulations of the Gaming Commission. Said accounting system shall reflect all business and financial transactions involved or connected in any manner with the gaming operation and conducting of gaming activities authorized by this act. The Gaming Commission shall have the right to access such records or to secure a court order to seize records or property not surrendered.

B. No applicant, licensee 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 Gaming Commission, or shall otherwise interfere, with any proper and lawful efforts by the Director of the Gaming Commission to produce such information. The Gaming Commission may conduct such hearings as deemed necessary to ensure compliance with the provisions of this act and accountability for all monies received and spent. Failure to comply with the provisions of this act or any rule or regulation promulgated by the Gaming Commission shall constitute grounds for denying, restricting, or revoking a gaming license or permit and/or levying sanctions or fines against gaming vendors and/or gaming facilities as determined by the Gaming Commission.

C. The Gaming Commission shall ensure annual independent audits of all gaming operations are conducted and shall submit the resulting annual audit report to the National Indian Gaming Commission in conformance with the NIGC's regulations, as applicable. The management and operation of any gaming facility shall be subject to all applicable provisions of the Indian Gaming Regulatory Act and any tribal-state compact to which the Nation may be a party.

D. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of Twenty-Five Thousand Dollars (\$25,000.00) annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit described in the preceding subsection.

§ 41. Certification of gaming systems and equipment

All gaming systems and/or equipment purchased, leased or otherwise acquired and utilized by a licensed gaming facility must meet all standards promulgated by the Gaming Commission. The Gaming Commission shall maintain records of all gaming equipment located at any gaming facility or storage facility approved by the Gaming Commission.

§ 42. Age limit for all gaming

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

§ 43. Oversight of fiscal affairs

The Gaming Commission shall promulgate regulations for internal controls and fiscal audits of all

gaming facilities owned and operated by the Nation. At a minimum, those regulations shall:

1. Prescribe minimum procedures for safeguarding the gaming operation's assets and revenues, including recording of cash and evidences of indebtedness and mandatory count procedures. Such procedures shall establish a control environment, gaming accounting system, and gaming control procedures that safeguard the assets of the organization, assures that operating transactions are properly recorded, and encourage adherence to prescribed policies;
2. Prescribe minimum reporting requirements to the Gaming Commission;
3. Promulgate regulations for internal controls and fiscal audits of the gaming facilities. At a minimum, those regulations shall require external and internal audits by Gaming Commission, Cherokee Nation Businesses internal audit or external Certified Public Accountants that meet federal requirements;
4. Ensure that an adequate accounting system and uniform code of accounts and accounting classifications are in place to assure consistency, comparability, and effective disclosure of financial information;
5. Prescribe intervals at which such information shall be furnished;
6. Provide for the maintenance of documentation to evidence all internal work performed as it relates to the requirements of this section, and;
7. Provide that all financial statements and documentation referred to in subdivision 6 be maintained for a minimum of five (5) years.

§ 44. Prohibition against embezzlement

Any delay, maneuver or action of any kind which is caused by any non-gaming employee, key employee, primary management official, and/or vendor to unlawfully divert gaming or other proceeds properly belonging to the Nation shall constitute grounds for taking sanctions against that licensee. If the Gaming Commission finds an unlawful diversion was conducted or attempted, it shall sanction the licensee, report the matter to the appropriate law enforcement agency for further action and may take such other action as it deems necessary or appropriate. Sanctions may include the imposition of fines and/or the revocation, suspension, or limitation of, or refusal to renew, any license.

§§ 45 to 49. Reserved

CHAPTER 5

LICENSING PROCEDURES FOR AND BACKGROUND INVESTIGATIONS OF KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

§ 50. Gaming permits and licenses—Generally

A. The Gaming Commission shall ensure that the following rules and regulations as prescribed by the IGRA, as amended, 25 C.F.R. §§ 556 and 558, as amended, and any tribal-state compact to which the Nation may be a party, are implemented with respect to key employees and primary management officials employed at any gaming facility under the jurisdiction of the Gaming Commission.

B. The Gaming Commission shall ensure that rules and regulations are developed and implemented for the licensure of all non-gaming employees of a gaming facility that are not key employees or primary management officials.

C. The Gaming Commissioners and Gaming Commission staff shall be subject to the licensing standards for primary management officials.

§ 51. Standard for licenses and permits

A. Licenses issued to key employees and primary management officials hereunder shall comply with and incorporate all standards and requirements enumerated in 25 C.F.R. and any amendments thereto, and also according to all standards and requirements enumerated in any tribal-state compact to which the Nation may be a party.

B. Licenses and permits issued to non-gaming employees shall comply with and incorporate all standards and requirements as provided for by the Gaming Commission in rules and regulations adopted pursuant to this act.

§ 52. 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 provided: 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 granted a gaming license. The information will be used by the tribal gaming regulatory authorities and by the 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 issuance, denial, 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 in this notice will result in a tribe's being unable to license you in a primary management official or key employee position."

"The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an

SSN may result in errors on processing your application."

B. 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 license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment. (U.S. Code, Title 18, Section 1001.)"

C. The Gaming Commission shall request the following information from each applicant for a key employee and primary management official license:

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 five (5) years; business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers(s);
3. The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph 2 of this subsection;
4. Current business and residence telephone numbers;
5. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
6. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
7. 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;
8. 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;
9. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten (10) years of the date of the application, the name and address of the Court involved, and the date and disposition, if any;
10. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph 7 or 8 of this subsection, the criminal charge, the name and

address of the Court involved, and the date and disposition, if any;

11. 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;

12. A current photograph;

13. Any other information the Gaming Commission deems relevant; and

14. Fingerprints consistent with procedures adopted by the Gaming Commission in accordance with 25 C.F.R. § 522.2(h).

D. The Gaming Commission shall determine the information required from and the content of a non-gaming employee license application.

E. The Gaming Commission shall notify in writing existing vendors that they shall complete an application for licensure by the Gaming Commission.

§ 53. Background investigations

A. The Gaming Commission shall conduct a background investigation of all applicants, including key employees and primary management officials, sufficient to make a determination under 4 CNCA § 56 of the applicant's eligibility for continued employment in a gaming operation. In conducting a background investigation, the Gaming Commission and/or an agent acting on its behalf shall promise to keep confidential the identity of each person contacted in the course of the investigation.

B. The Gaming Commission shall ensure that all records and information obtained as a result of a background investigation shall remain confidential and shall not be disclosed to persons who are not directly involved in the licensing process. Under no circumstances shall information obtained during the background investigation be disclosed to members of management, human resources personnel or others employed by the gaming facility without a signed and notarized release from the individual.

C. Subsection (B) above does not apply to requests for such information or records from any tribal, federal or state law enforcement or regulatory agency, or for the use of such information or records by the Gaming Commission and staff in the performance of their official duties.

§ 54. Continuing duty to provide information

All applicants and licensees shall have a continuing duty to provide any materials, assistance or other information required by the Gaming Commission, and to fully cooperate in any investigation conducted by or on behalf of the Gaming Commission. If any information provided on the application changes or becomes inaccurate in any way, the applicant or licensee shall promptly

notify the Gaming Commission or the Director of the Gaming Commission of such changes or inaccuracies.

§ 55. Terms and parameters of licenses and permits

A. Terms

1. The terms for licenses issued to persons under this act shall be provided for in regulations promulgated by the Gaming Commission.
2. The terms for facility licenses shall be one year and shall expire on December 31st of each year.
3. The terms for licenses issued to vendors under this act shall be provided for in regulations promulgated by the Gaming Commission.
4. Any license issued pursuant to the provisions of this chapter is valid only for the person, entity, or facility shown on the face thereof. It is not assignable or otherwise transferable to any other person, entity, or facility without the express written approval of the Gaming Commission.

B. Violations of any provision of this act or rules adopted by the Gaming Commission, any tribal–state compact, or relevant license provisions, by a licensee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Nation and shall be deemed grounds for refusing to grant or renew a license, or restrict, suspend, or revoke a license. Acceptance of a license, or renewal thereof by a licensee, constitutes an agreement on the part of the licensee to be bound by the provisions of this act and the rules of Gaming Commission, now and in the future, and to cooperate fully with the Gaming Commission. It is the responsibility of the licensee to remain informed of the contents of this chapter, the rules and other applicable regulations, amendments, provisions, and condition, and ignorance thereof will not excuse violations. A license issued hereunder is a privilege and no right shall attach thereto.

§ 56. Eligibility determination

A. The 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 an applicant for obtaining and maintaining a gaming license or permit. If the Gaming Commission determines that licensure or a business relationship with an individual 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 under the jurisdiction of the Gaming Commission shall employ that person in a position requiring a gaming license nor conduct any business with that vendor.

B. The Gaming Commission shall review a vendor's business history, history of the vendor's principals, as applicable, reputation, and associations to make a finding concerning the vendor's eligibility to receive a vendor license. If the Gaming Commission determines that the vendor 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, a tribal gaming operation shall not conduct business with that vendor.

§ 57. Federal review of gaming applicants

A. Report to the National Indian Gaming Commission

1. When gaming facility employs a key employee or a primary management official, the Gaming Commission shall forward to the National Indian Gaming Commission a completed application containing the information listed in 4 CNCA § 52.

2. Prior to issuing a license to a key employee or primary management official, and pursuant to the procedures set out in 4 CNCA § 53, the Gaming Commission shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation conducted for each key employee and primary management official. An investigative report shall include all of the following:

- a. steps taken in conducting a background investigation;
- b. results obtained;
- c. conclusions reached; and
- d. the basis for those conclusions.

The Gaming Commission shall submit with the report a copy of the eligibility determination made under 4 CNCA § 56.

3. If a license is not issued to an applicant for a key employee or primary management official position, the Nation:

- a. shall notify the National Indian Gaming Commission; and
- b. 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.

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

B. Procedures for forwarding applications and reports for key employees and primary management officials to the NIGC.

1. When a key employee or primary management official begins work at a gaming operation authorized by this act, the Gaming Commission shall forward to the NIGC a completed application for employment and shall conduct the background investigation and make the determination referred to in 4 CNCA § 56.

2. The Gaming Commission shall forward the report referred to in subsection (A) of this section to the NIGC within sixty (60) days after an employee begins work or within sixty (60) days of the approval of this act by the Chairman of the NIGC.

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

4. The provisions outlined in paragraph 1 above shall not apply to any background investigations conducted and reported to the NIGC under any agreement with the NIGC for reduced reporting of background investigation results.

C. The process in subsection (B) above does not apply to non-gaming employees or vendor principals/management officials as defined in this Title. The retention period for such records shall be defined by the Gaming Commission.

§ 58. Granting a gaming license or permit

A. If, within a thirty- (30) day period after the NIGC receives a report, the NIGC notifies the 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 Gaming Commission has provided an investigative report to the NIGC, the Gaming Commission may issue a license to such applicant.

B. The Gaming Commission shall respond to a request for additional information from the Chairman of the NIGC concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty- (30) day period under subsection (A) of this section until the Chairman of the NIGC receives the additional information.

C. If, within the thirty- (30) day period described above, the NIGC provides the 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 Gaming Commission has provided an application and investigative report to the NIGC, the Gaming Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Gaming Commission shall make the final decision whether to issue a license to such applicant.

§ 59. Preliminary determination and license suspension

A. Whenever, upon preliminary factual finding, the Gaming Commission determines that any person has failed to comply with the provision of this act or any regulations promulgated hereunder, the Gaming Commission shall make a certification of findings with a copy thereof to

the subject or subjects of that determination.

B. If, after the issuance of a license or permit to a gaming facility employee, the Gaming Commission receives from the NIGC, for a key employee or primary management official, or the Gaming Commission separately receives reliable information indicating that such licensee is not eligible for employment under 4 CNCA § 56, the Gaming Commission shall suspend such license and shall notify the licensee in writing of the suspension and proposed revocation.

C. The Gaming Commission shall provide at least five (5) days notice to the licensee and the gaming facility of a time and place for a hearing on the proposed revocation of a license or permit, to be held within thirty (30) days of a preliminary determination.

D. After a revocation hearing, the Gaming Commission shall decide to deny, revoke, reinstate, or set conditions for retention of a gaming license or permit. The Gaming Commission shall notify the NIGC of its decision for a key employee or primary management official.

CHAPTER 6

HEARINGS AND APPEALS

§ 60. Scope

This chapter provides procedures for hearings and appeals to the Gaming Commission for:

1. violation(s) of Gaming Commission rules, regulations, policies and/or procedures;
2. violation(s) of any tribal–state compact to which the Nation is a party;
3. violation(s) of any applicable Cherokee Nation law, rule, or regulations;
4. violation(s) of any applicable federal law, rule, or regulation;
5. patron disputes with a gaming facility;
6. citations and/or exclusions resulting from violations of federal and/or tribal statutes, and/or any provision of a tribal-state compact to which the Nation may be a party; or
7. any act that, in the view of the Gaming Commission, may affect an individual's ability to obtain or maintain a gaming license.

§ 61. Opportunities for hearing

A. The 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 final action resulting in denying,

terminating, revoking, suspending, or limiting a license or any other adverse action the Gaming Commission deems appropriate; provided, the Director may temporarily suspend or extend suspension of licenses for up to sixty (60) days in those cases where such action is deemed appropriate by the Gaming Commission.

B. 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.

C. The Gaming Commission is authorized to adopt rules and regulations, consistent with this act, governing the conduct of any and all hearings before the Gaming Commission as well as the process of issuing, modifying, conditioning, suspending, or revoking any license.

§ 62. Hearing

At such hearing it shall be the obligation of the 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.

§ 63. Appearance through counsel

A. Parties to all hearings governed by this act may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the Gaming Commission.

B. When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.

C. When a party is represented by an attorney, the attorney shall sign all motions, notices, requests, and other papers on behalf of the party.

D. Any attorney appearing before the Gaming Commission must be duly admitted and licensed by, and be a member of good standing before the Cherokee Nation Bar.

§ 64. Hearing procedures

The Gaming Commission is vested with the authority to develop and implement such hearing procedures it deems necessary to carry out its responsibilities to hear any issue raised under this act or under any term or condition of any tribal-state compact to which the Nation may be a party.

§ 65. Determinations by the Commission

A. The Gaming Commission shall make all determinations of issues before it by a majority vote of the Gaming Commissioners.

B. All determinations made by the Gaming Commission involving the granting, denial, cancellation or revocation of a license; a finding of a violation of the gaming ordinance, the Gaming Commission rules and regulations, the IGRA, or any tribal-state compact to which the Nation may be a party, the conditions of any license issued by the Gaming Commission; any order by the Gaming Commission; or any other applicable laws, regulations or agreements, and the imposition of any sanctions or penalties shall be made by motion and on the record.

C. A copy of any determination shall be served upon the licensee by registered or certified mail, or may be served personally. Refusal of service by the licensee shall constitute service.

§ 66. Request for re-hearing

A. For permit or license determinations, the Gaming Commission may, in its discretion, grant a rehearing upon written request from a licensee, only upon a showing of substantial new evidence affecting the outcome of the decision, provided such request is made within fourteen (14) days of receipt of the initial decision rendered by the Gaming Commission.

B. For disputes, the decision rendered by the Gaming Commission is not subject to a rehearing and shall follow the procedure outlined in 4 CNCA § 67.

§ 67. Appeals

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

B. Any affected party may appeal any final decision of the Gaming Commission within thirty (30) days after such decision by filing a notice of appeal with the District Court and serving a copy to the Gaming Commission. Thereafter the Gaming Commission shall promptly file the full record of the proceeding with the District Court.

C. In all appeals, the District Court shall give proper deference to the administrative findings of the Gaming Commission. The District Court shall not set aside, modify or remand any determination by the Gaming Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The District Court shall issue a written decision on all appeals.

D. The District Court may, in its discretion, award costs and attorney fees to the Gaming Commission 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 act.

§ 68. Finality of Gaming Commission or Cherokee Nation District Court action

Any final finding or determination of the Gaming Commission which is not timely appealed, and any final determination of the Courts of the Cherokee Nation of an appeal of a decision rendered by the Gaming Commission in proceedings pursuant to 4 CNCA § 67 shall be final and binding in any other proceeding against or by the same person before the Gaming Commission or the Courts of Cherokee Nation.

§ 69. Reserved

TITLE 5

ATTORNEYS

CHAPTER 1

PRACTICING BEFORE CHEROKEE NATION COURTS

§ 1. Membership in Cherokee Nation Bar required to practice before Cherokee Nation Courts—Qualifications for membership

No person shall practice as an attorney and counselor at law in any Court of Cherokee Nation unless said person first obtains membership in the Cherokee Nation Bar Association. All members in good standing of the Oklahoma Bar Association are eligible for membership in the Cherokee Nation Bar upon making application and submitting themselves to the jurisdiction of Cherokee Nation Courts and subjecting themselves to the contempt powers of Cherokee Nation Courts. Annual dues may be charged for membership in the Cherokee Nation Bar.

§ 2. Oath required

Any person admitted to the Cherokee Nation Bar shall, before he is allowed to appear as an attorney in any Court, Agency or Commission take the following oath:

"I do solemnly swear, that I will, to the best of my knowledge and ability, support and defend all causes that may be entrusted to my care, and that in so doing, I will be true to the Court and to the Constitution and laws of Cherokee Nation and subject myself to the contempt powers of Cherokee Nation Courts. So help me God."

§ 3. Removal of attorney

Any attorney practicing before Cherokee Nation Courts may be removed by the Supreme Court, for any deceit, malpractice, or other gross misconduct, willful neglect of the interests of his client, or collusion with the opposite party, upon complaint and showing made to the Supreme Court by the aggrieved party, and upon due notification given to the accused of such charge; and the expenses of any inquiry, instituted by the Supreme Court in reference to the removal of any attorney, shall be borne by the party at whose instance the expense shall be incurred.

§ 4. Granting special permission to appear before the Court

A. Any attorney, recognized as such under the laws of any other Indian nation or tribe, eligible for membership in the Cherokee Nation Bar, and in good standing where so recognized and admitted to practice law, may, on special occasions, be allowed, by permission of the presiding judge, to appear before any Courts of this Nation.

B. Any regularly-admitted practicing attorney in the courts of record of a state other than Oklahoma who has business in the Courts of this Nation may, on motion and at the discretion of the Judge presiding over the case, be admitted to practice before the Cherokee Nation Court for the purpose of said business only. Before practicing law in Cherokee Nation Courts, each specially admitted attorney must take the oath prescribed in 5 CNCA § 2 and must appear in the Court with an attorney who is a resident of or who maintains a law office within the State of Oklahoma, duly and regularly admitted to the Oklahoma Bar Association upon whom service may be had in all matters connected with said action, with the same effect as if personally made on such foreign attorney. Specially admitted attorneys will be subject to the removal power provided in 5 CNCA § 3.

§ 5. Choice of counsel

Parties may manage, prosecute, or defend their own suits, and by such counsel as they see fit to engage.

§ 6. Judge shall not appear as counsel

No judge appointed under the authority of this Nation shall be allowed to appear as counsel or attorney and to practice law in the Courts of this Nation.

TITLE 6

BANKS AND TRUST COMPANIES

Reserved for Future Use

TITLE 7

BLIND PERSONS

Reserved for Future Use

TITLE 8

CEMETERIES

CHAPTER 1

CEMETERIES PRESERVATION

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Cemeteries Preservation Act of 2004.

§ 2. Purpose

The purpose of this act is to make funds available for traditional Cherokee cemeteries that are threatened with neglect and non-maintenance.

§ 3. Definitions

"Traditional Cherokee cemetery" means any cemetery that contains gravesites of over fifty percent (50%) Cherokee tribal citizens or is historically significant.

§ 4. Appropriation—Advocate/coordinator—Policies and procedures

A. A total of Forty Thousand Dollars (\$40,000.00), to be expended equally among Council Members, shall be used for preservation and maintenance of traditional Cherokee cemeteries that are threatened by neglect and non-maintenance.

B. The funds are to be distributed to cemetery boards or individuals interested in the preservation of the cemetery in question.

C. The Principal Chief shall designate an advocate/coordinator to ensure effective implementation of this act.

D. The Language and Culture Committee of the Council is hereby authorized and directed to develop such policies and procedures necessary to effectively implement the program, including but not limited to, determining eligibility, verification of circumstances, assuring that services are not duplicated, and conducting appropriate follow-up services and appeal rights in the event that assistance is denied. The policies and procedures will be published for review by the Tribal Council as well as the general public.

E. The Language and Culture Committee of the Council shall review and approve requests or referrals for projects under this act, to be forwarded to the designated staff. Approvals or denials by the designated staff pursuant to the established policies and procedures will be reported to the Language and Culture Committee of the Council.

F. All approved applications will be processed in accordance with this act and applicable policies and procedures.

G. Persons or organizations receiving funds shall give a written accounting with receipts detailing the supplies expended on the maintenance of cemeteries in question. This accounting shall be presented to the designated staff within one hundred and twenty (120) days from receipt of any funds.

H. The Motor Fuels Tax Funds shall be the source of funds appropriated in this act.

I. All expenditures for this program shall be for materials only and those proposals or applications demonstrating self-help by labor contribution and community involvement shall be given preference.

TITLE 9

CENSUS

Reserved for Future Use

TITLE 10

CHILDREN

CHAPTER 1

GENERAL PROVISIONS

§ 1. Purpose

This title shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this Title;
2. To recognize that alcohol and substance abuse is a disease which is both preventable and treatable;
3. To achieve the purposes of this title in a family environment whenever possible, separating the child from the child's parents or extended family only when necessary for the child's welfare or in the interest of public safety;
4. To provide judicial and other procedures through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights recognized and enforced;
5. To protect the interest of Cherokee Nation in preserving and promoting the heritage, culture,

tradition and values of Cherokee Nation for its children;

6. To protect the child from abuse and to encourage a healthy, comfortable and constructive family life and environment for the children of Cherokee Nation.

§ 1.2. Application of Title

This Title shall apply to children subject to the jurisdiction of Cherokee Nation as defined by federal and Cherokee Nation law.

§ 1.3. Presumption of legitimacy

All children born in wedlock are presumed to be legitimate.

§ 1.4. Children deemed legitimate

All children born shall be legitimate.

§ 2. Children born after dissolution of marriage or before wedlock

All children of a woman who has been married, born within ten (10) months after the dissolution of the marriage are presumed to be legitimate children of that marriage.

§ 3. Reserved

§ 4. Support and education

The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the parent having custody is able to give are inadequate, the other parent must assist to the extent of his or her ability.

§ 5. Grandparental visitation rights

A. Pursuant to the provisions of this section, any grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the district court deems it to be in the best interest of the child.

1. The right of visitation to any grandparent of an unmarried minor child shall be granted only so far as that right is authorized and provided by order of the District Court. Visitation may be subject to supervision as directed by the Court.

2. Except as otherwise provided by paragraphs 5 and 6 of this subsection, if a child is born out of wedlock, the parents of the father of such child shall not have the right of visitation authorized by this section unless such father has been judicially determined to be the father of the child.

3. If one natural parent is deceased and the surviving natural parent remarries, any subsequent adoption proceedings shall not terminate any Court-granted grandparental rights belonging to the parents of the deceased natural parent unless said termination of visitation rights is ordered by the Court after opportunity to be heard, and the District Court determines it to be in the best interest of the child.

4. Except as otherwise provided by paragraphs 5 and 6 of this subsection, if the parental rights of one or both parents have been terminated, any person who is the parent of the person whose parental rights have been terminated may be given reasonable rights of visitation if the Court determines it to be in the best interest of the child.

5. If the child has been born out of wedlock and the parental rights of the father of the child have been terminated, the parents of the father of such child shall not have a right of visitation authorized by this section to such child unless:

a. the father of such child has been judicially determined to be the father of the child;

b. the Court determines that a previous grandparental relationship existed between the grandparents and the child; and

c. the Court determines such visitation rights to be in the best interest of the child.

6. If the child is born out of wedlock and the parental rights of the mother of the child have been terminated, the parents of the mother of such child shall not have a right of visitation authorized by this section to such child unless:

a. the Court determines that a previous grandparental relationship existed between the grandparents and the child; and

b. the Court determines such visitation rights to be in the best interest of the child.

7. For the purposes of paragraphs 5 and 6 of this subsection, the District Court shall not grant to the grandparents of an unmarried minor child, visitation rights to that child:

a. subsequent to the adoption of the child, provided however, any subsequent adoption proceedings shall not terminate any prior Court-granted grandparental visitation rights unless said termination of visitation rights is ordered by the Court after opportunity to be heard and the District Court determines it to be in the best interest of the child, or

b. if the child had been placed for adoption prior to attaining six (6) months of age.

B. The District Court is vested with jurisdiction to issue orders granting grandparental visitation rights and enforce such visitation rights, upon the filing of a verified application for such visitation rights or enforcement thereof. Notice as ordered by the Court shall be given to the person or parent having custody of said child.

C. Any transportation costs or other costs arising from any visitation ordered pursuant to this section shall be paid by the grandparent or grandparents requesting such visitation.

§ 5.1. Death of custodial parent—Custody of child

The question of custody of a minor child upon the death of the custodial parent shall always be based upon what is in the best interests of the minor child.

§ 5.2. Certain information and records to be available to both custodial and noncustodial parent

Any information or any record relating to a minor child which is available to the custodial parent of the child, upon request, shall also be provided the noncustodial parent of the child. Provided, however, that this right may be restricted by the Court, upon application, if such action is deemed necessary in the best interests of the child. For the purpose of this section, "information" and "record" shall include, but not be limited to, information and records kept by the school, physician and medical facility of the minor child.

§ 6. Custody of child born out of wedlock

Except as otherwise provided by law, the mother of an unmarried minor child born out of wedlock is entitled to the care, custody, services and earnings and control of such minor.

§ 6.5. Use of certain words in reference to children born out of wedlock prohibited

A. On and after the date upon which this act becomes operative, the designations "illegitimate" or "bastard" shall not be used to designate a child born out of wedlock.

B. No person, firm, corporation, agency, organization, Cherokee Nation nor any of its agencies, boards, commissions, officers or political subdivisions, nor any hospital, nor any institution supported by public funds, nor any employee of any of the above, shall use the term "illegitimate" or "bastard" in referring to or designating any child born on or after the operative date of this act.

§ 7. Allowance out of child's property for support and education

The District Court may direct an allowance to be made to a parent of a child out of its property, for its past or future support and education, on such conditions as may be proper whenever such direction is for its benefit.

§ 8. Parent without control over child's property

The parent as such, has no control over the property of the child.

§ 9. Abuse of parental authority—Civil action

The abuse of parental authority is the subject of judicial cognizance in a civil action in the District Court brought by the child, or by its relatives within the third degree, and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

§ 10. Cessation of parent's authority

The authority of a parent ceases:

1. upon the appointment by a court of a guardian of the person of the child;
2. upon the marriage of the child; or
3. upon its attaining majority.

§ 11. Public action for support of deceased parent's child

If a parent chargeable with the support of a child dies, leaving it chargeable upon the Nation, and leaving an estate sufficient for its support, the Office of Attorney General, in the name of the Nation, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin to the parent.

§ 12. Reserved

§ 13. Parent's liability for value of child's necessities

If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities and recover the reasonable value thereof from the parent.

§ 14. Compensation for support of child

A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

§ 15. Support of stepchildren

A person is not bound to maintain his spouse's children by a former spouse; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and where such is the case, they are not liable to him for their support, nor he to them for their services.

§ 16. Services and support after majority

Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor.

§ 17. Relinquishment of rights by parent

The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

§ 17.1. Assignment by parent to child of right to recover for injury to child

The parent or parents having the right to recover damages for an injury to a minor child may assign to said child their right to recover said damages, and where the parent or parents of a minor child bring an action as guardian or guardian ad litem or next friend on behalf of said child and ask for a judgment for him for damages to which said parent or parents are entitled, said parent or parents will be deemed to have assigned to the minor child their right to recover such damages. Any damages recovered pursuant to this section shall be disposed of in the same manner as provided by 12 O.S. § 83, as amended.

§ 18. Payment of minor's wages

The wages of a minor employed in service may be paid to him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

§ 19. Parent's right to change child's residence

A parent entitled to the custody of a child has a right to change his residence, subject to the power of the District Court to restrain a removal which would prejudice the rights or welfare of the child.

§ 20. Parent or child not answerable for other's act

Neither parent or child is answerable, as such, for the act of the other.

§ 21. Custody during parents' separation—Habeas corpus

When husband and wife live separately and apart from each other, and while they so live in a state of separation without being divorced, the judge of the District Court upon application of either, may issue any civil process necessary to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to such party as he sees fit in accordance with the best interest of the child, for such time and under such regulations as the case may require.

§ 21.1. Custody—Order of preference—Death of custodial parent—Preference of child

A. Custody should be awarded in the following order of preference according to the best interests

of the child to:

1. a parent or to both parents jointly except as otherwise provided in subsection (B) of this section;
2. a grandparent;
3. a person who was indicated by the wishes of a deceased parent;
4. a relative of either parent;
5. the person in whose home the child has been living in a wholesome and stable environment; or
6. any other person deemed by the Court to be suitable and able to provide adequate and proper care and guidance for the child.

B. When a parent having physical custody and providing support to a child becomes deceased, in awarding custody or appointing as guardian of the child the noncustodial parent, the Court may deny the custody or guardianship only if:

1. the noncustodial parent has willfully failed, refused, or neglected to contribute to the support of the child for a period of at least twelve (12) months immediately preceding the determination of custody or guardianship action:

- a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

- b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto;

2. the noncustodial parent has abandoned the child; or

3. the Court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

C. The Court may consider the preference of the child in awarding custody of said child if the child is of sufficient age to form an intelligent preference.

§§ 22, 23. Reserved

§ 24. Appointment of counsel—Compensation

A. When it appears to the Court that the minor or his parent or guardian desires counsel but is

indigent and cannot for that reason employ counsel, the Court shall appoint counsel. The Office of the Attorney General shall represent the interest of the child unless there appears to be a conflict. In the event of conflicts the Court shall appoint an attorney for the child.

B. The child and the parents may not be represented by the same attorney.

CHAPTER 1A

CARE AND CUSTODY

§ 25. Definitions

As used in this Title, the terms hereinafter enumerated shall have the following meanings:

1. **"Before the court"** as used in 10 CNCA § 28, means in-person or electronically via telephone or internet.
2. **"Cherokee Nation"** means the government of Cherokee Nation or the administrative agency within Cherokee Nation designated by the Principal Chief to administer laws and programs involving children and juveniles.
3. **"Child"** means any unmarried or unemancipated person under the age of eighteen (18) years.
4. **"Court"** means any court of competent jurisdiction which may hereafter be established for such purposes authorized to officiate in matters relating to children.
5. **"DHS"** means the Oklahoma Department of Human Services.
6. **"District Court"** means the District Court of Cherokee Nation.
7. **"Foster home"** means a home or other place, other than the home of a parent, or a guardian of the child concerned, duly licensed by Cherokee Nation, wherein a child is received for care, custody and maintenance.
8. **"Indian"** means a person as defined by 10 CNCA § 40.2.
9. **"Nation"** means Cherokee Nation.
10. **"Person"** means any natural person, corporation, association, organization, institution, or partnership.

Definitions provided in 10 CNCA § 1101 are incorporated for this title.

§ 26. Right to custody

No person, other than the parents, or relatives within the fourth degree, of the child concerned, may assume the permanent care and custody of a child except in accordance with the provisions of this act, or in accordance with the decree of a court of competent jurisdiction.

§ 27. Authority to assign, relinquish or otherwise transfer

No person may assign, relinquish, or otherwise transfer to another his rights or duties with respect to the permanent care or custody of a child, except to the parents, or to the relatives within the fourth degree, of the child concerned, unless specifically authorized or required so to do by an order or judgment of a court of competent jurisdiction or unless by a relinquishment executed in writing in accordance with the provisions of this act.

§ 28. Parties to whom relinquishments may be made

Relinquishments may be made only to:

1. Cherokee Nation, and shall be executed in writing before the Court;
2. a child-placing agency duly licensed or recognized under Cherokee Nation law;
3. any other person, with the written consent of the administrative officer of Cherokee Nation designated by the Principal Chief or the District Court.

§ 29. Execution of relinquishments

Relinquishments may be executed by:

1. the parents of a child;
2. one (1) parent alone, if:
 - a. the other parent consents thereto in writing; or
 - b. the other parent is dead; or
 - c. the other parent has been adjudicated incompetent and such incompetence is permanent in its nature and such fact has been proven to the satisfaction of the Court; or
 - d. the other parent, for one (1) year preceding, has abandoned the family; or
 - e. the other parent is imprisoned in a penitentiary, state or federal, for crime, provided such parent has been given proper notice and is authorized by the institutional head to attend said hearing and show cause why the child should not be taken from the parent or why such relinquishment should not be granted; or

f. the other parent has been declared by the Court to be morally unfit to provide for the care of the child; or

g. by the mother, if the child is born out of wedlock;

3. the guardian of the person of the child, if both parents are dead or if one (1) parent is a person whose consent is not required under the terms of subdivision 2 of this section.

§ 29.1. Termination of parental rights—Petition—Notice—Hearing—Orders

A. Whenever the mother of a child born out of wedlock who has custody of the child executes a relinquishment for the purpose of adoption pursuant to the provisions of 10 CNCA § 28, the person or agency to whom such relinquishment is made shall file a petition with the District Court in which the relinquishment was executed for the termination of the parental rights of the persons entitled to notice pursuant to subsection (B) of this section unless such rights have been previously terminated or relinquished.

B. Persons entitled to notice, pursuant to this section, shall include:

1. any person adjudicated by a court to be the father of the child;

2. any person who is recorded on the child's birth certificate as the child's father;

3. any person who is openly living with the child and the child's mother at the time the proceeding is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;

4. any person who has been identified as the child's father by the mother in a sworn statement;

5. any person who was married to the child's mother within ten (10) months prior or subsequent to the birth of the child.

C. Notice and hearing pursuant to this section shall comply with the provisions of 10 CNCA § 1131. The notice shall also apprise such person of his legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the child which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his parental rights and the transfer of the child's care, custody, or guardianship or in the child's adoption.

D. A person may waive his right to notice under this section. Such waiver signed by such person, shall include a statement affirming that the person signing such waiver understands that said waiver shall constitute grounds for the termination of his parental rights pursuant to the provisions of this section and 10 CNCA § 60.6.

E. 1. At the hearing the Court may, if it is in the best interest of the child:

- a. accept a relinquishment or consent to adoption executed by the father or putative father of the child; or
- b. determine that the consent of the father or putative father to the adoption of the child is not required and may terminate any parental rights which such father or putative father may have; or
- c. terminate the parental rights of the father or putative father, pursuant to the provisions of this section or 10 CNCA § 1130; or
- d. grant custody of the child to the father or putative father, if the Court determines such person to be the father of the child.

2. The Court shall terminate the rights of a father or putative father if he fails to appear at the hearing or has waived notice under this section.

F. No order of the Court shall be vacated, annulled, or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear or who waived notice pursuant to subsection (D) of this section.

§ 30. Requisites of relinquishment

The relinquishment shall:

1. be signed by the person or persons by whom it is executed;
2. identify the child or children relinquished; and
3. be acknowledged before the Court.

§ 31. Recovery of child after relinquishment

A child whose care and custody has been surrendered by a written relinquishment under this act may not be recovered by the parents or other person who executed the relinquishment except through order of a court of competent jurisdiction, based on a finding, supported by proof, that the child is neglected by its foster parents, guardian, or custodian, within the meaning of neglect as defined by the statutes relating to neglected children.

§ 32. Placement of child in foster home

No person except:

1. the parent or parents of the child involved;
2. a relative within the fourth degree of such child, having lawful custody thereof;

3. the legal guardian of such child, duly authorized thereto by the Court by which he was appointed; or

4. Cherokee Nation or a child welfare agency enumerated in 10 CNCA § 28, if the care and custody of the child has been relinquished to the Cherokee Nation or the agency under the terms of this act or has been committed thereto by order of judgment of a court of competent jurisdiction

shall place or offer to place a child for care in a foster home without securing the consent of Cherokee Nation or the District Court.

§ 33. Importation and exportation of children

No person shall bring, or cause to be brought, or sent, or cause to be sent, into this Nation, or take, or cause to be taken, or sent, or cause to be sent, out of this Nation any child for the purpose of placing such child in a foster home or procuring his adoption, without first having obtained the consent of the Court; but this section shall not apply to a resident who brings a child into the Nation for adoption in his own family, nor to a parent or guardian who takes or sends a child outside of the Nation for placement in a foster home.

§ 34. Application of act

All requirements established by this act, except as otherwise provided herein, shall be incumbent equally upon all public and private child welfare agencies and upon all private child placing or home finding agencies or institutions and upon all individuals.

§ 35. Violation of act

Violation of any of the provisions of this act shall be a crime and one who is convicted of such a violation shall be punished in accordance with law.

§ 36. Severability of provisions of act

If any provision or section of this act or the application thereof to any person, corporation, organization, or institution shall be held to be invalid or unconstitutional, the remainder of the act and the application of such provision or section to other persons, corporations, organizations and institutions shall not be affected thereby.

§ 37. Construction of act

Except as otherwise set forth or except in case of conflict between the provisions hereof and other law, the provisions of this act shall be cumulative to existing law.

§ 38. Voluntary relinquishment of physical custody—Presumption

When an order has been entered which provides for payment of child support and the legal custodian relinquishes physical custody of the child to any person, subject to the provisions of 10 CNCA § 27, without obtaining a modification of the order to change legal custody, the relinquishment, by operation of law, shall create a presumption that such person to whom the child was relinquished has legal custody of the child for the purposes of the payment of child support and the obligee shall remit such child support obligation to the person to whom the relinquishment was made.

CHAPTER 1B

INDIAN CHILD WELFARE ACT

§ 40. Short title

10 CNCA §§ 40.1 through 40.11 shall be known and may be cited as the "Cherokee Nation Indian Child Welfare Act."

§ 40.1. Purpose—Policy of Nation

The purpose of the Cherokee Nation Indian Child Welfare Act is the clarification of Nation policies regarding Indian children.

§ 40.2. Definitions

For the purposes of the Cherokee Nation Indian Child Welfare Act:

1. **"Child custody proceeding"** means:

a. **"Foster care placement"** which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

b. **"Termination of parental rights"** which shall mean any action resulting in the termination of the parent-child relationship;

c. **"Preadoptive placement"** which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

d. **"Adoptive placement"** which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

2. **"Custodian"** means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child.

3. **"Indian"** means a person who is either:

a. a member of an Indian tribe; or

b. eligible for membership in an Indian tribe.

4. **"Indian child"** means any unmarried or unemancipated person who is under the age of eighteen (18) and is either:

a. a member of an Indian tribe; or

b. eligible for membership in an Indian tribe.

5. **"Indian-operated institution"** means a residential care facility, group home or crisis foster care facility operated under a governing body or Board of Directors consisting of a minimum fifty percent (50%) whose board members are members of a federally-recognized Indian tribe.

6. **"Indian tribe"** means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

7. **"Involuntary custody proceeding"** means any action removing an Indian child from its parent or custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

§ 40.3. Application of act—Exemptions—Determination of Indian status

A. The Cherokee Nation Indian Child Welfare Act applies to all child custody proceedings involving any Indian child who is subject to the jurisdiction of Cherokee Nation under federal, state or tribal law, except the following:

1. A child custody proceeding arising from a divorce proceeding; or

2. A child custody proceeding arising from an adjudication of delinquency, unless there has been a request for termination of parental rights.

B. The Cherokee Nation Indian Child Welfare Act applies to a child who is a member of an Indian tribe or who is eligible for membership in an Indian tribe.

C. The Court shall seek a determination of the Indian status of the child in accordance with the

preceding standard in the following circumstances:

1. The Court has been informed by an interested party, an officer of the Court, a tribe, an Indian organization or a public or private agency that the child is Indian; or
 2. The child who is the subject of the proceeding gives the Court reason to believe he is an Indian child; or
 3. The Court has reason to believe the residence or domicile of the child is a predominantly Indian community.
- D. The Court shall seek verification of the Indian status of the child from the Indian tribe. A determination of membership by an Indian tribe shall be conclusive.
- E. The determination of the Indian status of a child shall be made as soon as practicable in order to ensure compliance with the notice requirements of 10 CNCA § 40.5.

§ 40.4. Indian child custody proceedings—Notice

In any Indian child custody proceeding under the Cherokee Nation Indian Child Welfare Act the Court or party initiating the action, if it is a private action, shall send notice to the parents or to the Indian custodians, if any, and to the tribe that may be the tribe of the Indian child, by registered mail return receipt requested, personal service by a court-approved process server, or after an affidavit of due diligence to locate, publication as provided for elsewhere in this title. The notice shall be written in clear and understandable language and include the following information:

1. The name and tribal affiliation of the Indian child;
2. A copy of the petition by which the proceeding was initiated;
3. A statement of the rights of the biological parents or Indian custodians, and the Indian tribe:
 - a. to intervene in the proceeding,
 - b. to request an additional twenty (20) days from receipt of notice to prepare for the proceeding; further extensions of time may be granted with court approval;
4. A statement of the potential legal consequences of an adjudication on the future custodial rights of the parents or Indian custodians or in a private proceeding, the legal consequences of failure to appear and contest the proceeding;
5. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them; and
6. A statement that tribal officials should keep confidential the information contained in the notice.

§ 40.5. Emergency removal of Indian child from parent or custodian—Order

A. When a court order authorizes the emergency removal of an Indian child from the parent or Indian custodian of such child in accordance with 25 U.S.C. § 1922, the order shall be accompanied by an affidavit containing the following information:

1. The names, tribal affiliations, and addresses of the Indian child, the parents of the Indian child and Indian custodians, if any;
2. A specific and detailed account of the circumstances that lead the agency responsible for the removal of the child to take that action; and
3. A statement of the specific actions that have been taken to assist the parents or Indian custodians so that the child may safely be returned to their custody.

B. No pre-adjudicatory custody order shall remain in force or in effect for more than thirty (30) days without a determination by the Court, supported by the preponderance of the evidence that the placement is in the best interest of the child. However, the Court may, for good and sufficient cause shown, extend the effective period of such order for an additional period of sixty (60) days.

§ 40.6. Placement preference

The placement preferences specified in 25 U.S.C. § 1915, shall apply to all pre-adjudicatory placements, as well as pre-adoptive, adoptive and foster care placements as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., as amended by Legislative Resolution 03–04.

§ 40.7. Agreements with Indian tribes for care and custody of Indian children

The Principal Chief of Cherokee Nation or his designee is authorized to enter into agreements with the State of Oklahoma regarding care and custody of Indian children as authorized by the federal Indian Child Welfare Act, 25 U.S.C. § 1919, as amended.

§ 40.8. Payment of foster care expenses under certain circumstances

A. In the event the Oklahoma Department of Human Services (DHS) has legal custody of an Indian child, and that child is placed with a tribal-licensed or approved foster home, the state shall pay the costs of foster care in the same manner and to the same extent the state pays the costs of foster care to state-licensed or state-approved foster homes, provided that the tribe shall have entered into an agreement with the state pursuant to 10 CNCA § 40.7, which shall require tribal cooperation with state plans required by federal funding laws.

B. The state shall pay the costs of foster care of a child placed with a tribal licensed or approved foster home where the placement is made by a tribe having jurisdiction of the proceeding, provided that the tribe shall have entered into an agreement with the state pursuant to 10 CNCA § 40.7,

which shall require tribal cooperation with state plans required by federal funding laws.

C. The Principal Chief of Cherokee Nation or his designee shall be authorized to enter into agreements to obtain any and all benefits from the state which are available to residents of the state.

D. The Principal Chief of Cherokee Nation or his designee shall be authorized to enter into agreements with the state and other institutions or agencies for providing residential, group home and crisis foster home care.

§ 40.9. Records

Cherokee Nation shall establish a single location where all records of every involuntary foster care, pre-adoptive placement and adoptive placement by the courts of any Indian child in the custody of Cherokee Nation will be available within seven (7) days of a request by the state, the tribe of the Indian child or by the Secretary of Interior. The records shall include, but not be limited to, all reports of the Nation caseworker, including a summary of the efforts to rehabilitate the parents of the Indian child, a list of the names and addresses of families and tribal-approved homes contacted regarding placement, and a statement of reason for the final placement decision.

§ 40.10. Involuntary custody placement orders—Evidence—Determination of damage to child

No involuntary custody placement may be ordered in an involuntary custody proceeding, in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child, provided that nothing in this section shall prohibit a default order being entered by the Court in cases where a parent or custodian fails to appear for a hearing after receiving proper notice of that hearing; and provided further that nothing in this section will require the specified testimony if a parent or custodian appears before a Judge and admits, stipulates, or enters a no-contest stipulation to the allegations in a petition.

§ 40.11. Parental rights termination orders—Evidence—Determination of damage to child

No termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child, provided that, nothing in this section shall prohibit a default order being entered by the Court in cases where a parent or custodian fails to appear for a hearing after receiving proper notice of that hearing; and provided further that nothing in this section will require the specified testimony if a parent or custodian appears before a judge and admits, stipulates, or enters a no-contest stipulation to the allegations in a petition or relinquishes parental rights for the purpose of an adoption not arising out of a deprived case.

CHAPTER 2

ADOPTION

§ 55. Adoption of child born out of wedlock by father

The father of an child by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such, and such child is thereupon deemed for all purposes legitimate from the time of its birth. The status thus created is that of a child adopted by regular procedure of court.

§ 55.1. Notice of intent to claim paternity—Acknowledging paternity—Paternity registry

A. The father or putative father of a child born out of wedlock may file notice of intent to claim paternity of the child or an instrument acknowledging paternity of the child as provided in this section.

B. Cherokee Nation shall utilize the centralized paternity registry established by the Oklahoma Department of Human Services which records the names and addresses of:

1. any person adjudicated by a court of this state to be the father of a child born out of wedlock;
2. any person who has filed with the registry before or after the birth of a child out of wedlock a notice of intent to claim paternity of the child;
3. any person adjudicated by a court of another state or territory of the United States to be the father of a child born out of wedlock, where a certified copy of the Court order has been filed with the registry by such person or any other person; and
4. any person who has filed with the registry an instrument acknowledging paternity.

C. A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include therein his current address and shall notify the registry of any change of address pursuant to procedures prescribed by regulations of the Oklahoma Department of Human Services.

D. A person who has filed a notice of intent to claim paternity may at any time, by filing a notice to disclaim, revoke a notice of intent to claim paternity.

E. An unrevoked notice of intent to claim paternity of a child or an instrument acknowledging paternity may be introduced in evidence by any party in any proceeding in which such fact may be relevant.

F, G. Deleted.

§ 56. Reserved

§ 57. Records to be kept confidential—Release of medical history and other information

A. Except as otherwise provided by this section, all records of proceedings in adoption cases and all papers and books relating to such proceedings, shall be kept in a separate confidential file in the Court Clerk's vault by the Court Clerk, and shall not be open to inspection or copy except upon order of a court of record for good cause shown.

B. Upon application and for good cause being shown, any court of record may, by written order reciting its findings, permit the necessary information to be released, or may restrict the purposes for which it shall be used.

C. No person in charge of adoption records in the District Court shall disclose the names of the natural or adoptive parents of a child unless ordered to do so by a court of record.

D. 1. The Cherokee Nation, any certified adoption agency or any licensed child-placing agency having custody of a child who is legally available for adoption is authorized to release the medical history, available to the Nation or agency, of the child, of the natural parents of the child and of the grandparents of the child to prospective parents of the adoptive child.

2. The release of any medical history of the natural parents of the child or the natural grandparents of the child shall be released in such a way that no person can be identified.

3. The medical history may include the information received pursuant to 10 CNCA § 60.5A or any other medical information or records regarding the child obtained by the Cherokee Nation or agency during the custody of the child.

E. Any person in charge of adoption records who discloses any information pertaining to an adoption proceeding, contrary to the provisions of this section, shall be guilty of a crime.

F. A child reaching the age of sixteen (16) may upon petition to the Court obtain his adoption records.

G. A child establishing his tribal citizenship or obtaining his Certificate of Degree of Indian Blood may obtain his adoption records.

§ 58. Limitation on challenge to adoption after entry of final decree

No adoption may be challenged on any ground either by a direct or collateral attack more than one (1) year after the entry of the final adoption decree regardless of whether the decree is void or voidable, and the minority of the natural parent shall not operate to prevent this time limit from running.

CHAPTER 2A

UNIFORM ADOPTION ACT

§ 60.1. Definitions

As used in this act, unless the context otherwise requires, "**child**" means any minor person, and "**agency**" means any person, authority or agency legally empowered to place children for adoption. Singular words may extend and be applied to several persons or things, as well as to one person or thing. Plural words may extend and be applied to one person or thing as well as to several persons or things.

§ 60.2. Eligibility for adoption

Any Indian child present within Indian country within Cherokee Nation or in the custody of Cherokee Nation at the time the petition for adoption is filed, may be adopted.

§ 60.3. Eligibility to adopt

The following persons are eligible to adopt a child:

1. A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.
2. An unmarried person who is at least twenty-one (21) years old.
3. A married person at least twenty-one (21) years old who is legally separated from the other spouse.
4. In the case of a child born out of wedlock, its unmarried father or mother.

§ 60.4. Court and jurisdiction

Proceedings for adoption must be brought in the District Court, or any specially created court having jurisdiction where the petitioners reside. This act shall apply to Indian children present in Indian country within Cherokee Nation.

§ 60.5. Consent to adoption

Unless consent is not required by 10 CNCA § 60.6, an adoption of a child may be decreed when there has been filed written consent to adoption executed by:

1. Both parents, if living, or the surviving parent if one parent be deceased. Consent shall not be required from one whose parental rights have been judicially terminated. If the child is born out of wedlock, its parents, if sixteen (16) years of age or older, shall be deemed capable of giving consent. If the mother or father be below the age of sixteen (16), consent to the adoption shall be

deemed sufficient if given by such mother or father before a Judge of the District Court, in writing, and if accompanied by the written consent of the legal guardian of the person of such parent. If such underage mother or father has no such guardian, the consent shall be accompanied by the written consent of his or her parents, but if one parent be deceased or the parents be divorced, then the written consent of the parent having the custody shall be deemed sufficient; if both parents of the underage mother or father be deceased, then the written consent of the person having his or her physical custody shall be deemed sufficient. If in any case consent cannot be secured from the person, other than the underage mother or father, authorized herein to give consent, notice by mailing shall be given by the Court, unless notice is waived by personal appearance, to such person or persons authorized herein to give consent, directing such person to show cause, at a time appointed by the Court, which shall be not less than ten (10) days from the date of mailing, why adoption should not be granted without that person's consent. If such person shall not appear to contest the adoption or if the Court should find that consent of such person is unreasonably withheld, the adoption may be granted without the consent of that person; or

2. The legal guardian of the person of the child or the guardian ad litem of the child if both parents are dead, or if the rights of the parents have been terminated by judicial proceedings, and such guardian or guardian ad litem has authority by order of the Court appointing him to consent to the adoption; or

3. Cherokee Nation if both parents are dead, or if the child has been relinquished for adoption to such agency, or if the rights of the parents have been judicially terminated and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

4. Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition. The consent required by subparagraphs 1, 2 and 3 hereof, including the consent required by the parent, guardian or party having physical custody as required for mothers or fathers under sixteen (16) in subparagraph 1 hereof, shall be acknowledged before a Judge of the District Court or the judge of any specially created court having jurisdiction in adoption proceedings. Provided, that when the person whose consent is necessary does not reside in Cherokee Nation Indian country may execute such consent before a district judge of this state or probate judge or judge having adoption jurisdiction of any other state of the county of his residence. Provided, further, that when such consent for adoption is necessary for children in custody of Cherokee Nation, the Director of the appropriate department may designate, authorize, and direct in writing an employee of the Department to appear in the Court and to give written consent for the adoption of such child by the family whose application for adoption has been approved by the department. This provision shall apply to consents heretofore given as well as to those given after the approval of this act; or

5. In the event the person having the legal custody or the parents of a child desired to be adopted in this Nation reside in a country or place other than the United States of America, the consent of such person to the adoption may be obtained by a written instrument signed by such person and acknowledged before an officer of the legal subdivision of government of the place of his, her or their residence who is authorized to administer oaths under the laws of such country or place; or,

when the party seeking to give such consent is a member of the United States Armed Services stationed in a country or place other than the United States, then such consent may be acknowledged before an officer of the Judge Advocate General's Office or other legal officer possessing the authority to administer oaths. Where consent is so obtained, it shall not be necessary for such person to appear before the District Court having jurisdiction of the adoption proceedings. If the written instrument containing such consent is written in any language other than the English language, the person adopting the child must have it translated into the English language by a person qualified so to do, and must file the original instrument together with the translation with the Court, and the translation must be sworn to as being a true and correct translation by the translator.

§ 60.5A. Medical history form to be completed for certain children—Contents—Filing

A. When ordered by the Court, any person required to consent to the adoption of a child pursuant to the provisions of 10 CNCA § 60.5 shall complete a medical history form which shall remain confidential pursuant to the provisions of 10 CNCA § 60.17 containing, as far as is ascertainable, the medical history of the child to be adopted, the medical history of the natural parents of the child, and the medical history of the natural grandparents of the child. Specifically, the form shall only contain information concerning:

1. the child, which shall include:

a. any medical or psychological evaluations, and

b. diseases, illnesses, accidents, allergies, and congenital defects; and

2. parents of the child, which shall include:

a. allergies, diseases, and illnesses, including but not limited to diabetes, high blood pressure, alcoholism, heart disease, venereal disease, and epilepsy, and

b. drugs taken and consumption of alcohol during the pregnancy of the mother; and

3. grandparents of the child, which shall include allergies, diseases, and illnesses including but not limited to high blood pressure, diabetes, heart disease, and epilepsy.

B. A copy of the medical history form shall be attached to the consent for adoption, or may be filed after the filing of the petition with the consent of the Court.

§ 60.6. Consent of parents—Exceptions

A child under eighteen (18) years of age cannot be adopted without the consent of its parents, if living, except that consent is not required from:

1. A parent whose parental rights have been terminated pursuant to the provisions of 10 CNCA §

29.1, 1130 or 1131; or

2. A parent who, for a period of twelve (12) months immediately preceding the filing of a petition for adoption of a child, has willfully failed, refused, or neglected to contribute to the support of such child:

a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto; or and where any of the above conditions exist it shall not be necessary to terminate parental rights under 10 CNCA § 1130 prior to the adoption of said child.

3. The father or putative father of a child born out of wedlock if:

a. prior to the hearing provided for in 10 CNCA § 29.1, and having actual knowledge of the birth or impending birth of the child believed to be his child, he fails to acknowledge paternity of the child or to take any action to legally establish his claim to paternity of the child or to exercise parental rights or duties over the child, including failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy, or

b. at the hearing provided for in 10 CNCA § 29.1:

i. he fails to prove that he is the father of the child, or

ii. having established paternity, he fails to prove that he has exercised parental rights and duties toward the child unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child. As used in this subparagraph, specific denial of knowledge of the child or denial of the opportunity to exercise parental rights and duties toward the child shall not include those instances where the father or putative father fails to prove to the satisfaction of the Court that he made a sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child prior to the receipt of notice, or

c. he waives in writing his right to notice of the hearing provided for in 10 CNCA § 29.1, or

d. he fails to appear at the hearing provided for in 10 CNCA § 29.1 if all notice requirements continued in or pursuant to 10 CNCA § 1131 have been met.

A determination that the consent of the father or putative father of a child born out of wedlock to the adoption of the child is not required shall not, by itself, act to relieve such father or putative

father of his obligation to provide for the support of the child as otherwise required by law.

§ 60.7. Notice and hearing in cases of adoption without consent of parents—Procedure

A. Prior to a court hearing on a petition for adoption without the consent of a parent or parents, as provided for in 10 CNCA § 60.6, the consenting parent, legal guardian, or person having legal custody of the child to be adopted shall file an application stating the reason that the consent of the other parent or parents is not necessary. The application shall be heard by the Court and an order entered thereon in which said child is determined to be eligible for adoption pursuant to the provisions of 10 CNCA § 60.6.

B. Prior to a hearing on the application, notice shall be given the parent whose consent is alleged to be unnecessary. The notice of the application shall contain the name of each child for whom application for adoption is made, the date for hearing on the application, and the reason that said child is eligible for adoption without the consent of said parent. Notice shall be served upon said parent in the same manner as a summons is served in civil cases, not less than ten (10) days prior to the hearing. If said parent resides outside of the Nation, said notice shall be served upon said parent in the same manner as a summons is served in civil cases, not less than fifteen (15) days prior to the hearing. If the location of said parent is not known and this fact is attested to by affidavit of the consenting parent, legal guardian, or person having legal custody of the child, notice by publication shall be given by publishing notice one (1) time in a newspaper qualified as a legal newspaper, pursuant to the laws relating to service of notice by publication, in the county where the petition for adoption is filed. The publication shall not be less than fifteen (15) days prior to the date of the hearing.

C. The provisions of this section shall not be construed to require notice to a parent whose parental rights have been previously terminated pursuant to 10 CNCA § 29.1, 1130 or 1131.

§ 60.7A. Court Clerk or Deputy may affix signature of Judge to order and notice of hearing

Whenever the Uniform Adoption Act requires that an order setting date of hearing and giving notice thereof be signed by a judge, the Chief Judge may by judicial order provide that such order or notice may be signed by the Court Clerk or his Deputy affixing his signature beneath the place where the Judge's name appears followed with the word "by" and then followed with the signing officer's title.

§ 60.8. Reserved

§ 60.9. Effect of act on prior adoptions

This act shall not invalidate any adoption heretofore granted by any court.

§ 60.10. Withdrawal of consent—Notice and hearing—Limitation

A. Withdrawal of any consent for adoption of a child pursuant to 10 CNCA § 60.5 shall not be

permitted, except that the Court pursuant to the provisions of this section may, if it finds that the best interest of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent if a petition for leave to withdraw consent is submitted in writing not later than thirty (30) days after consent was executed.

B. Notice of the petition to withdraw the consent and hearing on the petition to withdraw consent to the adoption shall be provided to:

1. the person who filed for adoption of the child;
2. any agency participating in the adoption; and
3. any person or agency in whose favor the consent was given.

The Court shall provide an opportunity to be heard to the person who has filed for adoption and to any agency participating in the adoption as to why the withdrawal of consent would not be in the best interest of the child.

C. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

§ 60.11. Consent of child

Consent of the child, if twelve (12) years of age or over, shall be required. Such consent shall be given before the Court in such form as the Court shall direct.

§ 60.12. Petition for adoption

A. A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

1. The full names, ages and places of residence of the petitioners and, if married, the place and date of the marriage.
2. When the petitioners acquired or intend to acquire custody of the child and from what person or agency.
3. The date and place of birth of the child and sex and race.
4. The name used for the child in the proceeding and, if a change in name is desired, the new name.
5. That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.
6. A full description and statement of value of all property owned or possessed by the child, if any.
7. Facts, if any, which excuse consent on the part of the parents, or either of them, to the adoption.

8. The tribal membership or tribes in which the child may be eligible for membership.

B. Any written consent required by this act may be attached to the petition, or may be filed, after the filing of the petition, with the consent of the court.

§ 60.13. Investigations and reports

A. Upon the filing of a petition for adoption, the Court shall order or receive a preplacement investigation and report to be made by:

1. The agency having custody or legal guardianship of the child; or
2. The Oklahoma Department of Human Services; or
3. A licensed child-placing agency or certified adoption agency; or
4. A person qualified by training or experience, designated by the Court; or
5. Cherokee Nation.

B. The Court shall order that a report of such preplacement investigation be filed with the Court by the designated investigator within the time fixed by the Court and in no event more than sixty (60) days from the issuance of the order for preplacement investigation, unless time therefor is extended by the court.

C. The preplacement investigation shall include an appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption and of which the Court should have knowledge; and, in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge and discretion.

D. A supplemental report including a determination as to the legal availability or status of the child for adoption shall be filed prior to the final adoption petition.

E. The Court may order agencies named in subsection (A) of this section located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate. Provided, that if the child petitioned to be adopted shall be the natural or adopted child of either of the petitioners then no investigation shall be made.

F. The report of such preplacement investigation shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed adoption and the reasons therefor.

§ 60.14. Waiver of interlocutory decree and waiting period

If the child is related by blood to one of the petitioners, or is a stepchild of the petitioner, or the Court finds that the best interests of the child will be furthered thereby, the Court, after examination of the report required in 10 CNCA § 60.13, in its discretion, may waive the entry of an interlocutory decree and the waiting period of six (6) months provided in 10 CNCA § 60.15 and grant a final decree of adoption, if satisfied that the adoption is for the best interests of the child.

§ 60.15. Interlocutory decree—Hearing—Final decree

Upon examination of the report required in 10 CNCA § 60.13, and after hearing, the Court may issue an interlocutory decree giving the care and custody of the child to the petitioners, pending the further order of the Court. Thereafter the investigator shall observe the child in his proposed adoptive home and report in writing to the Court on any circumstances or conditions which may have a bearing on the granting of a final adoption decree. After six (6) months from the date of the interlocutory decree the petitioners may apply to the Court for a final decree of adoption. The Court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on Cherokee Nation, in those cases where said Cherokee Nation has original custody, or the investigator. The investigator shall file with the court a written report of its findings and recommendations and certify that the required examination has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear unless the presence of the child is waived by the Court, the Court may enter a final decree of adoption, if satisfied that the adoption is for the best interests of the child.

§ 60.16. Effect of final decree—Grandparental rights

A. After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between the adopted child and the adoptive parents of the child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

B. After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and shall have no rights over the adopted child or to his property by descent and distribution.

C. A grandparent, who is the parent of the child's natural parents, may be given reasonable rights of visitation to the child, pursuant to the provisions of 10 CNCA § 5.

§ 60.17. Confidential character of hearings and records—Release of medical history

A. Unless otherwise ordered by the Court, all hearings held in proceedings pursuant to the Uniform Adoption Act shall be confidential and shall be held in closed court without admittance of any

person other than interested parties and their counsel.

B. All papers and records including the original medical history forms pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection except as otherwise provided by this section. No person shall have access to such records except upon order of the Judge of the Court in which the decree of adoption was entered, for good cause shown.

C. All files and records pertaining to said adoption proceedings shall be confidential and withheld from inspection except upon order of the Court for good cause shown. The adopted child may upon petition of the Court obtain his adoption records.

D. 1. Cherokee Nation, any certified adoption agency or any licensed child-placing agency having custody of a child who is legally available for adoption is authorized to release the medical history, available to the department or such agency, of the child, of the natural parents of the child and of the grandparents of the child to prospective parents of the adoptive child.

2. The release of any medical history of the natural parents of the child or the natural grandparents of the child shall be released in such a way that no person can be identified.

3. The medical history may include the information received pursuant to 10 CNCA § 60.5A or any other medical information or records regarding the child obtained by the department or agency during the custody of the child.

§ 60.18. Certificates

A. For each adoption or annulment of adoption, the Clerk of the Court shall prepare, within thirty (30) days after the decree becomes final, a certificate of such decree on a form furnished by the State Registrar of Vital Statistics, and before the 15th day of each calendar month the Clerk shall forward to the State Registrar the certificates prepared by him during the preceding calendar month, if adoptions in said court have been effected.

B. Deleted.

§ 60.19. Appeals

An appeal may be taken from any final order, judgment or decree rendered hereunder to the Supreme Court by any person aggrieved thereby, in the manner provided for appeals to said court in civil matters.

§ 60.20. Foreign decrees

When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined by 10 CNCA § 60.16.

§ 60.21. Adoption of adults

An adult person may be adopted by any other adult person, with the consent of the person to be adopted or his guardian, if the Court shall approve, and with the consent of the spouse, if any, of an adoptive parent, filed in writing with the Court. The provisions of 10 CNCA §§ 60.1 to 60.15, both inclusive, shall not apply to the adoption of a competent adult person. A petition therefor shall be filed with the District Court in the county where the adoptive parents reside. After a hearing on the petition and after such investigation as the Court deems advisable, if the Court finds that it is in the best interests of the people involved, a decree of adoption may be entered which shall have the legal consequences stated in 10 CNCA § 60.16.

CHAPTER 3

PATERNITY

§ 100. Presumption that man is the natural father

A. Except as otherwise provided by 10 CNCA § 100.1, a man is presumed to be the natural father of a child for all intents and purposes if:

1. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within ten (10) months after the termination of the marriage by death, annulment, declaration of invalidity, divorce or dissolution, or after a decree of separation is entered by a court. A child born before wedlock becomes legitimate by the subsequent marriage of his parents even if the marriage is, was or could be declared invalid. Any child born within the ten-month period specified in this subsection which is born during a subsequent marriage to another person shall be presumed to be the legitimate child of that subsequent marriage;
2. Before the child's birth, he and the child's natural mother have cohabitated and the child is born within ten (10) months after the termination of cohabitation. As used in this paragraph, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law;
3. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child for a period of at least two (2) years;
4. The United States Immigration and Naturalization Service made or accepted a determination that he was the father of the child at the time of the child's entry into the United States and he had the opportunity at the time of the child's entry into the United States to admit or deny the paternal relationship; or
5. Statistical probability of paternity is established at ninety-five percent (95%) or more by scientifically reliable genetic tests, including but not limited to blood tests.

B. The presumption of paternity created pursuant to this section may be disputed pursuant to 10

CNCA § 101.

§ 100.1. Additional presumption of paternity

A child shall be presumed to be the offspring of the putative father if:

1. The father, in writing, signed in the presence of a competent witness acknowledges himself to be the father of the child;
2. The father and mother intermarried subsequent to the child's birth, and the father, after such marriage, acknowledged the child as his own or adopted him into his family;
3. The father publicly acknowledged such child as his own, receiving it as such, with the consent of his wife, if he is married, into his family and otherwise treating it as if it were a child born in wedlock; or
4. The father was judicially determined to be such in a paternity proceeding before a court of competent jurisdiction.

§ 101. Persons entitled to dispute presumption; proof of illegitimacy; time limit

A. The presumption of paternity created pursuant to 10 CNCA § 100 may be disputed only by the husband or wife, the putative father or their descendants. Paternity may be established pursuant to 10 CNCA § 104.

B. If a child is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least two (2) years, the presumption cannot be disputed by anyone.

§ 102. Repealed by LA 08–11, eff. May 19, 2011

§ 103. Death of custodial parent; custody of child

The question of custody of a minor child upon the death of the custodial parent shall always be based upon what is in the best interests of the minor child.

§ 104. Natural mother of child—Establishment of paternity

A. Except as otherwise provided by law, a woman who gives birth to a child is the natural mother of the child.

B. Paternity may be established by:

1. Completion of the affidavit acknowledging paternity, provided by the Division of Child Support Services, by the father and mother. A statement acknowledging paternity shall have the same legal

effect as an order of paternity entered in a court or administrative proceeding.

a. The statement may be rescinded by the mother or acknowledging father within the earlier of:

- i. sixty (60) days after the statement is signed by making a motion to the District Court requesting an order rescinding the affidavit on the same grounds as subsection (B)(1)(a)(2) of this section; or
- ii. the date of an administrative or judicial proceeding relating to the child, including but not limited to a proceeding to establish a support order, in which the signatory is a party.

After the sixty- (60) day period referred to in division (1) of this subparagraph, a signed voluntary acknowledgment of paternity may be challenged in Court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger. Legal responsibilities, including but not limited to child support obligations, of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown.

This subparagraph shall not be interpreted to authorize the rescission of an acknowledgement of paternity if such rescission would be prohibited under applicable federal law.

b. i. If the mother was married at the time of conception or birth, and her husband is not the natural father of the child, the husband may sign a husband's denial of paternity form, which must be filed along with the affidavit acknowledging paternity.

ii. The husband's denial of paternity form shall be prescribed by the Division of Child Support Services and made available at the same locations as the affidavit acknowledging paternity;

2. Scientifically reliable genetic tests, including but not limited to blood tests;

3. District or Administrative Court order; or

4. As otherwise provided by law.

C. 1. If the person signing the acknowledgment of paternity is determined in an administrative or judicial proceeding not to be the father of the child, on the basis of fraud, duress or material mistake of fact pursuant to subsection (B) of this section, the Division of Child Support Services or the Court shall dismiss any pending court or administrative collection proceedings against the father and the father will be released from any Court-ordered or Division-ordered payments for the support and maintenance of the child.

2. The State Registrar of Vital Statistics shall remove the name of the person listed as the father from the birth certificate upon notice from the Division that such person has been judicially or administratively determined not to be the father. Once paternity is established, the State Registrar of Vital Statistics shall correct its records and amend the birth certificate to reflect the father's name.

D. Proceedings to establish paternity must be brought in the District Court. Proceedings may be brought by the mother, father, guardian, or custodian of the child, the Division, the prosecutor, a public or private agency or authority chargeable with the support of the child, or by the child. The Court, after determining paternity in a civil action, may, at the discretion of the Court, enter an order providing for the support and maintenance of the child. The social security numbers of both parents and the child shall be included on the summary of support order form provided for in 43 CNCA § 515 which shall be submitted to the Central Case Registry as provided for in 43 CNCA § 502. The District Court may further make provision for custody and visitation based upon the best interests of the child.

E. An action to establish paternity shall be available to a child if commenced prior to the child attaining the age of eighteen (18) years or within one (1) year after the child reaches the age of eighteen (18).

§ 105. Petition—Verification—Jurisdiction

If a woman is delivered of a child, or is pregnant with a child, and the paternity of said child is not determined, a petition may be filed, in writing duly verified by any person, to the District Court stating that fact and charging the proper person with being the father thereof if that person is a citizen of Cherokee Nation or in the case of a non-citizen Indian or a non-Indian, if the case arose within the jurisdictional boundaries of Cherokee Nation and the child in question is an enrolled citizen of Cherokee Nation or is eligible for enrollment as a citizen of Cherokee Nation. The death of the mother shall not abate an action which is brought under this section, and it will not prevent the bringing of an action for the support of the child.

§ 105.1. Notice to Registrar

In all actions to determine the paternity of a child, or of a person younger than age nineteen (19) in accordance with 10 CNCA § 104(E), that would affect the citizenship rolls of Cherokee Nation, notice must be served on the Cherokee Nation Registrar at least thirty (30) days prior to the date of the hearing on the petition. Proof of that notice must be filed with the District Court prior to any hearing on the petition for determination of paternity. However, this section shall not apply to paternity actions brought by Cherokee Nation.

§ 106. Trial of issues of paternity, support, custody and visitation—Burden of proof and procedure

The issues of paternity, support, custody and visitation shall be tried before a Judge of the District Court and the petitioning party shall bear the burden of proof. The Court shall not make a determination of paternity unless the preponderance of the evidence supports said determination.

§ 107. Court order determining paternity

When the paternity petition is filed, the Court shall order the defendant to appear and show cause why the Court should not determine him to be the father. If the defendant fails to appear, the Court

shall upon the findings of the Judge enter an order determining paternity. If the defendant appears and does not admit paternity, then the Court shall enter at that time an order directing genetic testing to determine paternity. No finding of paternity shall be made by the Court unless service has been made upon the named defendant(s) in accordance with the laws of Cherokee Nation.

§ 108. Court may enlarge, diminish or vacate order or judgment

If the accused be found guilty, he shall be charged with the maintenance of the child in such sum or sums, and in such manner as the Court shall direct, and with the costs of the suit and execution may issue, immediately, and afterwards from time to time for the collection of any sum or sums ordered to be paid, and in addition thereto the Court shall require the defendant to secure the performance of the order of the Court, in such manner as the Court shall direct, and the Court shall have power to punish, as for contempt, any disobedience by the defendant of an order of the Court issued under this section.

§ 109. Appeals

Appeals may be taken in cases brought under the provisions of this chapter, in the same manner and with like effect as in other actions in the District Court.

§ 110. Father's liability to support and educate child

A. An individual who has been legally determined to be the father of a child pursuant to 10 CNCA § 104, or an individual who has been judicially determined to be the father of a child is liable for the support and education of the child to the same extent as the father of a child born in wedlock.

B. 1. An action to enforce the obligation of support, maintenance, and education may be brought by the mother or custodian or guardian of the child, by the public authority chargeable with the support of the child, or by the child.

2. An action to determine paternity and to enforce this obligation may be brought any time before the eighteenth (18th) birthday of the child.

3. If paternity has been legally determined pursuant to 10 CNCA § 104, or judicially determined, Court-ordered child support is not subject to any statute of limitations and an action to enforce the obligation may be brought at any time and the support in question is owed until paid.

4. The father's obligation to support is terminated if the child is adopted.

5. The Court may order the payments made to the mother or custodian or guardian of the child, or to some other person, corporation or agency to administer under the supervision of the Court.

C. An individual who has been legally determined to be the father of a child pursuant to 10 CNCA § 104, or an individual who has been judicially or administratively determined to be the father of a child shall be ordered to pay all or a portion of the reasonable expenses of providing for the child

provided that liability for support provided before the determination of paternity shall be imposed for five (5) years preceding the filing of the action, absent good cause to deviate. The amount to be paid by the father shall be determined by applying the child support guidelines for establishing current support and applying the amount of the reasonable expenses against the percentage derived from the guidelines. No interest shall be applied to this amount retroactively.

D. The amount of child support and other support including amounts provided for in 10 CNCA § 110(C) shall be ordered and reviewed in accordance with the child support guidelines provided in 43 CNCA § 514.

E. 1. When a civil or administrative action is filed to determine paternity of a minor child, an interested party may request the Court to enter a temporary order for support of the child pending a final determination of paternity. The application for temporary support shall set forth facts supporting the application and shall be verified by the party or entity seeking the order. The application and notice of hearing shall be served as in other civil cases.

2. After service of the application and opportunity for hearing, the Court shall enter a temporary order for support if the Court finds there is clear and convincing evidence of paternity, including, but not limited to:

a. a genetic test which establishes a rebuttable or conclusive presumption of paternity pursuant to 10 CNCA § 121;

b. a notarized written statement acknowledging paternity of the child executed by the putative father;

c. a presumption of paternity pursuant to 10 CNCA § 100; or

d. other evidence which establishes a high probability of paternity.

3. Temporary orders for support shall be established in accordance with the child support guidelines pursuant to 43 CNCA § 514. A temporary support order terminates when a final judgment is entered which establishes support or when the action is dismissed. A temporary support order shall not be retroactively modified, but it may be modified prospectively before final judgment upon motion of an interested party and a showing of facts supporting a modification.

§ 111. Repealed by LA 20–07, eff. April 23, 2007

§ 112. Persons eligible to bring paternity actions

A. The mother, putative father, guardian or custodian of the child, the Division of Child Support Services, a public or private agency or authority chargeable with the support of the child, or the child may bring an action in a civil proceeding in District Court or by an administrative action through the Division of Child Support Services, to determine paternity and the amount of child support due and owing for the maintenance of the child.

B. Venue of an action to determine the paternity of a child pursuant to this section shall be, at the option of the plaintiff, in either the District Court in Tahlequah or the closest site of a Cherokee Nation child support enforcement court docket.

C. A Court may exercise personal jurisdiction over a person, whether or not a resident of Cherokee Nation, who is the subject of a paternity action. When a person who is subject to the jurisdiction of the Court is outside Cherokee Nation, the person may be served outside of Cherokee Nation by any method that is authorized by the statutes of this Nation.

D. The petition shall be verified as true by the affidavit of the plaintiff. A summons may be issued thereon and shall be served or publication made as in other civil cases.

E. The practice, pleading, and proceedings in such action shall conform to the rules prescribed by the Judicial Branch of Cherokee Nation.

F. If the defendant fails to answer the petition of the plaintiff or appear for show cause hearing, then the Court shall proceed to determine issues of paternity, support, custody and visitation if service on the defendant was made pursuant to the Cherokee Nation Code.

G. Attorneys for the Division of Child Support Services may appear or initiate an action brought under this section on behalf of:

1. A recipient of Temporary Assistance for Needy Families; or
2. A person not receiving Temporary Assistance for Needy Families, including but not limited to the putative father, upon the request of such person and proper application pursuant to rules and regulations adopted by the Division.

H. In a proceeding brought under subsection (G) of this section by the Division of Child Support Services, the Court may, and unless it is not in the best interests of the child, shall, limit the issues in that proceeding to issues of paternity and support, unless issues of custody and visitation are specifically and affirmatively pled by the father. All contested issues of custody and visitation shall be addressed by the District Court.

§ 113. Joinder of sexual partners as defendants—Genetic testing—Determination of paternity

A. All persons who have had sexual intercourse with a woman during the possible time of conception of a child for whom paternity is not determined may be joined as defendants in an action to determine the paternity of the child.

B. When more than one defendant is named or joined in a paternity action, the Court shall order all defendants to appear. The Court shall order genetic testing of all defendants who are duly served, including defendants who fail to answer or appear. The Court may order the mother, the child, or

other individuals necessary to make a determination of paternity to submit to genetic testing.

C. 1. When genetic testing indicates a probability of paternity greater than ninety-eight percent (98%) for a specific defendant pursuant to 10 CNCA § 121, the Court shall enter an order establishing that defendant as the father.

2. If a duly served defendant fails to answer, or to appear for hearing or genetic testing after being ordered to appear, and all other duly served defendants have been excluded as possible fathers by genetic testing, the Court shall enter an order establishing the defendant who failed to answer or appear as the father.

3. If one or more defendants fail to appear for genetic testing after being ordered to appear for testing, the Court may proceed to determine paternity and related issues based upon competent testimony and genetic test results, if any.

D. The Court has the authority to enforce a subpoena or order to appear or to submit to genetic testing, or any other order entered pursuant to this section.

E. After paternity is determined by the Court, the Court shall dismiss the paternity action against the other defendants.

F. No judgment shall be entered against the defendant who has not been properly served.

§ 113.1. Effect of failure to appear or answer—Presumptions

Any administrative or court order of any jurisdiction determining the paternity of a child which is entered due to the failure to appear or answer by the alleged father and in which no presumption of paternity exists in accordance with 10 CNCA § 100 or 100.1, and which is not supported by genetic testing meeting the requirements of 10 CNCA § 121, shall not be used as the sole basis for eligibility for citizenship in Cherokee Nation.

§ 114. Costs and attorney fees

In an action to determine paternity brought pursuant to 10 CNCA § 100 et seq., the Court may award and tax fees and costs, and apportion them between the parties as justice dictates.

§ 115. Changing child's name to paternal surname

A. At any time after a determination of paternity, the mother, father, custodian or guardian of the child may file a motion requesting the Court to order that the surname of the child be changed to the surname of its father. The Court shall thereafter set a hearing on said motion. Notice of the filing of the motion and the date of the hearing shall be served by process on all parties.

B. If, after said hearing, the Judge finds that it is in the best interest of the child to bear the paternal surname, the Court shall enter an order to that effect which shall include findings of fact as to each

issue raised by the parties.

C. The practice, pleading, and proceedings as set forth in this section shall conform to the applicable rules prescribed by the Judicial Branch of Cherokee Nation.

§ 116. Authority of District Court

In all cases of paternity and for arrearage of child support, the District Court shall make inquiry to determine if the noncustodial parent has been denied reasonable visitation. If reasonable visitation has been denied by the custodial parent to the noncustodial parent, the District Court shall include visitation provisions in the support order.

§ 117. Preparation of birth certificate—Acknowledgement of paternity

A. Unless an adoption decree has been presented, and consent to adoption has been given as otherwise provided by law, upon the birth of a child to an unmarried woman, the person required by the State of Oklahoma, under 63 O.S. § 1–311, to prepare and file an Oklahoma birth certificate shall:

1. Provide written materials and an oral, audio, or video presentation to the child's mother and/or natural father including an affidavit acknowledging paternity on a form prescribed by the Division of Child Support Enforcement. The completed affidavit shall be filed with the District Court. The affidavit shall contain:

a. a statement by the mother consenting to the assertion of paternity and stating the name of the father,

b. a statement by the father that he is the natural father of the child,

c. the social security numbers of both parents, and

d. other information as the Secretary of Health and Human Services may require;

2. Provide written information, furnished by the Division of Child Support Enforcement, along with an oral, audio, or video presentation to the mother:

a. explaining that the completed, notarized affidavit shall be filed with the District Court,

b. regarding the benefits of having her child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services, and

c. explaining the implications of signing, including parental rights and responsibilities; and

3. Provide the original affidavit acknowledging paternity to the Office of the State Registrar of Vital Statistics. Copies of the original affidavit acknowledging paternity shall be provided to the

Division of Child Support Enforcement and to the mother and acknowledged father of the child.

B. The Division of Child Support Enforcement shall make the affidavits acknowledging paternity and the husband's denial of paternity forms available at each office of the Division.

C. A person signing an affidavit of paternity prior to attaining the age of 18 years shall be allowed to challenge said affidavit in Cherokee Nation District Court. A petition challenging the paternity affidavit must be filed by the person who acknowledged paternity prior to his nineteenth birthday. A challenge must be supported by DNA testing and the standard for proving paternity shall be the same as that found in 10 CNCA § 121.

§ 118. Authority for test

In a civil action in which paternity is a relevant fact and at issue, the Court shall order the mother, child and putative father to submit to genetic testing. If any party refuses to submit to such tests, the Court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require unless such individual is found to have good cause for refusing to cooperate.

§ 119. Selection of experts

The tests shall be made by experts qualified as examiners of genetic markers in the human body. Except as otherwise provided in this act, the experts may be called by the Court or by a party as witnesses to testify as to their findings and shall be subject to cross-examination by the parties. Any party may request that additional experts qualified as examiners of genetic markers in the human body perform independent tests subject to order of Court, the results of which may be offered in evidence. The number and qualifications of the experts shall be determined by the Court. A party requesting additional testing shall be responsible for the costs of the additional testing.

§ 120. Compensation of expert witnesses

A. The compensation of each expert witness appointed by the Court or called by a party and costs of tests required shall be fixed at reasonable amounts by the Court. Said compensation and costs shall be paid as the Court shall order. The Court may order that said compensation and costs be paid by the parties in such proportions and at such times as it shall prescribe. All additional testing must be paid for in advance by the party requesting the additional test. The Court may order that, after payment by the parties, said compensation and costs may be taxed as costs in the action.

B. The Court shall not assess costs against the Office of Child Support Enforcement.

§ 121. Effect of test results

A. Evidence which shows a statistical probability of paternity is admissible and shall be weighed in addition to other evidence of the paternity of the child. Evidence which shows a statistical probability of paternity may include but is not limited to medical, scientific, or genetic evidence

relating to the paternity of the child based on tests performed by said experts.

B. If the Court finds that the evidence based upon the medical, scientific, and genetic tests, shows that the defendant is not the parent of the child, said evidence shall be conclusive proof of nonpaternity and the Court shall dismiss the action.

C. Evidence of statistical probability of paternity established at ninety-five percent (95%) or more creates a presumption of paternity. Said presumption is rebuttable by clear and convincing evidence admitted on behalf of the defendant.

D. Evidence of statistical probability of paternity established at ninety-eight percent (98%) or more creates a conclusive presumption of paternity.

E. The party receiving the copy of the genetic test results from the Court-appointed expert shall send all parties a copy of the genetic test results by certificate of mailing to the last-known address of the parties.

F. Any objection to genetic testing results must be made in writing within fifteen (15) days from the date of mailing of the genetic test results, and any hearing on the issue of paternity may not be held any sooner than fifteen (15) days after filing of objection to genetic test. If no objection is filed within the specified time, the genetic testing results will be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

§ 122. Effect on presumption of legitimacy

Except as otherwise provided by law, presumption of legitimacy of a child born during wedlock is overcome if the Court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, show that the husband is not the father of the child.

§ 123. Applicability to criminal actions

The genetic testing provisions shall also apply to criminal cases, subject to the following limitations and provisions:

1. An order for the tests shall be made on the application of a defendant or the Nation;
2. The compensation of the experts appointed by the Court shall be paid from the Court fund;
3. The Court may direct a verdict of acquittal upon the conclusions of all the experts under the provisions of 10 CNCA § 121, but otherwise the case shall be submitted for determination upon all the evidence.

CHAPTER 51

DELINQUENT, DEPENDENT AND NEGLECTED CHILDREN

ARTICLE I. DEPENDENT AND DELINQUENT CHILDREN

§ 1101. Definitions

When used in this title, unless the context otherwise requires:

1. **"Adjudicatory hearing"** means a hearing to determine whether the allegations of a petition alleging the child to be neglected, deprived, in need of supervision, delinquent, or in need of treatment pursuant to the provisions of 10 CNCA § 1103 are supported by the evidence and whether a child should be adjudged to be a ward of the Court.

2. **"Child"** means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age and a member of an Indian tribe or eligible for membership in an Indian tribe who is charged with any crime specified in 10 CNCA § 1104.2(A), or who has been certified as an adult pursuant to 10 CNCA § 1112; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to 10 CNCA § 1104.2, or who is not convicted after certification as an adult pursuant to 10 CNCA § 1112, shall continue to be subject to the jurisdiction of the juvenile court.

3. **"Child in need of supervision"** means a child who:

a. has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or

b. is willfully and voluntarily absent from his home without the consent of his parent, legal guardian, or other custodian for a substantial length of time or without intent to return; or

c. is willfully and voluntarily absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards, if said child is subject to compulsory school attendance.

4. **"Child in need of treatment"** means a child who has a demonstrable mental illness and as a result of that mental illness:

a. can be expected within the near future to intentionally or unintentionally seriously physically injure himself or another person and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or

b. is unable to attend to those of his basic needs that must be attended to in order for him to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic needs in the recent past. A determination regarding the ability of the child to attend to his basic needs shall be based upon the age of the child and reasonable and appropriate expectation of the abilities of a child of such age to attend to said needs.

The term "**child in need of treatment**" shall not mean a child afflicted with epilepsy, developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the child also meets the criteria for a child in need of treatment pursuant to paragraphs 1 or 2 of this subsection.

5. "**Community-based**" means a facility, program or service, or open group home or other suitable place located near the home or family of the child, and programs of community supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, and other rehabilitative services.

6. "**Community residential center**" means a residential facility for no more than twenty (20) children which offers a range of services including personal and social services, and emphasizes normal group living, school attendance, securing employment, and general participation in the community.

7. "**DHS**" means the Oklahoma Department of Human Services.

8. "**Day treatment**" means a program which provides intensive services to children who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility.

9. "**Delinquent child**" means a child who:

a. has violated any federal, state, or tribal law or municipal ordinance, except a traffic statute or traffic ordinance, or any lawful order of the court made pursuant to the provisions of 10 CNCA § 1101 et seq.; or

b. has habitually violated traffic laws or traffic ordinances.

10. "**Deprived child**" means a child:

a. who is for any reason destitute, homeless, or abandoned; or

b. who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, cruelty, or depravity on the part of his parents, legal guardian, or other person in whose care the child may be; or

c. who is a child in need of special care and treatment because of his physical or mental condition including a child born in a condition of dependence on a controlled dangerous substance, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment; or

d. who is a handicapped child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated nonhandicapped or handicapped children, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child; or

e. who is, due to improper parental care and guardianship, absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four- (4) week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance; or

f. whose parent or legal custodian for good cause desires to be relieved of his custody; or

g. who is a subsequent child born to a parent whose parental rights to any other child has been terminated by the Court; provided, that the applicant shall show that the condition which led to the making of the finding which resulted in the termination of such parent's parental rights to the other child has not been corrected.

No child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church, religious denomination, traditional healing or medicine or other religious organization by a recognized practitioner thereof shall be considered, for that reason alone, to be a deprived child pursuant to any provision of this article. The phrase dependent and neglected shall be deemed to mean deprived.

11. "**Dispositional hearing**" means a hearing to determine the order of disposition which should be made with respect to a child adjudged to be a ward of the Court.

12. "**Emergency youth shelter**" means a temporary residential care facility which provides a range of services including counseling, crisis intervention, referrals, educational services, the maximum stay of which is thirty (30) days.

13. "**Facility**" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned or operated by a public or private agency or contracted by the Nation.

14. "**Group home**" means a residential facility housing no more than twelve children with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents.

15. "**Handicapped child**" means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child or who is regarded as having such an impairment by a competent medical professional.

16. **"Independent"** means that the person or persons performing a mental health examination and submitting a report to the Court pursuant to the provisions of this title has no financial interests in or other connections to or relationships with a facility in which the child will be placed for inpatient mental health services that would constitute a conflict of interest, and has signed an affidavit to that effect.

17. **"Institution"** means a residential facility offering care and treatment for more than twenty (20) residents. Said institution may:

- a. have a program which includes community participation and community-based services; or
- b. be a secure facility with a program exclusively designed for a particular category of resident.

18. **"Less restrictive alternative to inpatient mental health care and treatment"** means and shall include but not be limited to: outpatient counseling services, including services provided in the home of the child and which may be referred to as **"home-based services"**; day treatment or day hospitalization services; respite care; foster care; group home care that provides for the delivery of services specifically designed to meet the treatment needs of children in need of treatment; or some combination thereof.

19. **"Mental health examination"** and **"mental health evaluation"** means an examination or evaluation of a child by a qualified mental health professional for the purpose of making a determination or preparing reports or recommendations as to whether, in the opinion of the qualified mental health professional:

- a. the child is a child in need of treatment and the least restrictive treatment necessary and appropriate for the child; or
- b. the child is not a child in need of treatment, and the mental health services, if any, necessary and appropriate for the child.

20. **"Mental health facility"** means:

- a. a facility or program operated by Cherokee Nation, the Indian Health Service or the Oklahoma Department of Mental Health and Substance Abuse Services or a facility or program operated by a private agency which offers outpatient or residential care and treatment services to children in need of treatment including but not limited to public or private hospitals, institutions, or agencies, comprehensive mental health centers, clinics, satellites, day treatment facilities, halfway homes, and group homes; or
- b. a child guidance center operated by the State Department of Health; or
- c. a facility or program operated by the Oklahoma Department of Human Services and designated by the Department to be a mental health treatment center for children in the custody of the

Department.

21. **"Preliminary inquiry"** or **"intake"** means a mandatory, preadjudicatory interview of the child and, if available, his parents, legal guardian, or other custodian, which is performed by a duly authorized individual to determine whether a child comes within the purview of this chapter, whether other nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary.

22. **"Qualified mental health professional"** means an individual having specific training and current experience in the mental health testing, examination, evaluation and diagnosis of children and adolescents and who:

a. holds at least a master's degree in a mental health field; and

b. has been awarded a current, valid Oklahoma license in a mental health field or permission to practice by a licensure board in a mental health field. For the purpose of this paragraph, **"mental health field"** means medicine, psychology, counseling and guidance, applied behavioral studies, human relations or social work.

23. **"Prescreening mental health evaluation"** means a face-to-face examination of a child by a qualified mental health professional to determine whether the child should be admitted to a hospital or inpatient mental health facility on an emergency psychiatric basis as provided by 10 CNCA § 5.

24. **"Rehabilitative facility"** means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of children in need of supervision.

25. **"Secure facility"** means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.

26. **"Treatment center"** means a facility for the care, education, training, treatment, and rehabilitation of children who are in the custody of Cherokee Nation and who have been found by the Court to be in need of treatment.

§ 1102. Jurisdiction of District Court—Transfer or consolidation of proceedings

A. Upon the filing of a petition, or upon the assumption of custody pursuant to the provisions of 10 CNCA § 1107, the District Court shall have jurisdiction of any Indian child who is or is alleged to be delinquent, in need of supervision, in need of treatment, or deprived, who is found within Indian country within Cherokee Nation; and of the parent, guardian or legal custodian of said child, regardless of where the parent, guardian or legal custodian is found. When jurisdiction shall have been obtained over a child in need of supervision, a child in need of treatment, or a deprived child, such may be retained until the child becomes eighteen (18) years of age and when jurisdiction shall

have been obtained over a delinquent child, jurisdiction may be retained until the child becomes nineteen (19) years of age. For the convenience of the parties and in the interest of justice, a proceeding under this chapter may be transferred to the district court in any other jurisdiction.

B. The District Court in which a petition is filed or the district court in which custody has been assumed pursuant to the provisions of 10 CNCA § 1107 may retain jurisdiction of a delinquent child in such proceeding notwithstanding the fact that the child is subject to the jurisdiction of another court. Any adjudication and disposition made by the Court in which said petition is filed shall control over prior orders in regard to the child.

C. The District Court in which a petition is filed which alleges that a child is in need of supervision, in need of treatment, or is deprived can issue any temporary order or grant any interlocutory relief authorized by this chapter notwithstanding the fact that another court has jurisdiction of the child or has jurisdiction to determine the custody or support of the child.

D. If the District Court in which a petition is filed pursuant to either subsection (B) or subsection (C) of this section sustains the petition, the District Court shall have the jurisdiction to make a final determination on the juvenile petition or to transfer the proceedings to a court having prior jurisdiction over the child.

§ 1102.1. Transfer of issues regarding child to juvenile docket for preliminary inquiry and determination

Where the evidence in an action for a divorce, for alimony without a divorce, for an annulment, for custody of a child or for the appointment of a guardian of the person of a child, or in subsequent proceedings in such actions, indicates that a child is deprived or in need of supervision, the Court, after proper notice, shall transfer the issues in regard to the child to the juvenile docket of the Court for preliminary inquiry and determination.

§ 1103. Preliminary inquiry—Verified petition—Contents—Filing by Prosecuting Attorney

A. The Court may provide by rule who shall make a preliminary inquiry to determine whether the interests of the public or of the child who is within the purview of this chapter require that further court action be taken. If it is determined that no further action be taken, said person or the Court may make such informal adjustment as is practicable without a petition.

B. A petition in a juvenile proceeding may be filed by the Prosecuting Attorney or the person who is authorized to make a preliminary inquiry to determine if further action is necessary. The proceeding shall be entitled:

"In the matter of ____, an alleged (delinquent) (deprived) child or (a child alleged to be in need of supervision) or (a child alleged to be in need of treatment)".

The petition shall be verified and may be upon information and belief. It shall set forth (1) with particularity facts which bring the child within the purview of 10 CNCA § 1101; (2) the name, age

and residence of the child; (3) the names and residences of his parents; (4) the name and residence of his legal guardian, if there be one; (5) the name and residence of the person or persons having custody or control of the child; (6) the name and residence of the nearest known relative, if no parent or guardian can be found; (7) the relief requested; and (8) the specific law or ordinance under which the child is charged, and an endorsement of witnesses intended to be called by the petitioner, where the child is sought to be adjudged a delinquent child under 10 CNCA § 1101. If a termination of parental rights is desired, it must be stated in the petition and summons, and if an order for the payment of funds for the care and maintenance of the child is desired, it must be stated in the petition and summons. If any of the facts herein required are not known by the petitioner, the petition shall so state, along with the reasons why said facts are not known to petitioner.

C. A petition alleging a child to be a child in need of treatment shall be filed by a prosecuting attorney and may be filed by a prosecuting attorney only after receipt and review of a report of a mental health examination of the child by an independent qualified mental health professional.

D. Nothing in this section shall prevent the filing of a petition alleging a child to be a child in need of treatment and delinquent, in need of supervision or deprived.

E. A copy of the petition shall be attached to and delivered with the summons.

§ 1103.1. Amendment of petition

A. No pleading subsequent to the petition is required, and the filing of any motion or pleading shall not delay the holding of the adjudicatory hearing.

B. A petition may be amended by order of the Court at any time before an order of adjudication has been made, provided that the Court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing. A petition shall be deemed to have been amended to conform to the proof where the proof does not change the substance of the act, omission or circumstance alleged. However, the Court may not amend the adjudicatory category prayed for in the petition.

§ 1104. Summons—Contents—Service—Taking child into custody—Arrest warrant

A. After a petition shall have been filed, unless the parties hereinafter named shall voluntarily appear, a summons shall be issued which shall recite briefly the nature of the proceeding with the phrase "as described more fully in the attached petition" and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the Court at a time and place stated. The summons shall state the relief requested, and shall set forth the right of the child, parents and other interested parties to have an attorney present at the hearing on the petition.

B. The summons shall be served on the person who has actual custody of the child, and if the child has reached the age of twelve (12) years a copy shall be served on the child. If the person who has

actual custody of the child shall be other than a parent or guardian of the child, a copy of the summons shall be served on the parent or guardian, or both, as hereinafter provided. A copy of the summons shall be served on each parent. If no parent or guardian can be found, a summons shall be served on such other person or persons as the Court shall designate. Provided that, upon a hearing the Court may find that no notice is required to a parent under the following circumstances:

1. The parent does not have custody of the child and has never established or has not maintained a substantial relationship with the child nor manifested a significant interest in the child for a period of not less than one (1) year preceding the filing of the petition; or

2. The parent does not have custody of the child and has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other court order during the year preceding the filing of the petition, or in the absence of such order, consistent with the parent's means and earning capacity.

Summons may be issued requiring the appearance of any other person whose presence is necessary.

C. If it subsequently appears that a person who should have been served was not served and has not entered an appearance, the Court shall immediately order the issuance of a summons which shall be served on said person.

D. If after a petition has been filed, it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the Court, the Judge may immediately issue a detention order or warrant authorizing the taking of said child into custody.

E. In a delinquency proceeding, whenever a warrant for the arrest of a child shall issue, it shall state the offense the child is being charged with having committed; in a child in need of supervision proceeding, whenever a warrant for detention of a child shall issue, it shall state the reason for detention. Warrants for the arrest or detention of a child shall comport with all other requirements of issuance of arrest warrants for adult criminal offenders.

§ 1104.1. Filing petition when child taken into custody—Time—Order to remove child from home

A. Where a child has been taken into custody under any provision of 10 CNCA § 1101 et seq., before a petition has been filed, a petition shall be filed and a summons issued within five (5) judicial days from the date of such assumption of custody, or custody of the child shall be relinquished to his parent, guardian or other legal custodian, unless otherwise provided for herein.

B. Where a child has been taken into custody and upon allegations of cruelty on the part of the parents, guardian or other person having custodial care of the child, the five- (5) day limitation herein shall not cause the child to be relinquished to such parent, guardian or other legal custodian. In all such cases, the Court shall determine whether the petition was filed within a reasonable time, except that a petition shall be filed within thirty (30) days of the child being taken into custody.

C. No order of the Court providing for the removal of an alleged or adjudicated deprived child from his home shall be entered unless the Court finds that the continuation of the child in his home is contrary to the welfare of the child. Said order shall include either:

1. a determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from his home and, as appropriate, reasonable efforts have been made to provide for the return of the child to his home; or

2. a determination as to whether or not an absence of efforts to prevent the removal of the child from his home is reasonable under the circumstances, if such removal of the child from his home is due to an alleged emergency and is for the purpose of providing for the safety of the child.

§ 1104.2. Persons sixteen or seventeen years of age to be considered as adult for committing certain offenses—Warrants—Certification as child

A. Any person sixteen (16) or seventeen (17) years of age who is charged with murder, kidnapping for purposes of extortion, robbery with a dangerous weapon, rape in the first degree, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, shooting with intent to kill, manslaughter in the first degree, nonconsensual sodomy, or manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance, shall be considered as an adult. Upon the arrest and detention, such sixteen-or seventeen-year-old accused shall have all the statutory and constitutional rights and protections of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

B. Upon the filing of an information against such accused person, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at hearings, to have an attorney present and to make application for certification of such accused person as a child to the juvenile division of the District Court. The warrant shall be personally served together with a certified copy of the information on the accused person and on the parents, guardian or next friend of the accused person.

C. The accused person shall file a motion for certification as a child before the start of the criminal trial. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the prosecuting attorney and the accused person.

The accused person may have a hearing on the motion for certification as a child or may at the conclusion of the Nation's case at the criminal trial, the accused person may offer evidence to support the motion for certification as a child.

The Court shall rule on the certification motion of the accused person before ruling on other dispositive motions at trial. When ruling on the certification motion of the accused person, the Court shall give consideration to the following guidelines, listed in order of importance:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
2. Whether the offense was against persons or property, greater weight being given for retaining the accused person within the adult criminal system for offenses against persons, especially if personal injury resulted;
3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and
4. The prospects for adequate protection of the public if the accused person is processed through the juvenile system.

The Court, in its decision on the certification motion of the accused person, need not detail responses to each of the above considerations, but shall state that the Court has considered each of the guidelines in reaching its decision.

D. Upon the Court's ruling on the accused person's motion for certification as a child, if the accused person is certified as a child to the juvenile division of the District Court, then all adult court records relative to the accused person and this charge shall be expunged and any mention of the accused person shall be removed from public record.

E. An order certifying a person as a child or denying the request for certification as a child pursuant to subsection (D) of this section shall be a final order, appealable when entered.

§ 1105. Service of summons—Time of hearing—Mental health examination—Report

A. Service of summons shall be made as provided for service in civil actions or service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. Where the address of the person to be summoned is not known, or if the mailed summons is returned, the Court may order that notice of the hearing be published once in a newspaper of general circulation in the county. The Court may not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian; provided, however, that the Court may not hold the hearing until at least five (5) days after the date of mailing the summons, if the parent is not served within the state, except with the consent of the parent, or if notice is published, until at least ten (10) days after the date of publication; provided, further, that if one or more persons must be served by publication, and if it appears that the Court must order the child held in a place of detention in order to meet the requirement of this section with respect to the time for holding a hearing when a party can be served only by publication, the Court may advance the date of the hearing, with reasonable notice to the other persons who have been served or are properly and legally notified, to any date that the Court determines to be reasonable and may proceed with the action; but an order determining that a child is delinquent or in need of supervision or is deprived shall not become final until thirty (30) days after the date of the publication of the notice. Nothing contained herein shall prevent a Court

from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

B. Whenever a petition alleging a child to be a child in need of treatment is filed and the Court has ordered an inpatient mental health examination of the child, the hearing on the petition shall be set for not more than twenty (20) days after the inpatient admission of the child to a hospital or other mental health facility.

1. The report of a mental health examination of the child by an qualified mental health professional shall be attached to a petition alleging the child to be a child in need of treatment. If such report is not attached to the petition at the time it is filed, or if the Court finds the report to be inadequate to aid the Court in the adjudication or disposition of the case, the Court shall order a mental health examination of the child. A report of the examination shall be submitted to the Court prior to a hearing on the petition, and the Court may order such other reports as it deems necessary in order to aid the Court in the adjudication or disposition of the case.

2. Any report of a mental health examination of a child alleged to be a child in need of treatment that recommends that the child be found to be eligible for inpatient mental health treatment shall be certified and shall be signed by qualified mental health professionals, at least one of whom shall be independent as defined by 10 CNCA § 1101.

§ 1106. Failure to appear—Contempt—Warrants

If any person summoned as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of Court. In case the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual or that the welfare of the child requires that he shall be brought forthwith into the custody of the Court, a warrant may be issued against the parent or guardian, or against the child himself.

§ 1107. Taking child into custody prior to filing petition—Detention or release—Medical examination and treatment

A. A child may be taken into custody prior to the filing of a petition:

1. By a peace officer, or employee of the Court without a court order if the child is found violating any law or ordinance, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, guardian or legal custodian for a substantial length of time or without intent to return, or if the child's surroundings are such as to endanger the welfare of the child.

2. Pursuant to an order of the District Court issued on the application of the office of the prosecuting attorney. The application presented by the prosecuting attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the Court that there is reasonable suspicion to believe the child is in

need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child.

B. Whenever a child is taken into custody as a delinquent child or a child in need of supervision, the child shall be detained or be released to the custody of his parent, guardian, attorney or custodian, upon the written promise of such parent, guardian, attorney or custodian to bring the child to the Court at the time fixed. If detained, such child shall be taken immediately before a judge of the District Court. If no judge be available locally, the person having the child in custody shall immediately report his detention of the child to another judge, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a designated juvenile detention center, beyond the next two (2) judicial days unless the Court shall so order after a detention hearing to determine if there exists probable cause to detain the child, as provided in 10 CNCA § 1107.1. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the Court may be released to the custody of a parent or other person appointed by the Court, or be detained pursuant to the provisions of 10 CNCA § 1107.1 in such place as shall be designated by the Court, subject to further order.

C. Whenever a child is taken into custody as a deprived child, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the Court, or he shall be taken immediately before a Judge of the District Court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a deprived child without a court order, the peace officer or employee of the Court taking the child into custody shall immediately report the fact of the detention of the child to a Judge of the District Court. If no Judge is available locally, the detention shall be reported immediately to any Judge of the District Court. Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the Court, the Court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to this chapter. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of the hearing. The Court may release an alleged deprived child from protective custody upon such conditions as the Court finds reasonably necessary for the protection of the child and the Court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to 10 CNCA § 1104.1(B) is warranted.

D. When any child is taken into custody pursuant to this title and it reasonably appears to the peace officer, employee of the Court or person acting pursuant to court order that the child is in need of medical treatment to preserve his health, any peace officer, any employee of the Court or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment, for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of a parent or guardian who is competent to authorize medical treatment. The officer or the employee of the Court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent, guardian or other person legally competent to authorize said medical treatment. The parent,

guardian or custodian of the child shall be responsible for such medical expenses as ordered by the Court. No peace officer, any employee of the Court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

§ 1107.1. Conditions of detention of child—Detention or confinement in adult facility

A. When a child is taken into custody pursuant to the provisions of 10 CNCA § 1101 et seq., the child shall be detained only if it is necessary to assure the appearance of the child in Court or for the protection of the child or the public.

1. No pre-adjudicatory or predisposition detention or custody order shall remain in force and effect for more than thirty (30) days. The Court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed sixty (60) days.

2. No child alleged or adjudicated to be deprived, in need of supervision or in need of treatment shall be confined in any jail, adult lockup, or adult detention facility. No child shall be transported or detained in association with criminal, vicious, or dissolute persons.

3. Except as otherwise authorized by this section a child who has been taken into custody as a deprived child, a child in need of supervision, or a child in need of treatment, may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care, or released to the custody of his parents or some other responsible party. When a child is taken into custody as a child in need of supervision as a result of being a runaway, the Court may order the child placed in a juvenile detention facility pending court proceedings if it finds said detention to be essential for the safety of the child.

B. No child may be placed in secure detention unless:

1. the child is an escapee from a correctional facility or community correctional program or placement; or

2. the child is a fugitive from another jurisdiction with a warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction; or

3. the child is seriously assaultive or destructive towards others or himself; or

4. the child is detained for the commission of a crime that would constitute a felony if committed by an adult; or

5. the child is currently charged with a crime that would constitute a misdemeanor if committed by an adult and:

a. is on probation or parole on a prior delinquent offense,

- b. is on pre-adjudicatory community supervision,
- c. is currently on release status on a prior delinquent offense, or
- d. has willfully failed or there is reason to believe that the child will willfully fail to appear for juvenile court proceedings.

C. 1. Except as otherwise provided in this section, no child may be placed in secure detention in a jail, adult lockup, or other adult detention facility unless:

a. the child is detained for the commission of a crime that would constitute a felony if committed by an adult, and

b. the child is awaiting an initial court appearance, and

c. the child's initial court appearance is scheduled within twenty-four (24) hours after being taken into custody, excluding weekends and holidays, and

d. there is no existing acceptable alternative placement for the child, and

e. the jail, adult lockup or adult detention facility meets the requirements for licensure of juvenile detention facilities, as adopted by the Commission for Human Services, is appropriately licensed, and provides sight and sound separation for juveniles, which includes:

i. total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities;

ii. total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and

iii. separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults can serve both.

2. Nothing in this section shall preclude a child who is detained for the commission of a crime that would constitute a felony if committed by an adult, or a child who is an escapee from a Cherokee Nation placement, juvenile training school or from a Department of Human Services group home from being held in any jail certified by Cherokee Nation or the State Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions.

a. The time limitations for holding a child in a jail for the purposes of identification, processing or

arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention.

b. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

3. Nothing in this section shall preclude detaining in a county jail or other adult detention facility an eighteen- (18) year old charged in a juvenile petition for whom certification to stand trial as an adult is prayed.

D. Nothing contained in this section shall in any way reduce or eliminate a county's liability as otherwise provided by law for injury or damages resulting from the placement of a child in a jail, adult lockup, or other adult detention facility.

E. Any juvenile detention facility shall be available for use by any eligible Indian child as that term is defined by the Oklahoma Indian Child Welfare Act, 10 O.S. § 40 et seq., providing that the use of the juvenile detention facility meets the requirements of this act. Cherokee Nation may contract with any juvenile detention facility for the providing of detention services.

F. Each member of the staff of a juvenile detention facility shall satisfactorily complete a training program provided or approved by Cherokee Nation.

§ 1108. Temporary detention of children—Reimbursement of transportation costs—Detention facilities—Detention services and centers—Standard for certification of facilities used to detain juveniles

A. Provision shall be made for the temporary detention of children in a juvenile detention facility or the Court may arrange for the care and custody of such children temporarily in private homes, subject to the supervision of the Court, or the Court may provide shelter or may enter into a contract with any institution or agency to receive, for temporary care and custody, children within the jurisdiction of the Court.

B. 1. "**Juvenile detention facility**" shall mean a secure facility, entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children. All juvenile detention facilities shall be required to meet standards for certification by Cherokee Nation or the Oklahoma Commission for Human Services.

2. "**Alternatives to secure detention**" means those services and facilities which are included in the State Plan for the Establishment of Juvenile Detention Services adopted by the Commission for Human Services pursuant to subsection (C) of this section or those designated by Cherokee Nation and which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility.

3. In order to operate juvenile detention facilities Cherokee Nation may:

- a. operate the juvenile detention facility subject to the supervision of the District Court; or
 - b. operate the juvenile detention facility by employing a manager who may employ personnel and incur other expenses as may be necessary for its operation and maintenance; or
 - c. contract with a public agency, private agency or single or multi-county trust authority for the operation of the juvenile detention facility. Cherokee Nation is authorized to directly contract with and pay such public or private agency for provision of detention services.
4. Management contracts for privately operated detention facilities shall be negotiated with the firm found most qualified by Cherokee Nation. However, no private management contract shall be entered into by the nation unless the private contractor demonstrates to the satisfaction of the board:
- a. that the contractor has the qualifications, experience, and personnel necessary to implement the terms of the contract;
 - b. that the financial condition of the contractor is such that the term of the contract can be fulfilled;
 - c. that the ability of the contractor to obtain insurance or provide self-insurance to indemnify the Nation against possible lawsuits and to compensate the nation for any property damage or expenses incurred due to the private operation of the juvenile detention facility; and
 - d. that the contractor has the ability to comply with applicable court orders and rules and regulations of the Oklahoma Department of Human Services and/or Cherokee Nation.

§ 1109. Questioning of children—Counsel—Appointment of guardian ad litem—Court appointed special advocates—Immunity—Confidentiality

A. No information gained by questioning a child nor any evidence subsequently obtained as a result of such information shall be admissible into evidence against the child unless the questioning about any alleged offense by any law enforcement officer or investigative agency, or employee of the Court, or the Department of Human Services or Cherokee Nation is done in the presence of the parents, guardian, attorney, or legal custodian of the child. No such questioning shall commence until the child and his parents, or guardian, or other legal custodian have been fully advised of the constitutional and legal rights of the child, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the Court if the parties are without sufficient financial means.

B. If the parents, guardian, or other legal custodian of the child requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the Court if a petition has been filed alleging that the child is a deprived child, a child in need of supervision, or a child in need of treatment, or if termination of parental rights is a possible remedy, provided that the Court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parents, guardian or other legal custodian. If the child is not otherwise represented

by counsel, whenever a delinquent child petition is filed pursuant to the provisions of 10 CNCA § 1103, and the parents, guardian, other legal custodian of the child are found to be without sufficient financial means the Court shall appoint a separate attorney for the child. In all other cases the prosecuting attorney shall protect the interest of the child. In the event the prosecuting attorney has a conflict or appearance of conflict the Court may appoint a separate attorney for the child.

C. Whenever a petition is filed alleging that a child is a deprived child the Court may appoint a guardian ad litem for the child at any time subsequent to the filing of the petition and shall appoint a guardian ad litem upon the request of the child, his attorney, or the prosecuting attorney.

1. The guardian ad litem shall not be a prosecuting attorney, an employee of the office of the prosecuting attorney, an employee of the Court, or an employee of any public agency having duties or responsibilities towards the child.

2. The guardian ad litem may be a Court-appointed special advocate.

D. For the purpose of this section and 21 CNCA § 846, a "Court-appointed special advocate" or "CASA" means a responsible adult, other than an attorney for the parties, who has volunteered to be available for appointment by the Court to serve as an officer of the Court and represent any child wherein a juvenile petition has been filed, based on the availability of volunteers, until discharged by the Court. It shall be the duty and responsibility of the Court-appointed special advocate to advocate for the best interests of the child and to assist the child in obtaining a permanent, safe, homelike placement.

The Court-appointed special advocate shall be given access to the Court file and access to all records and reports relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to this section or 21 CNCA § 846.

A Court-appointed special advocate shall serve without compensation and shall have such other qualifications and duties and responsibilities as may be prescribed by rule by the Court. Any person participating in a judicial proceeding as a Court-appointed special advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed. Any person serving in positions of management of a CASA organization, including members of the Board of Directors acting in good faith, shall be immune from any civil liability or any vicarious liability for the negligence of any CASA organization advocates, managers, or directors.

All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the State of Oklahoma, Cherokee Nation or United States in connection with the performance of their official duties. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the Department of Human Services, or Cherokee Nation, any other public officer or employee, or any Court-appointed special advocate (CASA), to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

E. The prosecuting attorney shall prepare and prosecute any case or proceeding within the purview of 10 CNCA § 1101.

§ 1110. Jury trial

A. A parent entitled to service of summons, Cherokee Nation or a child shall have the right to demand a trial by jury only in the following circumstances:

1. When the initial petition to determine if a child is deprived also contains a request for immediate termination of parental rights; or
2. When, following a hearing in which the child is adjudicated deprived, a petition for termination of parental rights is filed by Cherokee Nation.

B. A jury trial shall be granted only if demanded. Such jury shall consist of six (6) persons. The right to a jury trial may be waived. The right to a jury trial shall be deemed waived by the Court when a parent, guardian or custodian or other person entitled to service of summons fails to appear at any hearing set for termination of parental rights. Nothing in this act shall prohibit a termination of parental rights by default should a parent, or other person entitled to service of summons, who has been properly served a summons, fails to appear at a trial or hearing set on the termination of said person's parental rights.

§ 1111. Conduct of hearings

All cases of children shall be heard separately from the trial of cases against adults. The adjudicative hearings shall be conducted according to the rules of evidence, and may be adjourned from time to time. The hearings shall be private unless specifically ordered by the judge to be conducted in public, but persons having a direct interest in the case shall be admitted. Stenographic notes or other transcript of the hearings shall be kept as in other cases, but they shall not be open to inspection except by order of the Court. The child may remain silent as a matter of right during said hearing, and before he is interrogated, he shall be so advised. A decision determining a child to come within the purview of this chapter must be based on sworn testimony and the child must have the opportunity for cross-examination unless the facts are stipulated. Where a child is alleged to be delinquent and the facts are stipulated, the judge must ascertain from the child if he agrees with the stipulation and if he understands the consequences of stipulating the facts.

§ 1112. Children charged with violating Nation statute or municipal ordinance—Juvenile proceedings—Felonies—Trial as adult—Matters considered—Bail

A. Except as otherwise provided, a child who is charged with having violated any statute or ordinance other than those enumerated in 10 CNCA § 1104.2, shall not be tried in a criminal action but in a juvenile proceeding. If, during the pendency of a criminal or quasi-criminal charge against any person, it shall be ascertained that the person was a child at the time of committing the alleged offense, the District Court shall transfer the case, together with all the papers, documents and testimony connected therewith, to the juvenile division of the District Court. The division making

such transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile division, to that division itself, or release such child to the custody of some suitable person to be brought before the juvenile division. However, nothing in this act shall be construed to prevent the exercise of concurrent jurisdiction by another court in cases involving children wherein the child is charged with the violation of a Cherokee Nation, state or municipal traffic law or ordinance.

B. Except as otherwise provided by law, if a child is charged with delinquency as a result of an offense which would be a crime if committed by an adult, the Court on its own motion or at the request of the prosecuting attorney shall conduct a preliminary hearing to determine whether or not there is prosecutive merit to the complaint. If the Court finds that prosecutive merit exists, it shall continue the hearing for a sufficient period of time to conduct an investigation and further hearing to determine the prospects for reasonable rehabilitation of the child if he should be found to have committed the alleged act or omission. Consideration shall be given to:

1. The seriousness of the alleged offense to the community, and whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
2. Whether the offense was against persons or property, greater weight being given to offenses against persons especially if personal injury resulted;
3. The sophistication and maturity of the juvenile and his capability of distinguishing right from wrong as determined by consideration of his psychological evaluation, home, environmental situation, emotional attitude and pattern of living;
4. The record and previous history of the juvenile, including previous contacts with community agencies, law enforcement agencies, schools, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions;
5. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile if he is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and
6. Whether the offense occurred while the juvenile was escaping or in an escape status from an institution for delinquent children.

After such investigation and hearing, the Court may in its discretion proceed with the juvenile proceeding, or it shall state its reasons in writing and shall certify that such child shall be held accountable for his acts as if he were an adult and shall be held for proper criminal proceedings for the specific offense charged, by any other division of the Court which would have trial jurisdiction of such offense if committed by an adult. The juvenile proceeding shall not be dismissed until the criminal proceeding has commenced and if no criminal proceeding commences within thirty (30) days of the date of such certification, unless stayed pending appeal, the Court shall proceed with the juvenile proceeding and the certification shall lapse.

If not included in the original summons, notice of a hearing to consider whether a child should be certified for trial as an adult shall be given to all persons who are required to be served with a summons at the commencement of a juvenile proceeding, but publication in a newspaper when the address of a person is unknown is not required. The purpose of the hearing shall be clearly stated in the notice.

C. Prior to the entry of any order of adjudication, any child in custody shall have the same right to be released upon bail as would an adult under the same circumstances. Subsequent to the entry of an order that a child stand trial as an adult, said child shall have all the statutory and constitutional rights and protections of an adult accused of a crime but shall, while awaiting trial and for the duration of the trial, be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over. Upon conviction, the juvenile may be incarcerated with the adult population. If, prior to the entry of any order of adjudication, the child becomes eighteen (18) years of age, the child may be detained in a jail or released on bail.

D. Any child who has been certified to stand trial as an adult pursuant to any certification procedure provided by law and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court in any further proceedings.

E. An order either certifying a person as a child pursuant to subsection (b) of this section or denying such certification shall be a final order, appealable when entered.

§ 1113. Allegations of petition not supported by evidence

If the Court finds that the allegations of the petition are not supported by the evidence, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. The child's parents, guardian or other legal custodian shall also be discharged from any restriction or other previous temporary order.

§ 1114. Allegations of petition supported by evidence

A. If the Court finds that the allegations of the petition are supported by the evidence, and that it is in the best interest of the child and the public that he be made a ward of the Court, the Court shall sustain the petition, and shall make an order of adjudication, setting forth whether the child is delinquent, or in need of supervision or deprived and shall adjudge the child as a ward of the Court.

B. If the Court finds the allegations on a petition alleging a child to be a child in need of treatment are supported by clear and convincing evidence, including but not limited to the evidence of a mental health examination of the child by an qualified mental health professional pursuant to the provisions of 10 CNCA § 1105, and that it is in the best interest of the child that he be made a ward of the Court, the Court shall sustain the petition and shall make an order of adjudication. If warranted by the facts in the case, an order of adjudication finding a child to be a child in need of treatment shall not serve to preclude a subsequent order of adjudication finding a child to be

delinquent, in need of supervision or deprived or to vacate any such order of adjudication previously entered.

§ 1115. Dispositional hearings—Additional reports or evidence

A. After making an order of adjudication, the Court shall hold a dispositional hearing, at which all evidence helpful in determining the proper disposition best serving the interest of the child and the public, including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing.

B. Before making an order of disposition, the Court shall advise the prosecuting attorney, the parents, guardian, custodian or responsible relative, and their counsel, of the factual contents and the conclusion of reports prepared for the use of the Court and considered by it, and afford fair opportunity, if requested, to controvert them. An order of disposition shall include a specific finding and order of the Court relative to the liability and accountability of the parents for the care and maintenance of the child as authorized by 10 CNCA § 1121, except where custody is placed with both parents.

C. On its own motion or that of the Prosecuting Attorney, or of the parent, guardian, custodian, responsible relative or counsel, the Court may adjourn the hearing for a reasonable period to receive reports or other evidence and, in such event, shall make an appropriate order for detention of the child, or his release from detention subject to supervision by the Court, during the period of the continuance.

D. In scheduling investigations and hearings, the Court shall give priority to proceedings in which a child is in detention, or has otherwise been removed from his home, before an order of disposition has been made.

§ 1115.1. Placement plan filing—Preparation—Approval—Contents—Substance abuse treatment program for parents—Child born dependent on controlled dangerous substance

A. A placement plan shall be filed and prepared by the legal custodian of a child with the Court within the thirty (30) days after any deprived child has been removed from the custody of its lawful parent or parents.

B. Except as otherwise specified by the Court, the placement plan shall contain but not be limited to the following information:

1. A history of the child and family;

2. A statement of the conditions that the intervention is designed to alleviate and a statement of the methods to be used to correct those conditions or to achieve permanent placement of the child or, when the child is sixteen (16) years of age or older, and as appropriate for the child, the services to be provided for the purpose of assisting the child to make the transition from foster care to independent living;

3. A description of the appropriate special programs available and to be used by the parent, legal guardian, legal custodian, or stepparent or other adult person living in the home as well as the child which are in the best interests of the child or will prevent further harm to the child;

4. A statement as to the unavailability or inappropriateness of local placement, or other good cause for any placement more than forty (40) miles from the child's home;

5. A description of acts and conduct that would be expected of the parent or parents, legal guardian, legal custodian, or stepparent or other adult person living in the home before the child should be returned home; and

6. The name and business address of the attorney representing the child, if any.

C. In addition to the information required pursuant to subsection (B) of this section, when a child born in a condition of dependence on a controlled dangerous substance has been removed from the home, Cherokee Nation, subject to Court approval:

1. may require, as part of the placement plan, that the mother of such child complete a treatment program approved by Cherokee Nation for alcohol and drug abuse prevention, training, treatment and rehabilitation prior to the return of the child to the home;

2. may require, as part of the placement plan, that the father of the child, legal guardian, legal custodian, stepparent or other adult person living in the home who is a drug-dependent person, as such term is defined by 43A O.S. § 3-403, as amended, and whose conduct has contributed to the dependency of such child or mother on the controlled dangerous substance, or to the conditions which caused the child to be adjudicated deprived, complete a treatment program approved by Cherokee Nation for alcohol and drug abuse prevention, training, treatment and rehabilitation prior to the return of the child to the home; and

3. may require testing for substance abuse of the mother, father, legal guardian, legal custodian, stepparent or other adult person living in the home, on a monthly basis for a twelve-month period following completion of the substance abuse program and after return of the child to the home. A positive test of any such person shall be presented to the Court and the prosecuting attorney.

D. Testing ordered by the Court pursuant to subsection (C) of this section shall be admissible only for the purposes of juvenile and custody proceedings.

§ 1115.2. Information to accompany child placed outside his home

The Court shall ensure that the following information accompanies any deprived child placed outside his home:

1. Demographic information;

2. Type of custody and previous placement;
3. Pertinent family information including, but not limited to, the names of family members who, by court order, may not visit the child;
4. Known or available medical history including, but not limited to:
 - a. allergies,
 - b. immunizations,
 - c. childhood diseases,
 - d. physical handicaps,
 - e. psycho-social information, and
 - f. the name of the child's last doctor, if known.
5. Copies of policies and procedures of Cherokee Nation which pertain to placement operations of Cherokee Nation, and which may be necessary to properly inform the institution, foster parent or other custodian of the duties, rights and responsibilities of the custodian.

§ 1116. Disposition orders

A. The following kinds of orders of disposition may be made in respect to wards of the Court:

1. The Court may place the child on probation or under supervision in his own home, or in the custody of a suitable person elsewhere, upon such conditions as the Court shall determine. The Court may require the parent or other person to give security by bond, with surety or sureties approved by the Court, for compliance with such order.

If it is consistent with the welfare of the child, the child shall be placed with his parent or legal guardian, but if it appears to the Court that the conduct of such parent, guardian, legal guardian, stepparent or other adult person living in the home has contributed to such delinquency, or need of supervision or treatment, or deprivation, the Court may issue a written order specifying conduct to be followed by such parent, guardian, legal custodian, stepparent or other adult person living in the home with respect to such child. The conduct specified shall be such as would reasonably prevent the child from becoming delinquent, in need of supervision or treatment, or deprived, as defined by 10 CNCA § 1101. Such order shall remain in effect for a period of not more than one (1) year to be specified by the Court, and the order may be extended or renewed by the Court.

- a. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be deprived or in need of supervision due to repeated absence from school, the Court may order counseling and treatment for the child and the parents of the child which may be provided by the

local school district, the county, Cherokee Nation, the Department of Human Services or a private individual or entity. Prior to final disposition, the Court shall require that it be shown by the appropriate school district that a child found to be truant has been evaluated for learning disabilities, mental retardation, and hearing and visual impairments and other impediments which could constitute an educational handicap. The results of such tests shall be made available to the Court for use by the Court in determining the disposition of the case.

b. In issuing orders to a parent, guardian, legal guardian, stepparent or other adult person living in the home of a child adjudicated to be a delinquent child or in making other disposition of said delinquent child, the Court may consider the testimony of said parent, guardian, legal guardian, stepparent or other adult person concerning the behavior of the juvenile and his ability to exercise parental control over the behavior of the juvenile.

c. In any dispositional order involving a child age sixteen (16) or older, the Court shall make a determination, where appropriate, of the services needed to assist the child to make the transition from foster care to independent living.

No child who has been adjudicated in need of supervision or deprived upon the basis of truancy or noncompliance with the mandatory school attendance law alone may be placed in a public or private institutional facility or be removed from the custody of the lawful parent, guardian or custodian of the child. A deprived adjudication based upon repeated absence from school shall not constitute a ground for termination of parental rights.

2. The Court may commit the child to the custody of a private institution or agency, including any institution established and operated by Cherokee Nation or some other governmental agency, authorized to care for children or to place them in family homes. In committing a child to a private institution or agency, the Court shall select one that is licensed by Cherokee Nation or the Oklahoma Department of Human Services or any other state department supervising or licensing private institutions and agencies; or, if such institution or agency is in another state, by the analogous department of that state. Whenever the Court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency shall give to the Court such information concerning the child as the Court may at any time require.

3. The Court may order the child to receive counseling or other community-based services as necessary.

4. The Court may commit the child to the custody of Cherokee Nation; provided, any order adjudicating a child to be delinquent and committing the child to Cherokee Nation shall be for an indeterminate period of time.

5. The Court may place a child adjudicated to be in need of treatment with his parents or legal guardian or, if it is consistent with the treatment needs and the best interests of the child, commit the child to the custody of Cherokee Nation. In addition:

a. the Court shall order the child to receive the least restrictive mental health care and treatment appropriate for the treatment needs of the child through a public or private mental health facility until such time as such care and treatment is no longer necessary, as determined by a qualified mental health professional;

b. the Court may commit the child or authorize inpatient treatment for the child in a hospital or other facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation until such time as patient care and treatment is no longer necessary or appropriate. If the Court finds by clear and convincing evidence, including but not limited to the evidence of an independent qualified mental health professional, that a child in need of treatment:

i. has a demonstrable mental illness and as a result of that mental illness can be expected within the near future to intentionally or unintentionally seriously and physically injure himself or another person and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation, or

ii. has a demonstrable mental illness and as a result of that mental illness is unable to attend to those of his basic physical or psychiatric needs that must be attended to in order for him to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic physical or psychiatric needs in the recent past;

c. no order of the Court committing the child or authorizing inpatient care and treatment of the child shall be entered unless the Court makes a determination:

i. that reasonable efforts have been made to provide for the mental health treatment needs of the child through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the child, or

ii. after a thorough consideration of less restrictive alternatives to inpatient treatment, that the condition of the child is such that less restrictive alternatives are unlikely to meet the mental health treatment needs of the child;

d. pursuant to the provisions of subparagraphs b and c of this paragraph, the Court may:

i. commit a child whose custody remains with his parent or legal guardian to a public or private mental health facility appropriate for the inpatient care and treatment of children and which is willing to admit the child for treatment, provided that the Court shall not commit such child to a government-operated mental health facility for inpatient care and treatment,

ii. when the child is committed to the custody of Cherokee Nation, authorize inpatient care and treatment for the child;

e. the Court may also order the child to receive outpatient care and treatment, or other appropriate services, as necessary, upon his discharge from inpatient care and treatment; and

f. for the purposes of this paragraph "less restrictive alternative to inpatient treatment" includes but is not limited to: Outpatient counseling services, including services provided in the home of the child and which may be referred to as "home-based services"; and day treatment or day hospitalization services; respite care; or foster care or group home care through a program established and specifically designed to meet the treatment needs of children in need of treatment; or some combination thereof.

6. If the child has been placed outside the home, and it appears to the Court that the parent, guardian, legal custodian, stepparent, or other adult person living in the home has contributed to the delinquency, need of supervision or treatment, or deprivation of the child, the Court may order that the parent, guardian, legal custodian, stepparent, or other adult living in the home be made subject to any treatment or placement plan prescribed by the Department or other person or agency receiving custody of the child.

7. The Court may order any child adjudicated a delinquent child for acts involving criminally injurious conduct as defined in 21 CNCA § 142.3, to pay a victim compensation assessment in an amount not to exceed that amount specified in 21 CNCA § 142.18. The Court shall forward a copy of the adjudication order to the Prosecuting Attorney for purposes of 21 CNCA § 142.11. Such adjudication order shall be kept confidential by the Court and Prosecuting Attorney.

8. The Court may order any child adjudicated a delinquent child to engage in a term of community service without compensation. Cherokee Nation or any political subdivision shall not be liable if a loss or claim results from any acts or omission of a child ordered to engage in a term of community service pursuant to the provisions of this paragraph.

9. The Court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

10. In any dispositional order removing a child from the home of the child, the Court shall make a determination that reasonable efforts have been made to provide for the return of the child to the child's own home, or that efforts to reunite the family are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child.

B. A dispositional order removing a child from the custody of the parents of the child shall be reviewed at a hearing by the Court at least once every six (6) months until such time as the child is returned to the custody of his parents. No later than eighteen (18) months after placing a child in foster care and every twelve (12) months thereafter, the Court making the original order of adjudication shall conduct a dispositional hearing to consider whether the child should be returned to his parents or other family member; the child should be continued in foster care for a specified period; the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship; or whether the child, because of exceptional circumstances, should remain in foster care on a long-term basis as a permanent plan or with a goal of independent living.

C. The Court shall not terminate the rights of a parent who has not been notified that the parental rights might be terminated. If the Court terminates the rights of a parent and commits the child to

an individual or agency, the court may invest in such individual or agency authority to consent to the adoption of the child. Provided, that where the Court commits the child to Cherokee Nation, it shall vest Cherokee Nation with authority to place the child and, upon notice to the Court that an adoption petition has been filed concerning said child, invest Cherokee Nation with authority to consent to the adoption of the child, and the jurisdiction of the committing Court shall terminate.

D. No child who has been adjudicated in need of supervision or deprived may be placed in a correctional or training school.

E. No child charged in a Cherokee Nation Court with a violation of Cherokee Nation laws or ordinances, or convicted therefor, may be incarcerated in jail for any said violation unless the charge for which the arrest was made would constitute a felony if the child were an adult; provided, that nothing contained in the above section prohibits the detention of a juvenile for traffic-related offenses prior to the filing of a petition in the District Court alleging delinquency as a result of said acts.

F. If it is consistent with the welfare of the child, the Court may require community service or restitution or both community service and restitution for acts of delinquency. The immunities provided by 57 O.S. §§ 227 and 228, as amended, shall apply to community services directed pursuant to this section.

G. The Court may require any child found to be a juvenile delinquent or child in need of supervision, the parents of any child found to be a juvenile delinquent, a child in need of supervision, a deprived child or a child in need of treatment, or both the child and the parents, to reimburse the Court fund, in whole or in part, for any disbursements made from the Court fund in conjunction with the case, including, but not limited to, Court-appointed attorney's fees, expert witness fees, law enforcement fees, witness fees, transcripts and postage. When any parent is financially able but has willfully failed to pay court costs or to reimburse the court fund as ordered by the court or has willfully failed to pay court costs and to reimburse the Court fund as ordered by the Court, the parent may be held in contempt of court and, upon conviction, shall be punished pursuant to 21 CNCA § 566. After a judicial determination that the child, the parent of the child, or both such child or parent, are able to pay the costs and to reimburse the court fund or pay the costs and to reimburse the court fund in the case in installments, the Court may order the costs and such reimbursement of the court fund to be paid in installments and shall set the amount and due date of each installment. A parent may be found to be financially able to pay court costs or to reimburse the court fund or to pay court costs and to reimburse the Court fund in installments even though the Court has previously found the parent indigent.

§ 1116.1. Review of order removing child from custody of lawful parents

A. Any disposition order removing a deprived child from the custody of its lawful parent or parents shall be reviewed by the Court at least once every six (6) months until such time as the child is returned to the custody of said parent or parents and the conditions which caused the child to be adjudicated deprived have been corrected or the parental rights of said parent or parents are terminated and a final adoption decreed. The provisions of this section shall also apply to a child

who has been removed from the home of the lawful parent or parents of the child after the child has been returned to that home until such time as the Court orders the case closed.

B. 1. The legal custodian of a child who has been removed from the custody of its lawful parent or parents shall cause to be prepared for each review hearing required herein a written report concerning each child who is the subject of such review.

2. Said report shall include but not be limited to a summary of the physical, mental, and emotional condition of the child, the conditions existing in the home or institution where the child has been placed, and the child's adjustment thereto, a report on the child's progress in school and visitation exercised by the lawful parents of such child.

3. If Cherokee Nation is the legal custodian of the child, the report also shall include any efforts on the part of the parent or parents to correct the conditions which caused the child to be adjudicated deprived. The report shall specifically recommend, giving reasons therefor, whether or not the parental rights of the parent or parents of the child should be terminated and the child placed for adoption, whether or not the child should remain in the home or if placed outside the home of the child's lawful parents, whether or not the child should remain outside the home or be returned to the home from which the child was removed. If it is determined that the child should be placed for adoption, foster parents may be considered eligible to adopt the child.

C. At each such review hearing, the Court shall specifically inquire as to the nature and extent of services being provided the child and parent or parents of the child and shall direct additional services be provided if necessary to protect the child from further physical, mental, or emotional harm.

In any review order, the Court shall further make a determination:

1. as to whether or not reasonable efforts have been made to provide for the return of the child to the child's own home. If reasonable efforts have failed or are not feasible, the Court shall make a finding that the efforts to reunite the family have failed, or are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child; and

2. where appropriate, when the child is age sixteen (16) or older, that services are being provided that will assist the child in making the transition from foster care to independent living.

D. The attorney representing a child whose case is being reviewed may submit a report to the Court for presentation at the review hearing to assist the Court in reviewing the placement or status of the child. The legal custodian shall not deny to a child the right of access to counsel and shall facilitate such access.

E. Cherokee Nation may not move any child from one foster home or institution to another, if the child has already been moved once since the last court hearing, without first obtaining the approval of the Court following a hearing into the reasons and necessity for moving the child. However, Cherokee Nation may move any child due to an emergency, in which case a hearing shall be

conducted, if requested in writing, within ten (10) days following the moving of the child concerning the reasons and necessity for moving the child. Cherokee Nation shall notify the attorney of the child, if any, whenever the placement of the child is changed and shall inform said attorney regarding the location of the child.

F. The case of every deprived child removed by court order from the custody of its lawful parent or parents shall be reviewed as provided for in this section.

G. Cherokee Nation shall place siblings together in the same placement unless conditions prohibit such placement. In the event siblings cannot be placed together Cherokee Nation shall at hearing show cause as to why siblings cannot be placed together.

§ 1117. Persons or agencies receiving custody—Rights and duties

A.1. Whenever the Court transfers custody of a child as provided in 10 CNCA § 1116, the person, institution, agency, or Department receiving custody shall have the right to, and shall be responsible for, the care and control of the child, and shall have the duty and authority to provide food, clothing, shelter, ordinary medical care, education, discipline for the child, and, in an emergency, to authorize surgery or other extraordinary care. Except for an emergency psychiatric admission pursuant to 10 CNCA § 1107(F), said person, institution, agency or department may:

a. provide or arrange for the provision of an inpatient mental health examination of such child only pursuant to a court order as provided by 10 CNCA § 1120,

b. provide or arrange for the provision of inpatient mental health care and treatment of such child only after the filing of a petition alleging the child to be a child in need of treatment and a finding by the Court that the child is eligible for inpatient mental health care and treatment.

Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient mental health services, including an outpatient mental health examination, counseling, educational, rehabilitative or other similar services to said child, as necessary and appropriate, in the absence of a specific court order for such services.

2. The medical care, surgery and extraordinary care shall be charged to the appropriate agency where the child qualifies for the care under law, rule, regulation or administrative order or decision.

3. Nothing in this subsection shall be interpreted to:

a. relieve a parent of the obligation to provide for the support of the child as otherwise provided by law; or

b. limit the authority of the Court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including mental health care or treatment, to the person, institution, agency or Department having custody of the child; or

c. abrogate the right of the child to any benefits provided through public funds for which the child is otherwise eligible.

4. No person, agency or institution shall be liable in a civil suit for damages for authorizing or not authorizing surgery or extraordinary care in an emergency, as determined by competent medical authority.

B. The person, institution, agency, or Department having legal custody of a child pursuant to an order of the Court shall receive notice of court proceedings regarding the child as provided in 10 CNCA §§ 1105 and 1115 and shall be allowed to intervene upon application as a party to all court proceedings pertaining to the care and custody of the child including, but not limited to: adjudication, disposition, review of disposition, and termination of parental rights.

§ 1118. Modification of decrees or orders

Any decree or order made under the provisions of this title may be modified by the Court at any time; provided, however, that an order terminating parental rights or an order certifying the juvenile as an adult may not be modified.

§ 1119. Religious faith of parents or child

In placing a child in the custody of an individual or of a private agency or institution, the Court shall, if at all possible, select a person or an agency or institution governed by persons of the same religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or, if the religious faith of the child is not ascertainable, then of the faith of either of the parents. However, it shall be left to the discretion of the judge to place children where their total needs will best be served.

§ 1120. Examination of child by physician or mental health professional—Order for care—Expense—Emergency—Investigation

A. After a petition under the provisions of this title has been filed, the Court may order the child to be examined and evaluated by a physician or qualified mental health professional to aid the Court in making the proper disposition concerning the child.

B. The report of an examination and evaluation of the child by a qualified mental health professional may be attached to a petition alleging a child to be a child in need of treatment at the time it is filed. If such report is not attached to the petition or if the Court finds the report to be inadequate to aid in the adjudication and disposition of the case, after a petition is filed alleging a child to be a child in need of treatment, the Court shall order the child to be examined and evaluated by a qualified mental health professional to aid the Court in making the proper adjudication and disposition of the child. The mental health professional shall submit a report of the examination and evaluation to the Court prior to the adjudicatory hearing and shall submit such other reports as the Court may order to aid the Court in the disposition of the case.

1. Whenever possible, the Court shall order the examination and evaluation to be conducted on an outpatient basis in or near the community in which the child resides at the time of such order. When an inpatient evaluation is required, the Court shall order the examination and evaluation to be conducted in the mental health facility nearest to the place where the child resides at the time of such order and which is approved by Cherokee Nation or the Commissioner of Mental Health and Substance Abuse Services as an appropriate facility for the inpatient examination and evaluation of a child alleged to be a child in need of treatment.

2. Whenever it appears that a child who is in the custody of Cherokee Nation as a deprived or delinquent child or a child in need of supervision may also be a child in need of treatment, Cherokee Nation shall arrange for the examination and evaluation of the child by a qualified mental health professional in order to determine if a petition alleging the child to be a child in need of treatment is warranted. The examination and evaluation shall, whenever possible, be conducted on an outpatient basis in or near the community in which the child is residing; if an inpatient examination and evaluation is required, it shall be conducted in the mental health facility appropriate for such inpatient evaluation and examination nearest to the community in which the child is residing.

3. Whenever, pursuant to the filing of a petition alleging a child to be a child in need of treatment, the Court receives a report of the inpatient examination and evaluation of the child by a qualified mental health professional, the Court shall immediately set a date for a hearing on the petition. Said hearing shall be within ten (10) judicial days following the receipt of the report by the Court.

C. Whenever a child concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the Court may order the parent or other person responsible for the care and support of the child to provide such care in a hospital or otherwise. If the parent or other person fails to provide such care, the Court may, after due notice, enter an order therefor, and the expense thereof, when approved by the Court, shall be a charge upon the Nation, but the Court may adjudge that the person having the duty under the law to support the child pay part or all of the expenses of such care. In an emergency the Court may, when health or condition of the child may require it, cause the child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution which will receive the child for like purpose, and consent to emergency treatment or surgery.

D. After adjudication and at the request of a judge in any juvenile proceeding, Cherokee Nation shall investigate the home conditions and environment of the child and the financial ability, occupation and earning capacity of the parent, legal guardian or custodian of the child. Upon request by the Court of a state, Cherokee Nation may conduct a similar investigation.

§ 1121. Care and maintenance of child—Orders for enforcement

A. In any hearing concerning the status of a child, the Court shall have authority to adjudge the parent or parents who have been served with notice of the hearing liable and accountable for the care and maintenance of any child or children, and to order the payment of funds for the care and maintenance of the child, including but not limited to all or some part of medical care and mental

health services, as authorized by law. The Court shall have all powers incident to such orders necessary for their enforcement, including the power and authority to require bond or other security for the payment of such order; and may resort to execution and the power of punishment for contempt for noncompliance with such order.

B. The Court shall have the right to increase, decrease, or otherwise modify its orders for care and maintenance, as the conditions or needs of the child or children may require and the ability of the person or persons held to pay may afford. The Court may order support payments to be made direct to the person, organization or institution having the care and custody of the child or children, or directly to the Clerk of the Court.

C. All such funds ordered and paid to the Clerk shall be accounted for; provided, that when payments are made in advance for any child, and custody of the Court is terminated before the end of the period, then the Clerk may refund, by proper voucher, the unused or unaccrued portion of such payment; or the refund may be authorized and paid on claim properly verified and approved by the Judge.

§ 1122. Penalties

A willful violation of any provision of an order of the Court issued under the provisions of this act shall constitute indirect contempt of Court and shall be punishable as such. Punishment for any such act of contempt shall not exceed a fine of Three Hundred Dollars (\$300.00), or imprisonment in the penal institution of Cherokee Nation or its contracted facility for not more than thirty (30) days, or both such fine and imprisonment.

§ 1123. Appeals

A. Any interested party aggrieved by any order or decree may appeal to the Supreme Court in the same manner as other appeals are taken to the Supreme Court of this Nation. An order either certifying a juvenile to stand trial as an adult or denying such certification shall be a final order, appealable when entered.

B. The record on appeal of an order of adjudication or of an order certifying or denying certification of a juvenile to stand trial as an adult shall be completed and the appeal perfected within sixty (60) days after the date of the order.

C. The pendency of an appeal thus taken shall not suspend the order of the District Court regarding a child, nor shall it discharge the child from the custody of that Court or of the person, institution or agency to whose care such child has been committed, unless the Supreme Court shall so order. The pendency of an appeal from an order of adjudication shall not prevent the District Court from holding a dispositional hearing unless the appellate court shall so order. The pendency of an appeal from an order certifying a juvenile to stand trial as an adult shall not prevent the commencement of criminal proceedings against the juvenile unless stayed by the judge who issued the order of certification or by the appellate court. If the Supreme Court does not dismiss the proceedings and discharge the child, it shall affirm or modify the order of the District Court and remand the child to

the jurisdiction of that Court for supervision and care; and thereafter the child shall be and remain under the jurisdiction of the District Court in the same manner as if such Court had made such order without an appeal having been taken.

§ 1123.1. Appellate titling of case by initials of child

In the published opinions of the appellate courts of this Nation in juvenile proceedings including, but not limited to, adoption and paternity proceedings and proceedings under the juvenile code, the initial of the child's surname shall be used rather than his name.

§ 1123.2. Time for filing petition—Completion of record—Briefing schedule

A. All appeals of cases involving deprived or allegedly deprived children shall be initiated by filing a petition in error in the Supreme Court within thirty (30) days of the order appealed from. The record on appeal shall be completed within sixty (60) days from the date of the order.

B. The briefing schedule is established as follows:

1. Appellant's brief in chief shall be filed twenty (20) days after the trial court clerk notifies all parties that the record is complete and such notice has been filed in the office of the Clerk of the Supreme Court;

2. Appellee's answer brief shall be filed fifteen (15) days after the appellant's brief in chief is filed;

3. Appellant's reply brief may be filed within ten (10) days after the appellee's answer brief is filed; and

4. Adjudication of the appeals described herein shall be expedited by the Supreme Court.

§ 1124. Mileage and witness fees

In proceedings under 10 CNCA § 1101 et seq., the Court may allow mileage as in civil actions to witnesses and reimbursement for expert witnesses but such shall not be tendered in advance of the hearing.

§ 1125. Records

The Court shall make and keep records of all cases brought before it. Such records shall be open to public inspection only by order of the Court to persons having a legitimate interest therein, except that all records of proceedings in adoption cases and all papers and books relating thereto shall remain confidential as provided by law. The Court shall devise and cause to be printed such forms for social and legal records and such other papers as may be required. Nothing in this section shall be construed to prohibit inspection by any person who is entitled to inspect such records pursuant to any provision of this title.

§ 1126. Reserved

§ 1127. Use of records or evidence in other causes or proceedings prohibited—Fingerprinting—Civil disability—Criminal status

A. A record of any child under this act, or any evidence given in such cause, shall not in any civil, criminal or other cause or proceeding in any Court be lawful or proper evidence against the child for any purpose whatever, except in subsequent cases against the same child under this act. The records of law enforcement officers concerning juveniles shall be maintained separate from records of arrests, and shall not be open to public inspection, or their contents disclosed, except by order of the Court.

B. If latent fingerprints are found during the investigation of an offense, a law enforcement officer may fingerprint a child for the purpose of comparing his fingerprints with the latent fingerprints, and the fingerprints may be sent to a law enforcement agency for comparison purposes only. If the comparison is negative or if the Court finds that the child did not commit the alleged offense, the child's fingerprint card and all copies of his fingerprints shall be destroyed immediately after the juvenile proceeding is completed unless the child is reported to a law enforcement agency as a missing child or a custodial parent, legal guardian or legal custodian of the child requests issuance of the fingerprint card to the parent, legal guardian, or legal custodian. If the child is reported to a law enforcement agency as a missing child, and only until the child is located, his fingerprints may be retained pursuant to the provisions of this section. If the Court finds that the child committed the alleged offense, or if the commission of the offense is admitted or not contested by the juvenile and his parents pursuant to an informal adjustment, deflection or diversion of the referral, his fingerprints may be retained either in a central state depository or in a local district court file which local depository may be a duly constituted law enforcement agency or agencies designated by the presiding judge of the juvenile docket.

C. No adjudication by the Court upon the status of a child in a juvenile proceeding shall operate to impose any of the civil disabilities ordinarily resulting from conviction of a crime, nor shall a child be deemed a criminal by reason of such adjudication, nor shall any arrest or detention under this chapter or any adjudication in a juvenile proceeding be deemed a detention or an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire, application, or any other public or private purposes; provided, however, that nothing herein shall prevent an adjudication in a juvenile proceeding:

1. from being considered in connection with the sentencing of said child should he be convicted in a criminal action after he has become an adult; or
2. from being used to show the bias, if any, of the child should he be a witness in any civil or criminal action either while a child or after he has become an adult.

D. Subsections (A) and (B) of this section shall not apply to the use, confidentiality and disposition of the records and fingerprints of a person who is sixteen (16) or seventeen (17) years old and charged with one of the crimes enumerated in 10 CNCA § 1104.2.

§ 1129. Liberal construction of act

This title shall be liberally construed, to the end that its purpose may be carried out, to wit:

1. That the care and custody and discipline of the child shall approximate, as nearly as may be, that which should be given by its parents, and that, as far as practicable, any delinquent child shall not be treated as a criminal.
2. That the public policy of this Nation is to assure adequate and appropriate care and treatment for any child, to allow for the use of the least restrictive method of treatment consistent with the treatment needs of the child and, in the case of delinquents, the protection of the public, to provide orderly and reliable procedures for the placement of a child alleged to be a child in need of treatment and to protect the rights of any child placed out of his home pursuant to law.

§ 1130. Termination of parental rights in certain situations

A. The finding that a child is delinquent, in need of supervision or deprived shall not deprive the parents of the child of their parental rights, but a Court may terminate the rights of a parent to a child in the following situations:

1. Upon a written consent of a parent, including a parent who is a minor, acknowledged as provided in 10 CNCA § 60.5(4), who desires to terminate his parental rights; provided that the Court finds that such termination is in the best interests of the child; or
2. A finding that a parent who is entitled to custody of the child has abandoned it; or
3. A finding that:
 - a. the child is deprived, as defined in this chapter, and
 - b. such condition is caused by or contributed to by acts or omissions of his parent, and
 - c. termination of parental rights is in the best interests of the child, and
 - d. the parent has failed to show that the condition which led to the making of said finding has not been corrected although the parent has been given three (3) months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The Court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the Court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the Court may return the child to the custody of its parent or guardian, subject to any conditions which it may wish to impose or the Court may place the child with an individual or an agency; or
4. A finding that a parent who does not have custody of the child has willfully failed to contribute

to the support of the child as provided in a decree of divorce or in some other court order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity; or

5. A conviction in a criminal action pursuant to the provisions of 21 CNCA or §§ 843, 845 [repealed], 1021.3, 1111 and 1123 or 10 O.S. §§ 7102 and 7115, 21 O.S. §§ 1021.3, 1111 and 1123, as amended, or a finding in a deprived child action either that:

a. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the Court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse; or

b. the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse; or

6. A conviction in a criminal action that the parent has caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic neglect of such sibling; or

7. A finding that all of the following exist:

a. the child is deprived, as defined in this chapter, and

b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and

c. the parent whose rights are sought to be terminated has been sentenced to a period of incarceration of not less than ten (10) years, and

d. the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past, and

e. termination of parental rights is in the best interests of the child.

Provided, that the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights; or

8. A finding that all of the following exist:

- a. the child is deprived as defined in this chapter, and
- b. custody of the child has been placed outside the home of a natural or adoptive parent, guardian or extended family member, and
- c. the parent whose rights are sought to be terminated has a mental illness or mental deficiency, as defined by 43A O.S. § 6–201, Article II, paragraphs f and g, as amended, which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities, and
- d. the continuation of parental rights would result in harm or threatened harm to the child, and
- e. the mental illness or mental deficiency of the parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve, and
- f. termination of parental rights is in the best interests of the child.

Provided, a finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his parental rights.

B. Unless otherwise provided for by law, any parent or legal custodian of a child who willfully omits or neglects, without lawful excuse, to perform any duty imposed upon such parent or legal custodian by law to furnish necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a crime. As used in this section, the duty to furnish medical attention shall mean that the parent or legal custodian of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or legal custodian is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted. Any person who leaves the state to avoid providing necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a crime. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer or traditional methods of healing, in accordance with the tenets and practice of a recognized church or religion for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules and regulations relating to communicable diseases and sanitary matters are not violated. Nothing contained herein shall prevent a Court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare. Psychiatric and psychological testing and counseling are exempt from the provisions of this act.

C. An order directing the termination of parental rights is a final appealable order.

D. A parent or guardian of a child may petition the Court to terminate the parental rights of a parent or the parents of a child for any of the grounds listed in paragraphs (1), (2) or (4) of

subsection (A) of this section. A prior finding by a Court that a child is delinquent, deprived or in need of supervision shall not be required for the filing of such petition by the parent or guardian.

§ 1131. Notice of hearing to terminate parental rights

A. A parent shall be given actual notice of any hearing to terminate his parental rights. The notice shall indicate the relief requested, and the hearing shall not be held until at least ten (10) days after the receipt of such notice, except with the consent of the parent, if known. If the Court finds that the whereabouts of the parent cannot be ascertained, it may order that notice be given by publication and a copy mailed to the last-known address of the parent. The notice shall be published once in a newspaper of general circulation in the county in which the action to terminate parental rights is brought, and the hearing shall not be held for at least ten (10) days after the date of publication of the notice. Except as otherwise provided by subsection (B) of this section, if a parent has not received actual notice of the hearing at which he is deprived of his parental rights, the order depriving him of those rights shall not become final for a period of six (6) months after the hearing. Nothing in this section shall prevent a Court from immediately taking custody of a child and ordering whatever action may be necessary to protect his health or welfare.

B. For the purpose of terminating parental rights, a father or putative father of a child born out of wedlock who has not, prior to commencement of a proceeding to terminate parental rights to such child, exercised parental rights and duties or whose consent is not required pursuant to 10 CNCA § 60.6 shall not be deemed to have parental rights to such child. The father or putative father shall be entitled to notice and an opportunity to be heard pursuant to this section and 10 CNCA § 29.1, except that the Court may:

1. waive notice to a putative father whose identity is unknown to the mother of the child born out of wedlock and the mother of the child signs a sworn statement before the Court that the identity of the father or putative father of the child is unknown and the Court is satisfied, after inquiry into the matter, that his identity is unknown and with due diligence could not be determined; the willful and deliberate falsification of said sworn statement shall be perjury and shall, upon conviction, be punishable as otherwise provided by law. The waiver of notice by the Court pursuant to this paragraph shall not constitute grounds to challenge an adoption of the child; and

2. when the identity of the father or putative father of a child born out of wedlock is known but his whereabouts is unknown and the Court, after inquiry, is satisfied that after diligent search his whereabouts remains unknown, order that notice be given by publication as provided in subsection (A) of this section and a copy mailed to the last-known address, if known, of such father or putative father. When notice is given by publication the order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.

§ 1132. Effect of termination of parental rights

The termination of parental rights terminates the parent-child relationship, including the parent's right to the custody of the child and his right to visit the child, his right to control the child's training and education, the necessity for the parent to consent to the adoption of the child and the

parent's right to the earnings of the child, and the parent's right to inherit from or through the child. Provided, that nothing herein shall in any way affect the right of the child to inherit from the parent.

§ 1133. Custody with authority to consent to adoption after termination of parental rights

A. After parental rights have been terminated, a Court may award custody of the child to any qualified person or agency with authority to consent to the adoption of the child, or the Court, in its discretion, may reserve the authority to consent to the adoption of the child; but a Court cannot consent to or authorize any person or agency to consent to the adoption of a child unless the rights of the parents have been terminated in accordance with the provisions of this act.

B. When an interlocutory or final decree of adoption has been rendered, a decree terminating parental rights cannot be challenged on any ground either by a direct or a collateral attack, more than three (3) months after its rendition. The minority of the natural parent shall not operate to prevent this time limit from running.

§ 1134. Action to adopt not to be combined with action to terminate parental rights

A. Except as otherwise provided for in subsection (B) of this section, an action to adopt a child may not be combined with an action to terminate parental rights and when the rights of a parent have been terminated, neither an interlocutory nor a final decree of adoption may be rendered until the decree terminating parental rights has become final.

B. This section shall not apply to:

1. a proceeding to adopt a child without the consent of a parent when the Court has determined that consent is not legally required; or
2. a proceeding to adopt a child born out of wedlock when the mother of the child is granting consent to the adoption and is a party to the action; or
3. proceedings pursuant to the provisions of 10 CNCA § 60.6.

§ 1135. Placement determination

A. It is the intent of the Tribal Council of Cherokee Nation that the placement of each child adjudicated to be a ward of the Court and placed in the custody of Cherokee Nation will assure such care and guidance of the child, preferably in his home, as will serve the spiritual, emotional, mental and physical welfare of the child and will preserve and strengthen the family ties of the child whenever possible, with recognition of the fundamental rights of parenthood and with recognition of the responsibility of the Nation to assist the family in providing necessary education and training and to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation and reintegration of juvenile delinquents and the protection of the welfare of the general public. In pursuit of these goals it is the intention of the Tribal Council to provide for

removing the child from the custody of parents only when the welfare of the child or the safety and protection of the public cannot be adequately safeguarded without removal; and when the child has to be removed from his family, to secure for the child custody, care and discipline consistent with the best interests and the treatment needs of the child.

B. Cherokee Nation shall review and assess each child committed to it to determine the type of placement consistent with the treatment needs of the child in the nearest geographic proximity to the home of the child and, in the case of delinquent children, the protection of the public. Such review and assessment shall include an investigation of the personal and family history of the child, and his environment, and any physical or mental examinations considered necessary.

C. In making such review, Cherokee Nation or the Department may use any facilities, public or private, which offer aid to it in the determination of the correct placement of the child.

§ 1135.1. Child in need of treatment—Care and placement—Evaluation—Inpatient care and treatment

A. Cherokee Nation may provide for the care of a child adjudicated to be a child in need of treatment who is in the custody of Cherokee Nation:

1. in the home of the child, the home of a relative of the child, a foster home, a group home or in any other community-based child care facility under the jurisdiction or licensure of Cherokee Nation or the Department of Human Services appropriate for the care of the child and shall provide for the outpatient care and treatment of the child; or

2. Cherokee Nation may place a child in need of treatment and found by a Court to be eligible to receive inpatient care and treatment as provided in 10 CNCA § 1116 in a government-operated treatment center or other public or private mental health facility. Cherokee Nation may place such child in a Cherokee Nation-approved inpatient treatment facility or with the Department of Mental Health and Substance Abuse Services upon the consent of the Commissioner of Mental Health and Substance Abuse Services or his designee. The Department shall establish a system for the regular review by a qualified mental health professional, at intervals of not more than sixty (60) days, of the case of each child in need of treatment in the custody of Cherokee Nation and receiving inpatient care and treatment to determine whether or not continued inpatient treatment is required and appropriate for the child. When such child no longer requires inpatient care and treatment in a mental health treatment facility, Cherokee Nation shall place the child as provided in paragraph 1 of this subsection.

B. In providing for the outpatient care and the treatment of children in its custody who have been adjudicated in need of treatment, Cherokee Nation shall utilize to the maximum extent possible and appropriate the services available through:

1. the guidance centers operated by Cherokee Nation, the federal government, or State Department of Health; and

2. the Department of Mental Health and Substance Abuse Services or Cherokee Nation; and
3. community-based private nonprofit agencies and organizations.

C. Nothing in this section shall be interpreted to require Cherokee Nation to place a child found by a Court to be eligible for inpatient mental health treatment in a mental health facility when Cherokee Nation determines that such placement is inappropriate or unnecessary for the treatment needs of the child.

§ 1136. Cherokee Nation to care for deprived children

It shall be the responsibility of Cherokee Nation to provide care for deprived children who are committed to the care of Cherokee Nation for custody or guardianship. Cherokee Nation may provide for the care of such children in the home of the child, the home of a relative of the child, in a foster home, group home, transitional living program, independent living program or in any other community-based facility established for the care of deprived children. A deprived child found to be a child in need of treatment and eligible for residential care and treatment, as provided in 10 CNCA § 1116, by the Court, may be placed in a Department of Human Services treatment center or other mental health facility.

§ 1137. Child adjudicated in need of supervision—Placement—Rehabilitative facilities—Residential care and treatment

A. Whenever a child who has been adjudicated by the Court as a child in need of supervision has been committed to Cherokee Nation, Cherokee Nation may place the child in the home of the child, the home of a relative of the child, foster home, group home, transitional living program, independent living program, community-based setting, rehabilitative facility or child care facility, or in a state school for the mentally retarded if eligible for admission thereto.

B. Cherokee Nation may establish, maintain, or contract one or more rehabilitative facilities to be used exclusively for the custody of children in need of supervision.

C. A child in need of supervision who has been found to be a child in need of treatment and to be eligible for residential care and treatment, as provided in 10 CNCA § 1116, by the Court, may be placed in a mental health facility contracted or deemed appropriate by the District Court.

§ 1138. Delinquent children—Intent of Tribal Council—Powers and duties of Cherokee Nation

A. It is the intent of the Tribal Council of this Nation to provide for the creation of all reasonable means and methods that can be established by the Nation for the prevention of delinquency and for the care and rehabilitation of delinquent children. It is further the intent of the Tribal Council that this Nation, through Cherokee Nation, establish, maintain and continuously refine and develop a balanced and comprehensive program for children who are potentially delinquent or are delinquent.

B. Whenever a child who has been adjudicated by the Court as a delinquent child has been committed to Cherokee Nation, Cherokee Nation may:

1. Place the child in a training school or other institution or facility maintained by a government for delinquent children if the child has:

a. exhibited seriously violent, aggressive or assaultive behavior; or

b. committed a crime which if committed by an adult under the laws of a state would be a felony involving violent, aggressive and assaultive behavior; or

c. habitually committed serious delinquent acts; or

d. committed multiple serious delinquent acts; to the extent that it is necessary for the protection of the public; or

2. Place the child in a facility maintained by Cherokee Nation or the State of Oklahoma for children, or in a foster home, group home, transitional living program or community residential center; or

3. Allow the child his liberty, under supervision, in an independent living program; or

4. Allow the child his liberty, under supervision, either immediately or after a period in one of the facilities referred to in paragraphs 1 and 2 of this subsection; or

5. Place the child in a school for mentally retarded, if the child is eligible for admission thereto; or

6. Place the child in any licensed private facility deemed by Cherokee Nation to be in the best interest of the child; or

7. Place the child in a government-operated treatment center or other mental health facility if the delinquent child has been found to be in need of treatment and to be eligible for residential care and treatment, as provided in 10 CNCA § 1116, by the Court.

§ 1139. Discharge of children adjudicated delinquent—Retaining custody

A. All children adjudicated delinquent and committed to Cherokee Nation shall be discharged at such time as Cherokee Nation determines there is a reasonable probability that it is no longer necessary, either for the rehabilitation and treatment of the child, or for the protection of the public, that Cherokee Nation retain legal custody. Following a hearing, the Court may also order that a child adjudged delinquent and committed to Cherokee Nation shall be discharged by Cherokee Nation provided the child is on parole status and the Court deems the discharge in the best interest of the child and public.

B. All children adjudged delinquent and committed to Cherokee Nation and not discharged under subsection (A) of this section shall be discharged when the child becomes eighteen (18) years of age, unless Cherokee Nation is authorized by the Court to retain custody of the child until nineteen (19) years of age. Upon motion of Cherokee Nation the Court, after notice to the delinquent child and to the parents and attorney of said child, may authorize Cherokee Nation to retain custody of the child until he reaches nineteen (19) years of age. If the Court sustains the motion of Cherokee Nation, the delinquent child during the extended period shall be considered as a child for purposes of receiving services from Cherokee Nation. If a criminal offense is committed by the individual during the extended period, said offense shall be considered as having been committed by an adult. Except to the extent necessary to effectuate the purposes of this section, an individual after age eighteen (18) is considered an adult for purposes of other applicable law.

C. Cherokee Nation shall not place a child under ten (10) years of age in an institution maintained for delinquent children.

§ 1140. Children becoming unmanageable and uncontrollable

If a child who has been adjudicated as a delinquent, a child in need of supervision, or deprived, and who has been committed to Cherokee Nation becomes unmanageable and uncontrollable while in the legal custody of Cherokee Nation, Cherokee Nation may return the child to the Court having original jurisdiction for further disposition or may provide information to the Prosecuting Attorney and request the filing of a petition alleging the child to be delinquent or in need of treatment, if such petition is warranted by the facts in the case.

§ 1141. Intake, probation and parole services

Cherokee Nation shall provide intake, probation and parole services for juveniles pursuant to the provisions of 10 CNCA § 602 and may enter into agreements to supplement probationary services to juveniles with the state, county or federal government. Cherokee Nation may participate in federal programs for juvenile probation officers, and may apply for, receive, use and administer federal funds for such purpose.

§ 1142. Cooperative agreements for education and training of children

Cherokee Nation may enter into cooperative agreements with any other federal, state, county, or local entity for the purpose of enhancing services, supplementing existing services and/or collaborating this services on behalf of Cherokee children and families. Moreover, Cherokee Nation may apply for, receive and administer federal, state funds as a result of any cooperative effort.

§ 1143. Commitment of children to institution—Delivery

When a child is committed to the custody of Cherokee Nation under the provisions of this act, the Court shall order the child to be delivered by law enforcement offices to an institution, or other place, designated by the Court.

§ 1144. Causing, aiding, abetting or encouraging minor to become delinquent, in need of supervision, or dependent and neglected—Penalty

Any person who knowingly and willfully:

1. causes, aids, abets or encourages a minor to be, to remain or to become delinquent, in need of supervision or dependent and neglected; or

2. omits the performance of any duty, which act or omission causes or tends to cause, aid, abet, or encourage any minor to be delinquent, in need of supervision or dependent and neglected, within the purview of 10 CNCA § 1101(2), (3) or (4),

upon conviction, shall be guilty of a crime and, as applicable, shall be punished pursuant to the provisions of 21 CNCA § 856, 858.1 or 858.2.

§ 1145. Cherokee Nation to serve as legal guardian

Whenever parental rights of a child have been terminated and the child is committed to Cherokee Nation, Cherokee Nation shall serve as the legal guardian of the estate of the child, until another guardian is legally appointed, for the purpose of preserving the child's property rights, securing for the child any benefits to which he may be entitled under social security programs, insurance, claims against third parties, and otherwise, and receiving and administering such funds or property for the care and education of the child.

§ 1146. Escape or run away from institutional placement

Upon discovery that a child has escaped or run away from an institutional placement, Cherokee Nation may notify any law enforcement officer or agency in this state who shall use any reasonable method to notify law enforcement agencies and personnel. Upon receiving notification that a child has escaped or run away from an institutional placement, all law enforcement agencies and personnel shall be authorized to apprehend and detain said child. Escaping or running away by an adjudicated delinquent child from institutional placement shall be considered by the Court of juvenile jurisdiction as a delinquent act.

§ 1147. Admissibility of prerecorded statements of child age twelve or under who is victim of abuse

A. This section shall apply only to a proceeding affecting the parent-child, guardian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused, and shall apply only to the statement of that child or other child witness.

B. The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The Court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability; no corroboration of the child's statement is necessary for admission;
2. No attorney for any party is present when the statement is made;
3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;
6. Every voice on the recording is identified;
7. The person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party; and
8. Each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

§ 1148. Taking testimony of child age twelve or under in room other than courtroom—Recording

A. This section shall apply only to a proceeding affecting the parent-child, guardian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused, and shall apply only to the testimony of that child or other child witness.

B. The Court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the Court, the finder of fact and the parties to the proceeding. Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the equipment may be present in the room with the child during his testimony. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them.

C. The Court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the Court, the finder of fact and the parties to the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (B) of this section may be present during the taking of the

child's testimony. Only the attorneys for the parties may question the child, and the persons operating the equipment shall be confined from the child's sight and hearing. The Court shall ensure that:

1. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
2. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
3. Every voice on the recording is identified; and
4. Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

D. If the testimony of a child is taken as provided by subsections (B) or (C) of this section, the child shall not be compelled to testify in Court during the proceeding.

§ 1149. Aggravated assault and battery upon employee of facility for delinquent children

A. Every person who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of an employee of a facility maintained primarily for delinquent children, while the employee is in the performance of his duties, shall upon conviction thereof be guilty of a crime.

B. This act shall not supersede any other act or acts, but shall be cumulative thereto.

ARTICLE III. AREA CHILDREN'S DETENTION CENTERS

§ 1301. Establishment of area detention centers

Cherokee Nation may establish and maintain area children's detention centers where children committed thereto by District Judges or placed therein by peace officers may be kept, temporarily, subject to orders of the District Courts. Any such center may be maintained at a institution under the jurisdiction of Cherokee Nation; or may, by contractual arrangement, be maintained at a facility established for the detention of juveniles.

§ 1403.1. Rules, regulations, policies and procedures regarding children in Cherokee Nation custody

A. Cherokee Nation shall promulgate written rules and regulations, outline policies and procedures governing the operation of those institutions and other facilities operated by Cherokee Nation wherein juveniles may be housed. Said policies and procedures shall include, but not be limited to, standards of cleanliness, temperature and lighting, availability of medical and dental care,

provision of food, furnishings, clothing and toilet articles, supervision, appropriate and permissible use of restriction and confinement, procedures for enforcing rules of conduct consistent with due process of law and visitation privileges.

B. The policies prescribed shall, at a minimum, ensure that:

1. A child shall not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or solitary confinement;
2. A child shall have the opportunity to participate in physical exercise each day;
3. A child shall be allowed daily access to showers and his own clothing or individualized clothing which is clean;
4. A child shall have constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the presence of the child, without being read, to inspect for contraband;
5. A child shall have reasonable opportunity to communicate and to visit with his family on a regular basis, and to communicate with persons in the community;
6. A child shall have immediate access to medical care as needed, and shall receive necessary psychological and psychiatric services;
7. A child in the custody or care of Cherokee Nation shall be provided access to education including teaching, educational materials and books, provided, that such policies shall provide emphasis upon basic literacy skills, including but not limited to curricula requirements stressing reading, writing, mathematics, science, vocational-technical education, and other courses of instruction designed to assure that such children will be capable of being assimilated into society as productive adults capable of self-support and full participation;
8. A child shall have reasonable access to an attorney upon request;
9. A child shall be afforded a grievance procedure, including an appeal procedure; and
10. A child's mental health needs and mental well-being will be met, protected and served through provision of guidance, counseling and treatment programs, staffed by competent, professionally qualified persons, serving under the supervision of licensed psychologists, psychiatrists or licensed clinical social workers.

§ 1403.2. Use of physical force—Mechanical restraints

A. Use of physical force in institutions and other facilities operated by Cherokee Nation wherein children are housed shall be permitted only under the following circumstances:

1. For self-protection;
2. To separate juveniles who are fighting;
3. To restrain juveniles in danger of inflicting harm to themselves or others; or
4. To restrain juveniles who have escaped or who are in the process of escaping.

B. When use of physical force is authorized, the least force necessary under the circumstances shall be employed.

C. Staff members of residential and nonresidential programs who are assigned to work with juveniles shall receive written guidelines on the use of physical force, and that, in accordance with staff disciplinary procedures, loss of employment may result if unauthorized use of physical force is proven.

D. Use of mechanical restraints in institutions and other facilities operated by Cherokee Nation wherein children are housed shall be minimal and shall be prohibited except as specifically provided for in the regulations of Cherokee Nation.

§ 1404.1. Juvenile Offender Victim Restitution Work Program

There is hereby created a program of juvenile crime victim restitution to be administered by Cherokee Nation. The program shall be known as the "Juvenile Offender Victim Restitution Work Program".

1. Cherokee Nation shall promulgate rules and regulations necessary for the implementation of the provisions of this act.

2. The programs developed under the provisions of this act shall provide restitution to a victim by requiring the child to work or provide a service for the victim, or to make monetary restitution to the victim from money earned from such a program. The supervised work or service program shall not deprive the child of schooling which is appropriate to his age, need, and specific rehabilitative goals. Provided, such program shall not prohibit the child from fulfilling his restitution obligation through jobs he has found, by performing volunteer services for the community, or by doing work for the victim.

3. Agreements for participation in the programs under this act may include restitution not in excess of actual damages caused by the child which shall be paid from the net earnings of the child received through participation in a constructive program of service or education acceptable to the child, the victim, Cherokee Nation, the prosecuting attorney and/or the District Court. During the course of such service, the child shall be paid no less than the federal minimum wage. In considering such agreement, Cherokee Nation, the Prosecuting Attorney and/or the District Court shall take into account the child's age, physical and mental capacity. The service shall be designed to relate to the child a sense of responsibility for the injuries caused to the person or property of

another. If a petition has not been filed, the prosecuting attorney shall approve the nature of the work, the number of hours to be spent performing the assigned tasks and shall further specify that as part of a plan of treatment and rehabilitation, that fifty percent (50%) or more of the child's net earnings be used for restitution in order to provide positive reinforcement for the work performed. If a petition has been filed, the District Court may approve the nature of the work, the number of hours to be spent performing the assigned tasks and may further specify that as part of a plan of treatment and rehabilitation, that fifty percent (50%) or more of the child's net earnings be used for restitution.

4. Cherokee Nation may subsidize the employment of a child for the purposes of participation in a work program as provided by this section.

5. Any person, entity or political subdivision who is an employer of children or recipient of services either of which are under an agreement with the Juvenile Offender Victim Restitution Work Program shall not be liable for ordinary negligence for:

a. Damage to the property of the child or injury to the child except as to the liability established by the Workers' Compensation Act, 85 CNCA § 1 et seq., if the child is covered thereunder; or

b. Damage to any property or injury to any person;

which results from the services of the child pursuant to this act.

§ 1405. Enforcement

The prosecuting attorney and any other law enforcement official having jurisdiction, shall have the authority to bring civil actions against any person, officer or department, board, commission or other entity, to enforce the provisions of 10 CNCA § 1101 et seq. or to enforce any of the laws of this Nation protecting or applying in any way to children removed from the custody of the lawful parent or parents of the child by a disposition order of the Court.

§ 1406. Institutional abuse

A. The malicious or wanton neglect, or sexual, physical or emotional abuse perpetrated by any person upon a child in the care or custody, or under the supervision of Cherokee Nation including employees of any agency, on duty or not, shall be guilty of a crime.

B. Every co-worker, supervisor, supervisee or other individual witnessing the abuse or neglect or having reason to suspect abuse or neglect, has a duty to notify the Cherokee Nation Marshal, Cherokee Nation Department of Children's Services or its successor, and the Oklahoma Child Abuse Hotline. This report shall be made directly without notice to the person suspected of abuse, including the supervisor of an employee. It shall be a crime to fail to report abuse described in this section.

§ 1407. Child protection

This act may be cited as the "Cherokee Nation Child Protection and Family Violence Prevention Act."

1. Findings and purpose.

a. Findings. The Council of Cherokee Nation, after careful review of the problem of child abuse on Indian country, finds that:

i. Incidents of abuse of children in Indian country are grossly under-reported,

ii. There is no resource that is more vital to the continued existence and integrity of Cherokee Nation than its children and Cherokee Nation has a direct interest, as trustee, in protecting Indian children who are citizens of, or are eligible for citizenship in Cherokee Nation.

b. Purposes. The purposes of this act are to:

i. Require that reports of abused Indian children are made to the appropriate authorities in an effort to prevent further abuse,

ii. Authorize such other actions as are necessary to ensure effective child protection in Indian country,

iii. Provide for the treatment and prevention of incidents of family violence,

iv. Provide minimum standards of character and suitability for employment or volunteerism for individuals whose duties and responsibilities allow them regular contact with or control over Indian children,

v. Authorize other actions necessary to ensure effective child protection on Indian country.

2. Definitions. For the purposes of this act, the term:

a. "**Abuse**" means harm or threatened harm to a child's health, safety or welfare by a person responsible for the child's health, safety or welfare, including sexual abuse and sexual exploitation;

b. "**Bureau**" means the Bureau of Indian Affairs of the Department of the Interior;

c. "**Child**" means any person under the age of eighteen (18) years, except any person convicted of a crime where statute requires that persons charged with such crimes must be considered adults or any person who has been certified as an adult and convicted of a felony;

d. "**Child advocacy center**" means an entity that is a full member in good standing with Cherokee Nation or the State of Oklahoma's standard for accreditation;

e. **"Child protective services worker"** means a person employed by the Department with sufficient experience or training as determined by the Department in child abuse prevention and identification;

f. **"Confirmed report—court intervention"** means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department finds that the child's health, safety or welfare is threatened, and court intervention is being recommended;

g. **"Confirmed report—services recommended"** means a report which is determined by a child protective services worker, after an investigation and based upon some credible evidence, to constitute child abuse or neglect which is of such a nature that the Department recommends prevention and intervention-related services for the parents or persons responsible for the care of the child or children, but for which initial court intervention is not required;

h. **"Department"** means the Cherokee Nation Department of Children, Youth, and Family Services' Indian Child Welfare Program;

i. **"Family violence"** means any act, or threatened act, of violence, including any forceful detention of an individual, which:

i. results, or threatens to result, in physical or mental injury, and

ii. is committed by an individual against another individual:

(a) to whom such person is or was, related by blood or marriage or otherwise legally related, or

(b) with whom such person is, or was, residing.

j. **"Harm or threatened harm to a child's health or safety"** includes, but is not limited to:

i. nonaccidental physical or mental injury,

ii. sexual abuse,

iii. sexual exploitation,

iv. neglect,

v. failure or omission to provide protection from harm or threatened harm, or

vi. abandonment.

k. **"Indian"** means any individual who is a member of an Indian tribe or is eligible for membership in an Indian tribe.

l. **"Indian child"** has the meaning given to such term by Section 4(4) of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1903(4)).

m. **"Indian country"** has the meaning given to such term by 18 U.S.C. § 1151.

n. **"Investigation"** means an approach utilized by the Department to respond to reports of alleged child abuse or neglect which, according to priority guidelines established by the Department, constitute a serious and immediate threat to the child's health or safety. An investigation includes, but is not limited to, the following elements:

i. an evaluation of the child's safety or welfare,

ii. a determination whether or not child abuse or neglect occurred, and

iii. a determination regarding the family's need for prevention and intervention-related services;

o. **"Local child protective services agency"** means that agency of the federal government, of a state, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country.

p. **"Local law enforcement agency"** means that federal, tribal, or state law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

q. **"Neglect"** means failure or omission to provide:

i. adequate food, clothing, shelter, medical care, and supervision,

ii. special care made necessary by the physical or mental condition of the child, or

iii. abandonment.

r. **"Person responsible for a child's health, safety or welfare"** includes a parent; a legal guardian; a custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program; or an owner, operator, volunteer, or employee of a child care facility;

s. **"Prevention and intervention-related services"** means community-based programs that serve children and families on a voluntary and time-limited basis to help reduce the likelihood or incidence of child abuse and neglect.

t. **"Related assistance"**:

i. includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate healthcare services (including alcohol and drug abuse treatment), and

ii. may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents.

u. "**Secretary**" means the Secretary of the Interior.

v. "**Service**" means the Indian Health Service of the Department of Health and Human Services.

w. "**Services not needed determination**" means a report in which a child protective services worker, after an investigation, determines that there is no identified risk of abuse or neglect;

x. "**Services recommended determination**" means a report in which a child protective services worker, after an investigation, determines the allegations to be unfounded or for which there is insufficient evidence to fully determine whether child abuse or neglect has occurred, but one in which the Department determines that the child and the child's family could benefit from receiving prevention and intervention-related services;

y. "**Sexual abuse**" includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety or welfare;

z. "**Sexual exploitation**" includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's health, safety or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, by a person responsible for the child's health, safety or welfare;

aa. "**Shelter**" means the provision of temporary refuge and related assistance in compliance with applicable federal and Tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents.

3. Reporting procedures; report to local law enforcement agency.

a. Any person who is:

i. a physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

ii. a teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, federal, public or private school,

iii. an administrative officer, supervisor of child welfare and attendance, or truancy officer of any

tribal, federal, public or private school,

iv. a child day care worker, HeadStart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

v. a psychiatrist, psychologist, or psychological assistant,

vi. a licensed or unlicensed marriage, family, or child counselor,

vii. a person employed in the mental health profession, or

viii. a law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;

b. who knows, or has reasonable suspicion, that:

i. a child was abused in Indian country, or

ii. actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and

c. fails to immediately report such abuse or actions described in paragraph b of this subdivision to the local child protective services agency or local law enforcement agency, shall be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned for not more than six (6) months, or both.

d. Any person who supervises, or has authority over, a person described in this subdivision, who inhibits or prevents that person from making the report described in this subdivision, shall be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned for not more than six (6) months, or both.

e. For purposes of this section, the term:

i. "**Abuse**" includes:

(a) any case in which a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and such condition is not justifiably explained or may not be the product of an accidental occurrence, and

(b) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

ii. "**Child**" means any person under the age of eighteen (18) years, except any person convicted of a crime where statute requires that persons charged with such crimes must be considered adults or any person who has been certified as an adult and convicted of a felony;

iii. **"Local child protective services agency"** means that agency of the federal government, of a state, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and

iv. **"Local law enforcement agency"** means that federal, tribal, or state law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

f. Any person making a report described in this subdivision which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

g. Notification of child abuse reports:

i. When a local law enforcement agency or local child protective services agency receives an initial report from any person of:

(a) the abuse of a child in Indian country, or

(b) actions which would reasonably be expected to result in abuse of a child in Indian country,

the receiving agency shall immediately notify appropriate officials of the other agency of such report and shall also submit, when prepared, a copy of the written report required under paragraph (h) of this subdivision to such agency.

ii. Where a report of abuse involves an Indian child or where the alleged abuse is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, shall immediately report such occurrence to the Federal Bureau of Investigation.

h. Written report of child abuse:

i. Within thirty-six (36) hours after receiving an initial report as described in this subdivision, the receiving agency shall prepare a written report which shall include, at a minimum, if available:

(a) the name, address, age, and sex of the child that is the subject matter of the report,

(b) the grade and the school in which the child is currently enrolled,

(c) the name and address of the child's parents or other person responsible for the child's care,

(d) the name and address of the alleged offender,

(e) the name and address of the person who made the report to the agency,

(f) a brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse, and

(g) any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

ii. (a) Any local law enforcement agency or local child protective services agency that receives a report alleging abuse described in this subdivision shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.

(b) Upon completion of the investigation of any report of alleged abuse that is made to a local law enforcement agency or local child protective services agency, such agency shall prepare a final written report on such allegation.

j. Confidentiality of informant: The identity of any person making a report described in this subdivision shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a state or the federal government who needs to know the information in the performance of such employee's duties.

4. Confidentiality. Agencies of any Indian tribe, of any state, or of the federal government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any state, or the federal government that need to know the information in performance of their duties. For purposes of this section, Indian tribal governments shall be treated the same as other federal government entities.

5. Waiver of parental consent.

a. Examination and interviews. Photographs, x-rays, medical examinations, psychological examinations, and interviews of an Indian child alleged to have been subject to abuse in Indian country shall be allowed without parental consent, if local child protective services or local law enforcement officials have reason to believe the child has been subject to abuse.

b. Interviews by law enforcement and child protective services officials. In any case in which officials of the local law enforcement agency or local child protective services agency have reason to believe that an Indian child has been subject to abuse in Indian country, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian.

c. Protection of child. Examinations and interviews of a child who may have been the subject of abuse shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child.

d. Court order. Upon a finding of reasonable suspicion that an Indian child has been the subject of abuse in Indian country, a judge of the District Court may issue an order enforcing any provision of this action.

6. Character investigation.

a. The Cherokee Nation Human Resources Department shall conduct an investigation of the character of each individual who is employed by, or is being considered for employment by, is subject to the supervision of, or receives funding from Cherokee Nation, in a position that involves regular contact with, or control over, Indian children.

b. Cherokee Nation shall employ individuals in those positions having regular contact with or control over Indian children only if the individuals meet standards of character regarding care, custody, and safety of children established by the Human Resources Department subject to approval of the Principal Chief.

c. i. The Human Resources Department shall establish a list of positions at Cherokee Nation which involve regular contact with or control over Indian children.

ii. The positions listed by the Human Resources Department must include, at a minimum, any employee or volunteer of a children's residential facility, any position providing out-of-home care, education or services to children. The position list shall also include, but not be limited to:

(a) adults responsible for administration or direct supervision of staff who have regular contact with or control over Indian children,

(b) any staff person, volunteer, or official of the Nation who engages in regular contact with children as part of their duties with the Nation, and

(c) any staff person, volunteer, or official of the Nation who engages in activities with children where the activities include overnight stays with children.

iii. The following may be excluded from the character investigation requirement:

(a) A volunteer providing time-limited specialized services if this person is directly supervised by an individual who has cleared a character investigation, and the volunteer spends no more than sixteen (16) hours per week engaging in activities with children, and the volunteer does not spend any overnights with the children, and the volunteer is not left alone with children in care,

(b) A student enrolled or participating at an accredited educational institution if the student is directly supervised by an individual who has cleared a character investigation, the facility has an agreement with the educational institution concerning the placement of the student, and the volunteer does not spend any overnights with the children, and the student spends no more than sixteen (16) hours per week engaging in activities with children, and the student is not left alone with children in care,

(c) A volunteer who is a relative, legal guardian, or foster parent of a client being provided services by the Nation shall not be subject to the character investigation requirement when the volunteer is engaging in activities related to the services being provided to his/her child unless the volunteer is required to spend an overnight with the children in which case, he/she must be cleared through a character investigation,

(d) A contracted repair person retained by a facility where children are served, if not left alone with children in care, shall be exempt from the requirements of this subdivision,

(e) Any person similar to those described in this subdivision, as defined by Human Resources.

d. The Human Resources Department shall establish procedures for determining suitability for employment and efficiency of service as mandated by the Indian Child Protection and Family Violence Prevention Act and shall include in said procedures standards of character to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes or acted in a manner that placed others at risk or raised questions about their trustworthiness:

i. The Human Resources Department's determinations of suitability shall measure the fitness or eligibility of an applicant, volunteer, or employee for a particular position. Suitability for employment does not evaluate an applicant's education, skills, knowledge, experience, etc.; rather, it requires that the Human Resources Department investigate the background of each applicant, volunteer, and employee to:

(a) Determine the degree of risk the applicant, volunteer, or employee brings to the position, and

(b) Certify that the applicant's, volunteer's, or employee's past conduct would not interfere with his or her performance of duties, nor would it create an immediate or long-term risk for any Indian child.

ii. Efficiency of service procedures shall verify that the applicant or employee is able to perform the duties and responsibilities of the position, and his or her presence on the job will not inhibit other employees or the agency from performing their functions.

e. The Human Resources Department shall use character traits and past conduct to determine whether an applicant, volunteer, or employee can effectively perform the duties of a particular position without risk of harm to others. Minimum standards of character require that no applicant, volunteer, or employee will be placed in a position with regular contact with or control over Indian children if he or she has been found guilty of or entered a plea of nolo contendere or guilty to any offense under federal, state, or tribal law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, crimes against persons, an offense involving a child victim, other sex crimes, or a drug-related felony. Minimum standards of character shall also require that no applicant, volunteer, or employee will be placed in a position with regular contact with or control over Indian children if the individual has resorted to physical

punishment or mistreatment while working with children even if a criminal conviction has not been obtained.

f. An applicant, volunteer, or employee shall be disqualified from consideration or continuing employment or volunteer work where the employment or work requires regular contact with or control over children if it is found that he or she does not meet the minimum standards listed herein. Elected officials shall be disqualified from engaging in any activities and work, whether as part of their duties or as volunteers, where they would have regular contact with or control over children.

g. An applicant, volunteer, official, or employee may be disqualified from consideration or continuing employment or volunteer work where the employment or work requires regular contact or control over children if it is found that:

i. The individual's misconduct or negligence interfered with or affected a current or prior employer's performance of duties and responsibilities,

ii. The individual's criminal or dishonest conduct affected the individual's performance or the performance of others,

iii. The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment,

iv. The individual has refused to furnish testimony or cooperate with an investigation,

v. The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position or would directly threaten the property or safety of others,

vi. The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation,

vii. The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs,

viii. While working with children, the individual has resorted to physical punishment or mistreatment,

ix. The individual fails to demonstrate good judgment as evidenced by prudent and responsible behavior that reasonably ensures the health and safety of children in care.

h. A determination that an individual who is currently employed by the Nation is disqualified for continuing employment pursuant to this section shall be cause for termination of such employee. An individual who is an official of the Nation or who is a volunteer and is determined to be disqualified shall be prohibited from engaging in any activities and work on behalf of the Nation or

where children in the Nation's care are involved and where they would have regular contact with or control over children.

§ 1611. Pleading or affidavit—Oath—Information required

A. Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

1. He has participated, as a party, witness, or in any other capacity, in any other litigation concerning the custody of the same child in this Court or any state, tribal or federal court;
2. He has information of any custody proceeding concerning the child pending in any court including tribal, state or federal.
3. He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

B. If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the Court. The Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Court's jurisdiction and the disposition of the case.

C. Each party has a continuing duty to inform the Court of any custody proceeding concerning the child in this or any other state of which he obtained the information during this proceeding.

TITLE 11

CITIZENSHIP

CHAPTER 1

GENERAL PROVISIONS

§ 1. Title

This title shall be known as the "Cherokee Nation Citizenship Act."

§ 2. Purpose

The purpose of this act is to establish the policies and procedures governing the issuance of tribal citizenship.

§ 3. Definitions

A. **"Adopted person"** means a person whose biological parents' parental rights have been awarded to another or other persons pursuant to court order, judgment or decree, or an orphaned person who has been formally adopted by another person or other persons in accordance with the law. **"Adoptive parent"** means a person who has been awarded permanent care, custody and parental rights of another person pursuant to a final court order, judgment or decree of adoption.

B. **"Applicant"** means a person submitting an application for enrollment in Cherokee Nation.

C. **"Base roll"** means a specific list of individuals used for determining tribal citizenship. One must prove back directly to an individual who is listed by blood on a base roll. The base roll as used herein means those final rolls otherwise known as the Dawes Commission Rolls or the Final Rolls. The Final Rolls were closed in 1907. Those Final Rolls by Blood used for citizenship purposes are (1) Cherokees by Blood, (2) Cherokee Minors by Blood, (3) Delaware Cherokees, and (4) Shawnee Cherokees.

D. **"Certificate of Degree of Indian Blood"** means the official document issued by the Bureau of Indian Affairs (BIA) stating a person's degree of Indian blood. The CDIB is an acceptable document used to meet the necessary evidence requirements. The CDIB is not an enrollment/citizenship document.

E. **"Cherokee Register"** means the current citizenship roll of the Nation and is maintained by the Registrar.

F. **"Citizen," "enrolled citizen" and "tribal citizen"** mean any person who, having met all requirements to be a citizen of Cherokee Nation under Article III of the Constitution [now Article IV], is enrolled on the Cherokee Register in accordance with the provisions of this Title, except that the term **"citizen"** also includes any original enrollee and any newborn child who qualifies for citizenship under the provisions of 11 CNCA § 11A, whether or not such enrollee or child has been enrolled on the Cherokee Register. Provided, however, any such newborn child shall no longer be a citizen when the period of his or her temporary citizenship expires as provided in 11 CNCA § 11A unless the child is otherwise enrolled on the Cherokee Register in accordance with the provisions of 11 CNCA §§ 11, 12, 13 and 14.

G. **"Direct ancestors"** means those persons who are the biological parents, grandparents, great-grandparents, etc., through whom enrollment rights are claimed. Collateral relations such as brothers, sisters, nieces, nephews, cousins, etc., are not direct ancestors. **"Direct descendant"** means a person who is the biological child, grandchild, great-grandchild, etc., of a direct ancestor who is or was an original enrollee.

H. **"Enrollment"** means the process for applying to be formally recognized or registered as a citizen of Cherokee Nation.

I. **"Member"** means, for the purposes of this title, a citizen as defined in this section.

J. "**Nation**" means Cherokee Nation.

K. "**Necessary evidence**" means the documents that clearly establish relationships from one generation to another and that the person has a direct ancestor on the Dawes Rolls. These documents must be state-certified copies of the original birth and/or death records. These records are issued by state vital statistics offices. Other acceptable records are court-ordered determinations or a CDIB issued by the BIA.

L. "**Original enrollee**" means an individual whose name is listed on the Final Rolls.

M. "**Registrar**" means the person who has the immediate administrative jurisdiction over the affairs of registration for enrollment/citizenship.

N. "**Registration Committee**" means the Registrar and two assistants.

O. "**Sponsor**" means a person who is acting on behalf of a minor or an incompetent adult in (i) submitting an application for tribal citizenship, (ii) requesting the release of records or information pursuant to 11 CNCA § 33, (iii) requesting and submitting a tribal citizenship relinquishment form pursuant to 11 CNCA § 34, or (iv) any other dealings with the Registrar which relate in any respect to tribal citizenship; and

1. in the case of a minor, a biological parent of such minor whose parental rights relating to the minor have not been terminated by a court of law, or a duly-appointed legal guardian, adoptive parent, child welfare social worker, or other representative with power and authority over the care, custody and welfare of such minor; or

2. in the case of an incompetent adult, a duly-appointed legal guardian or other representative with power and authority over the affairs, care, custody and welfare of such incompetent adult; or

3. whenever acting on behalf of either a minor citizen or an incompetent adult citizen, and subject to the provisions of 11 CNCA § 34(A), any adult person determined by the Registrar to have unambiguous authority in writing to act on behalf of the minor or incompetent adult for tribal citizenship purposes signed by a person who is qualified to be a sponsor under paragraph (1) or (2) of this subsection.

The Registrar may require any person purporting to be the Sponsor of a minor or incompetent adult to furnish any and all documents, written or oral statements, affidavits, or court records which, at the discretion of the Registrar, may be necessary to demonstrate that the person is qualified to act as a Sponsor pursuant to this subsection. Provided, however, the Tribal citizenship of any person who otherwise meets the requirements of citizenship in Cherokee Nation and has been enrolled on the Cherokee Register pursuant to this Title shall not be revoked or rendered invalid for the reason that his or her application for Tribal citizenship was submitted by a person not qualified to act as a Sponsor under this section.

P. **"Tribal citizenship relinquishment form"** means any form approved for use by the Registrar in connection with the relinquishment of a person's citizenship pursuant to the provisions of this Title.

Q. **"Tribal membership"** and **"tribal citizenship"** mean a person's status as a citizen of Cherokee Nation.

CHAPTER 2

POLICIES AND PROCEDURES FOR CITIZENSHIP APPLICATIONS

§ 11. Requirements of the applicant

A. An applicant or sponsor has the burden of proof to establish the eligibility of the applicant.

B. An applicant or sponsor who knowingly files false or fraudulent information will be rejected for enrollment and may be subject to criminal prosecution.

§ 11A. Temporary automatic citizenship of newborn children

A. This section 11A is enacted as an amendment to the Cherokee Nation Citizenship Act for the specific purpose of protecting the rights of Cherokee Nation under the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

B. Notwithstanding any provisions of this Title to the contrary, every newborn child who is a direct descendant of an original enrollee shall be automatically admitted as a citizen of Cherokee Nation for a period of two hundred forty (240) days following the birth of the child. No request or application for tribal citizenship or other documentation need be submitted or delivered to the Registrar as a prerequisite to the temporary tribal citizenship of a child under this section. Such temporary tribal citizenship shall be effective automatically from and after the birth of the child for all purposes although the name of the child is not entered on the Cherokee Register.

C. The temporary tribal citizenship granted to a child pursuant to subsection (A) of this section shall automatically expire without notice to the child or to the sponsor or any other interested person, at the end of the two hundred forty- (240) day period following the child's birth. Any citizen whose temporary tribal citizenship has expired pursuant to this section may apply for citizenship pursuant to 11 CNCA §§ 11, 12, 13 and 14.

D. The Registrar may, at the request of Cherokee Nation Children's Services, on his own initiative or pursuant to 11 CNCA § 13(C), determine whether or not a child qualifies for temporary tribal citizenship pursuant to this section. A determination by the Registrar that such child does not so qualify may be appealed by a sponsor in accordance with 11 CNCA §§ 21 through 27, inclusive.

§ 12. Citizenship requirements

A. Tribal citizenship is derived only through proof of Cherokee blood based on the Final Rolls.

B. The Registrar will issue tribal citizenship to a person who can prove that he or she is an original enrollee listed on the Final Rolls by Blood or who can prove to at least one direct ancestor listed by blood on the Final Rolls.

§ 13. Procedures

A. Applications for tribal citizenship should be completed by the applicant. A sponsor may complete the application, if the person is legally incompetent or a minor child.

B. Requests for applications for tribal citizenship should be made to the Registrar.

C. If the Registrar determines that the person has failed to submit acceptable documentation to establish his or her identity as the tribal citizen named in the records or his or her relationship to an ancestor by blood named in the records, the Registrar must deny the request. The denial must be in writing and mailed by certified mail. It must be received by the addressee only and a return receipt requested. The denial letter shall explain fully the reason(s) for rejecting the application and the right of appeal of the applicant.

§ 14. Documentation

A. Tribal citizenship applications must be completed and submitted with required documentation.

1. Acceptable forms of documentation for establishing relationship are:

a. Birth certificates. The document must be a state-certified, full image/photocopy of the original birth record showing parentage and containing the state seal, state registrar's signature, and the state file number. In those states where state law prohibits the release of full photocopies without a court order, computer generated or transcribed records are acceptable; however, these must be verified by a sworn statement or affidavit from the Indian parent. Individuals born outside the United States must obtain a certified copy of the official State Department record showing parentage. In cases where the State Department record is not available, then the foreign agency responsible for recording vital records must be contacted for a certified copy of the birth record. The certified foreign record must be submitted with the State Department notice of no record on file and a certified translation if needed.

b. Delayed certificates of birth. This document must be state-certified, full image/photocopy showing parentage and containing the state seal, state registrar's signature, and the state file number. State regulations cover the requirements for issuing these; however, for this purpose they are not fully acceptable by themselves and must be verified by at least one supporting document.

c. Certificate of death. This record must be state-certified, full image photocopy of the original record showing parentage and containing the state seal, state registrar's signature, and state file number. Death certificates must be verified by at least one of the supporting documents for

verification that must help define the relationships as claimed.

d. Certificate of Degree of Indian Blood (CDIB). This record is the formal certification document issued by the Bureau of Indian Affairs.

2. Acceptable supporting documents must be original or certified copies and are listed as follows:

a. County and district court records

b. Hospital birth certificates

c. Birth certificates issued by the Bureau of Census

d. U.S. federal census records

e. Per capita payment records

f. Enrollment census cards

g. Social Security numident or extract

h. Affidavits. Affidavits are written declarations made under oath before a notary public, must be submitted in original form and are used for the following:

(1) For identification. Many people use more than one name. An affidavit may be used to certify that one person goes by two names or that two or more names actually refer to the same person.

(2) To clarify discrepancies in names for identification purposes. If identification is not questioned, minor variations in spelling, etc., may not require further proof.

(3) To help establish relationship.

(4) To establish paternity of children born out of wedlock. An acknowledgment of paternity must be signed by the natural father and presented to the Bureau of Vital Statistics and his name must be added to the birth record.

i. Other documents. Other documents that define relationship may be considered.

3. Adoption documentation:

a. Adoption decree signed by the judge of the county where adoption proceedings occurred.

b. Replacement birth certificate showing new name and name(s) of the adoptive parent(s).

c. In some cases, the name(s) of the natural parent(s) will not appear on the adoption decree;

therefore, other pertinent records will be required for verification of the Indian parent(s). These records may include the original birth certificate established at birth, hospital birth certificate containing the name(s) of the natural parent(s), or other legal documents at the discretion of the Registrar.

CHAPTER 3

APPEAL FROM ADVERSE ENROLLMENT ACTION

§ 21. Who may appeal

A person who is the subject of an adverse enrollment action may file or have filed on his or her behalf an appeal.

§ 22. Appeals generally

A. The requirements in this part are to provide procedures for the filing and processing of appeals from adverse enrollment actions by the Registrar.

B. Appeals from actions taken by the Registrar must be in writing and must be filed pursuant to 11 CNCA § 23.

C. The decision of the Supreme Court shall be final.

§ 23. Appeal procedure

A. An appeal must be in writing and must be filed with the Registrar designated in the notification of an adverse enrollment action.

B. A sponsor may file an appeal on behalf of another person who is subject to an adverse enrollment action.

C. An appeal filed by mail or filed by personal delivery must be post-marked and received in the office of the Registrar by close of business within thirty (30) days of the notification of an adverse enrollment action, unless the appeal is mailed from outside the United States, in which case the appeal must be postmarked and received by the close of business within sixty (60) days of the notification of an adverse enrollment action.

D. The appellant or sponsor shall furnish the appellant's mailing address in the appeal. Thereafter, the appellant or sponsor shall promptly notify the Registrar with whom the appeal was filed of any change of address; otherwise, the address furnished in the appeal shall be the address of record.

E. An appellant or sponsor may request additional time to submit supporting evidence. A ninety-(90) day period for such submission may be granted by the Registrar with whom the appeal is filed. However, no additional time will be granted for the filing of the appeal.

F. In all cases where an appellant is represented by a sponsor, the sponsor shall be recognized as fully controlling the appeal on behalf of the appellant. Service of any document relating to the appeal shall be on the sponsor and shall be considered to be service on the appellant. Where an appellant is represented by more than one sponsor, service upon one of the sponsors shall be sufficient.

§ 24. Computation of the appeal period

A. A notification of an adverse enrollment action will be mailed to the address of record or the last available address and will be considered to have been made and computation of the appeal period shall begin on:

1. The date of delivery indicated on the return receipt when notice of the adverse enrollment action has been sent by certified mail, return receipt requested; or
2. Ten (10) days after the date of the decision letter to the individual when the notice of the adverse enrollment action has not been sent by certified mail, return receipt requested, and the letter has not been returned by the post office; or
3. The date the letter is returned by the post office as undeliverable whether the notice of the adverse enrollment action has been sent by certified mail, return receipt requested, or by regular mail.

B. In computing the thirty (30) or sixty (60) day appeal period, the count begins with the day following the notification of an adverse enrollment action and continues for thirty (30) or sixty (60) calendar days. If the thirtieth (30th) or sixtieth (60th) day falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the appeal period will end on the first working day thereafter.

§ 25. Burden of proof

The burden of proof is on the appellant or sponsor. The appeal should include any supporting evidence not previously furnished and may include a copy or reference to any Bureau or tribal records having a direct bearing on the action.

§ 26. Action by the Registrar

A. When an appeal is from an adverse enrollment action taken by the Registrar, the Registrar shall acknowledge in writing receipt of the appeal and shall forward the appeal to the District Court of Cherokee Nation together with any relevant information or records and his or her recommendations on the appeal.

B. The Registrar may sustain an appeal, provided the reason for rejection has been overcome with presentation of new evidence.

§ 27. Action by the District Court of Cherokee Nation—Standard of review

A. When an appeal is from an adverse enrollment action taken by the Registrar, the District Court of Cherokee Nation will consider the record as presented together with such additional information as may be considered pertinent. The standard of review by the District Court will be de novo. Any additional information relied upon shall be specifically identified in the decision. The appellant may request a hearing, the granting of which shall be discretionary with the Court. The District Court shall make a decision on the appeal which shall be final for the Nation, unless appealed to the Supreme Court, and which shall so state in the decision. The appellant or sponsor will be notified in writing of the decision, provided that the District Court may waive his or her authority to make a final decision and forward the appeal to the Supreme Court of Cherokee Nation. The District Court shall provide the appellant information and instructions pursuant to Title 20, Courts, for filing a petition before the Supreme Court.

B. When an appeal is from an adverse enrollment action taken by the District Court of Cherokee Nation, the District Court shall acknowledge in writing receipt of the appeal and shall forward the appeal and petition to the Supreme Court for final action together with any relevant information or records, the recommendations of the Registrar, when applicable, and the ruling of the District Court of Cherokee Nation.

C. The Supreme Court shall make a decision on the appeal, which shall be final for Cherokee Nation and which shall so state in the decision. The appellant or sponsor will be notified in writing of the decision.

CHAPTER 4

TRIBAL CITIZENSHIP

§ 31. Tribal citizenship cards

A. The tribal citizenship card shall be blue in color and contain the following information:

1. Name. The name which was approved and entered into the Cherokee Registry. This name would be the name that appears on the individual's birth record. For women who are married, their current married name is also included.
2. Cherokee Registry number. This number is a seven- (7) digit number preceded by the capital letter, "C."
3. Date of birth of the individual.
4. Current address.
5. Signature of the Tribal Registrar.

6. Signature of the Principal Chief.

7. Approval date.

8. The phrase, "This card shows the above named person to be a certified citizen of Cherokee Nation."

9. The legal signature or mark of the tribal citizen.

B. The front of the card shall also have the official name of the tribe in English and in Cherokee: Cherokee Nation. The reverse side of the card shall contain the following statement: "The responsibility of the tribal citizen is to notify the Cherokee Registration Committee of any citizenship change such as a name or address, as soon as possible. Please refer to: Cherokee Nation, Cherokee Registration Department, P.O. Box 948, Tahlequah, OK 74465."

C. The tribal citizenship card shall not be valid without the proper signatures of the Tribal Registrar and the Principal Chief of Cherokee Nation.

D. The tribal citizenship card shall not be valid without the indention of the Seal of Cherokee Nation.

E. The tribal citizenship card represents a permanent citizenship file maintained in the office of the Registrar. These cards are the property of Cherokee Nation and may be subject to recall.

§ 32. Maintenance of records

A. The Registrar shall keep and maintain the original applications, copies of required documents, and supporting documentation.

B. These records shall be subject to a records retention program as determined by the Registrar and in compliance with Cherokee Nation Code Annotated, Title 67, Records.

C. The Registrar shall develop and maintain a tribal citizenship database.

§ 33. Release of tribal citizenship information

A. All requests for copies of, or information contained in, records relating to tribal citizenship shall be made in writing and on a form prepared for that purpose by the Registrar.

B. The Registrar is hereby authorized and directed to prepare one or more forms to be used for all requests for the release of copies of tribal citizenship records or information.

C. Only a citizen of Cherokee Nation or the sponsor of a citizen may request copies of tribal citizenship records or information. Upon a request for such records or information by a citizen or a sponsor, the Registrar shall issue to the citizen or sponsor an authorization form. Provided,

however, prior to issuing the form the Registrar shall enter thereon the name of the citizen, the citizen's Registry number, the sponsor's name (if any), and the date of issuance of the form. No authorization form issued pursuant to this section may be used to obtain information or records relating to any citizen other than the citizen whose name and Registry number is entered on the form by the Registrar.

D. Whenever authority to release information or records cannot be obtained from the tribal citizen or sponsor, the Principal Chief or the Principal Chief's designee may authorize the release of such records or information to any person if the Principal Chief or the designee determines that the release of same would be appropriate under the circumstances of the request.

E. Nothing in this section shall prevent the Registrar from releasing copies of records or information pursuant to a bona fide request from a law enforcement official.

F. Listings, statistics, and labels from the tribal citizenship database must be approved by the Principal Chief or designee. The receiving of such requests are routed through the Registrar, who obtains the Chief's approval, and coordinates with other departments to facilitate the request.

G. The status of a person as an enrolled citizen of Cherokee Nation is hereby deemed to be public information. In addition to any other tribal citizenship information that the Registrar is now or may hereafter be authorized to release or otherwise make public under the laws of the Cherokee Nation, the Registrar is authorized to disclose to any person, upon request, the following tribal citizen information:

1. Whether or not a person is currently enrolled as a citizen of Cherokee Nation, and, if so, the date on which the person became enrolled as a tribal citizen;
2. Whether or not a person has relinquished his or her tribal citizenship one or more times, and, if so, the date or dates on which the relinquishment of his or her tribal citizenship became effective under 11 CNCA § 34; and
3. Whether or not a person, having relinquished his or her tribal citizenship one or more times, has re-enrolled as a tribal citizen, and, if so, the date or dates upon which such person re-enrolled as a tribal citizen.

H. The Registrar shall maintain and keep current a list of the names of all persons who have relinquished their tribal citizenships, together with their former enrollment numbers and the effective dates of relinquishments of tribal citizenship. If any person appearing on the list re-enrolls pursuant to the Tribal Citizenship Act, the person's name shall remain on the relinquishment list but notation shall be made thereon of the re-enrollment and each of the date or dates on which such person re-enrolled as a citizen.

§ 34. Relinquishment

A. Any citizen or sponsor of a citizen of Cherokee Nation may request a tribal citizenship

relinquishment form, which shall be furnished directly to the citizen or sponsor by the Registrar. Provided, however, if the person whose citizenship is to be relinquished is a minor child, the sponsor, in addition to the requirements of 11 CNCA § 3(O), must also be that minor child's biological parent or adoptive parent. A sponsor who is not a minor child's biological parent or adoptive parent shall have no authority to act on such minor child's behalf in the relinquishment of the minor's tribal citizenship. The request for a tribal citizenship relinquishment form shall be made in person or in a writing signed by the citizen or the citizen's sponsor and delivered to the Registrar.

B. The Office of the Attorney General of Cherokee Nation is hereby authorized to prepare the tribal citizenship relinquishment form and any other necessary forms, which shall be consistent with the provisions of this section, to be used in connection with the relinquishment of tribal citizenship.

C. Upon receipt of a request pursuant to subsection (A) of this section, the Registrar shall issue to the citizen or sponsor a tribal citizenship relinquishment form. Provided, however, prior to issuing the form the Registrar shall enter thereon the name of the citizen, the citizen's registry number, the sponsor's name (if any) and the date of issuance of the form. No tribal citizenship relinquishment form may be used to relinquish the citizenship of any person other than that of the citizen whose name and registry number is entered on the relinquishment form by the Registrar.

D. The tribal citizen or sponsor shall complete and sign the tribal citizenship relinquishment form before a notary public, and file the notarized form with the Clerk of the District Court of Cherokee Nation, who shall open a civil case styled "In re the relinquishment of citizenship of _____, a Tribal Citizen," without charging a filing fee, and shall assign the case a number. The relinquishment case so opened shall be set for an initial hearing on a date not more than thirty (30) days after the date of filing of the notarized form. The court clerk shall cause notice of the initial hearing to be delivered to the citizen at the time of filing or subsequently by first-class mail. Notice of the hearing shall also be mailed to the Cherokee Nation Department of Justice.

E. At the initial hearing, the tribal citizen or sponsor shall be placed under oath, and the Court or the Nation's attorney shall inquire of the citizen or sponsor who is relinquishing citizenship:

1. in any case where the tribal citizen whose citizenship is being relinquished is a minor, whether the sponsor is the biological parent or adoptive parent of the minor citizen and is otherwise qualified to act as a sponsor under 11 CNCA § 3(O); whether the minor citizen is currently the subject of a deprived child, juvenile delinquency, adoption or other proceeding involving the custody of the minor; and whether any person with parental or custodial rights to the child disputes the relinquishment or who, if unaware of the relinquishment proceeding, would likely dispute the relinquishment if he or she were aware of same;

2. whether the tribal citizen or sponsor is aware that by relinquishing tribal citizenship, all benefits and privileges to which the citizen is entitled as a consequence of being a citizen will be forfeited upon the effective date of relinquishment of citizenship; and

3. if the person whose citizenship is being relinquished is eighteen (18) years of age or older or will

be of such age by the time the relinquishment form will be submitted to the Registrar pursuant to subsection (A) of this section, whether the tribal citizen or sponsor is aware that said person will not be eligible to re-enroll as a tribal citizen for a period of five (5) years following the effective date of the relinquishment.

F. At the conclusion of the initial hearing, the Court shall issue a written order authorizing the citizen or sponsor to submit the tribal citizen relinquishment form to the Registrar unless, based on the citizen's or sponsor's testimony, the Court finds:

1. in any case where the person whose citizenship is to be relinquished is a minor, that the person acting as a sponsor is not the child's biological parent or adoptive parent or is not qualified to act as a sponsor under the provisions of 11 CNCA § 3(O); that the minor citizen is the subject of a deprived child, juvenile delinquency, adoption or other custodial proceeding pending in any court; or that another person with parental or custodial rights with regard to the minor citizen disputes the relinquishment or, if such other person is unaware of the relinquishment request, he or she would likely dispute the relinquishment if he or she were aware of same; or

2. that the citizen or sponsor indicates that he or she had been unaware of the consequences of relinquishment and requests of the Court additional time in order to reconsider the decision to relinquish, in which event the Court shall reschedule the hearing for a later date to determine whether the citizen or sponsor wishes to proceed with relinquishment. If at the rescheduled hearing the citizen or sponsor thereafter indicates that he or she no longer wants to relinquish citizenship, or fails to appear at the rescheduled hearing without first requesting a continuance, the Court shall dismiss the action without prejudice. Otherwise, the Court shall issue an order authorizing submission of the relinquishment form to the Registrar in accordance with this section.

G. If at the conclusion of the initial hearing the Court finds that the person whose citizenship is to be relinquished is a minor child and that the person seeking the relinquishment of the minor child's citizenship is not the child's biological parent or adoptive parent or is not otherwise qualified to act as the child's sponsor, the Court shall issue an order dismissing the case without prejudice. If the Court finds that the person is qualified to act as the minor child's sponsor but that the minor is the subject of a deprived child, juvenile delinquency, adoption or other custodial proceeding, or that another person has parental or custodial rights with regard to the child and disputes or would likely dispute the relinquishment, the Court shall schedule another hearing no more than thirty (30) days after the initial hearing and shall require that notice of same be given to all persons known to the Court to have parental or custodial rights with regard to the minor citizen. All such persons, including the Nation through its attorneys, may appear at the subsequent hearing and present evidence and testimony of witnesses on the issue of whether or not relinquishment of tribal citizenship would be in the best interest of the minor citizen. Within fifteen (15) days after the conclusion of the subsequent hearing the Court shall issue its order and decision on whether relinquishment would be in the best interests of the minor citizen. The party seeking to have the child's citizenship relinquished shall have the burden of proving such by a preponderance of the evidence.

H. All Cherokee Nation District Court hearings required under this section involving minor

citizens, and the Court files associated therewith, shall be confidential and closed to the public as in other juvenile cases; provided, copies of any court order authorizing or denying relinquishment shall be made available to the Registrar for filing in the minor child's citizenship records in accordance with this section but shall not otherwise be subject to public disclosure under this or any other law of Cherokee Nation. The Registrar shall not reproduce, release or disclose the contents of any such order to any person except as expressly authorized by order of Cherokee Nation District Court or Supreme Court.

I. If after any hearing authorized by this section the Court, having determined that the relinquishment process should proceed, issues an order allowing the citizen or sponsor to submit the tribal citizenship relinquishment form to the Registrar, the citizen or sponsor must, within sixty (60) days following the issuance of the order, deliver certified copies of the order and the notarized relinquishment form to the Registrar, which copies shall be made available to the citizen or sponsor by the court clerk without charge. Upon timely receipt of the certified copies of the Court's order and the relinquishment form, the Registrar shall stamp both with the date on which they were received by the Registrar and place them in the tribal citizen's file. The Registrar shall not accept the relinquishment form without the certified copy of the Court's order authorizing relinquishment to proceed. The relinquishment of the person's tribal citizenship shall become effective sixty (60) days after the date on which the certified copies of the Court's order and tribal citizenship relinquishment form were delivered to the Registrar in accordance with this subsection, unless prior to the expiration of said sixty- (60) day period the Registrar receives a written request from the citizen or sponsor that the tribal citizenship relinquishment form be revoked or withdrawn. If a written request by the tribal citizen or sponsor to revoke or withdraw his or her tribal citizenship relinquishment form is delivered to the Registrar prior to the expiration of the sixty- (60) day period, the tribal citizenship relinquishment form shall be deemed withdrawn and the person's status as a tribal citizen shall continue as if the relinquishment form had never been received by the Registrar.

J. Except as provided in subsections (K) and (M) of this section, any person who has relinquished his or her tribal citizenship may re-enroll at any time as a tribal citizen pursuant to 11 CNCA §§ 11, 12, 13 and 14.

K. Any person who relinquishes his or her own tribal citizenship in accordance with the provisions of this section shall be ineligible to re-enroll as a tribal citizen for a period of five (5) years following the effective date of his or her relinquishment of tribal citizenship if, but only if:

1. the certified copies of the notarized tribal citizenship relinquishment form and the Court's order authorizing relinquishment to proceed were received by the Registrar on or after the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002, LA 16-02; and
2. the tribal citizen whose citizenship was relinquished was eighteen (18) years of age or older on the date on which the certified copies of said relinquishment form and order were received by the Registrar.

Upon the expiration of said five- (5) year period following the effective date of his or her

relinquishment, such person shall be eligible to re-enroll as a citizen in accordance with the provisions of this Title; provided, however, no person subject to the five- (5) year ineligibility period of this subsection shall be eligible to re-enroll as a citizen if, at any time after the effective date of his or her relinquishment, the person was convicted of a felony or of any crime involving moral turpitude under the laws of any federally-recognized Indian tribe, state or the United States; and provided further that in addition to all other requirements for enrollment under this Title, any person subject to the five- (5) year ineligibility period of this subsection who thereafter seeks to re-enroll as a tribal citizen must also execute an affidavit affirming under oath that at no time subsequent to the effective date of his or her relinquishment had he or she been convicted of any such felony or crime of moral turpitude. Said affidavit must be presented to the Registrar together with the application to re-enroll.

L. The provisions of subsection (K) of this section shall not apply to any person who was under the age of eighteen (18) years of age at the time his or her tribal citizenship relinquishment form was received by the Registrar or whose citizenship was relinquished through a sponsor, or to any person, regardless of age, whose tribal citizenship relinquishment form or other document requesting or declaring his or her relinquishment of tribal citizenship was received by the Registrar prior to the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002, LA 16-02.

M. Any person who relinquished his or her citizenship but, as of the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002, L.A. 16-02, had not re-enrolled as a citizen, may apply for re-enrollment by delivering to the Registrar a completed application to re-enroll no later than two hundred seventy (270) days following the effective date of said Act. Any such person who fails to deliver to the Registrar a completed application to re-enroll prior to the expiration of said two hundred seventy- (270) day period following the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002 shall be ineligible to re-enroll as a citizen for the remainder of the five- (5) year period commencing on the effective date of said act. Provided, however, the re-enrollment ineligibility period of this subsection shall not apply to any person who was at the time of his or her relinquishment less than eighteen (18) years of age or whose relinquishment was procured through a sponsor. For the purposes of this subsection, the term "**completed application**" means an application to re-enroll as a citizen that substantially complies with the provisions of 11 CNCA §§ 11, 12, 13 and 14 and is submitted to the Registrar simultaneously with all documentation required by 11 CNCA § 14. No later than thirty (30) days after the effective date of LA 16-02, the Registrar shall cause notice of the provisions of this subsection (M) to be sent by first-class mail to the last known address of all persons who are subject to the re-enrollment ineligibility period of this subsection. The Registrar shall also cause notice of this subsection to be published in the next issue of the *Cherokee Phoenix* and *Indian Advocate* published after the effective date of said LA 16-02.

N. Commencing on the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002 (LA 16-02), all tribal citizenship relinquishment forms shall include the following language above the signature line:

NOTICE: THE RELINQUISHMENT OF

YOUR TRIBAL CITIZENSHIP HAS SERIOUS CONSEQUENCES

I, THE UNDERSIGNED, UNDERSTAND THAT ANY PERSON 18 YEARS OF AGE OR OLDER WHO RELINQUISHES HIS OR HER TRIBAL CITIZENSHIP DOES THEREBY ALSO WAIVE THE RIGHT TO RE-ENROLL AS A CITIZEN OF CHEROKEE NATION FOR A PERIOD OF FIVE YEARS FOLLOWING THE EFFECTIVE DATE OF THE CITIZENSHIP RELINQUISHMENT.

I UNDERSTAND THAT BY RELINQUISHING MY TRIBAL CITIZENSHIP I WILL LOSE ALL BENEFITS THAT I MAY BE ENTITLED TO BY VIRTUE OF MY STATUS AS A CITIZEN OF CHEROKEE NATION.

I UNDERSTAND THAT THIS RELINQUISHMENT OF TRIBAL CITIZENSHIP WILL BECOME EFFECTIVE 60 DAYS AFTER THE DATE ON WHICH THIS RELINQUISHMENT FORM IS RECEIVED BY THE REGISTRAR UNLESS, BEFORE THE END OF THAT 60-DAY PERIOD, I DELIVER TO THE REGISTRAR A WRITTEN REQUEST TO REVOKE OR WITHDRAW THIS RELINQUISHMENT FORM.

§ 35. Recognition of Delaware Tribe of Cherokee Nation—Rights and duties of Delaware Tribe and Cherokee Nation and citizens thereof—Proposal of and conduct of referendum upon governing document for Delaware Tribe—Election of tribal officers

A. Cherokee Nation hereby recognizes that since 1867 the Delaware Tribe of Indians has maintained a separate, distinct identity within Cherokee Nation with its citizens having full rights of Cherokee citizenship.

B. Cherokee Nation does recognize the Delaware citizens to be citizens of the separate, domesticated Delaware Tribe with all inherent rights retained by the Delaware Tribe not specifically restricted by the Congress of the United States.

C. Cherokee Nation shall assist, as requested by Delaware Tribal resolution, to purchase and have placed in trust, land on which to develop income generating economic business and industry. No monies shall be committed for this purpose from Cherokee Nation except as shall be authorized and appropriated by Cherokee Nation. Revenues derived from land so placed in trust or businesses established are to be used for the exclusive benefit of the Delaware Tribal Council by such resolutions as may be appropriate.

D. Cherokee Nation will permit independent operation of the Delaware Tribe, its elected officials, citizens and businesses, except upon request by resolution from Cherokee Nation.

E. The Delaware Tribe will conduct its business in a manner to permit independent operation of Cherokee Nation, its elected officials, citizens and businesses, except upon request by resolution from Cherokee Nation.

F. Delaware Tribal citizens that are on or descendants from the Dawes Roll, June 21, 1906 (34

Stat. 325) shall remain full citizens of Cherokee Nation pursuant to the Constitution of Cherokee Nation; provided, that no elected officer of the Delaware Tribe of Indians shall seek or hold office within the Cherokee Nation tribal government, nor shall an elected official of the Cherokee Nation tribal government seek or hold office within the Delaware Tribe of Cherokee Nation.

G. Cherokee Nation will assist the Delaware Tribe through Cherokee Nation's recognized government-to-government status with the United States to protect legally and governmentally the Delaware Tribe's citizens, property, industries and businesses. No appropriations from Cherokee Nation shall be used for such protection. Funds available from the United States government may be requested by the Delaware Tribe for such purposes.

H. The Delaware Tribe shall not attempt efforts that would lead to a separation of the citizens or tribal government from Cherokee Nation nor shall it seek federal funding for programs separate from Cherokee Nation. Cherokee Nation shall remain the only tribal organization to administer federal programs, grants-in-aid or other special funding that may be available from time to time from the federal government, except, as provided in subsection (G) of this section; provided that all benefits of federal, state or local funds that might become available to Cherokee Nation shall be available to citizens of the Delaware Tribe on the same basis as all other Cherokee citizens.

I. The Delaware Tribe is prohibited from adopting any governing document or passing any tribal laws, ordinances or resolutions that are in contravention to or inconsistent with the Constitution and laws of Cherokee Nation. Any disputes regarding this provision or other laws affecting the relationship of the Delaware Tribe and Cherokee Nation shall be resolved by the Cherokee Nation Supreme Court after the filing of an appropriate action by one of the parties.

J. Cherokee Nation hereby authorizes and requests the Delaware Tribe of Cherokee Nation to propose and present a governing document, properly titled, to the Delaware citizens for their adoption or rejection. The authorized voters, for purposes of this election, shall be those Delaware citizens whose names are currently on file with the Bureau of Indian Affairs as being eligible to participate in per capita payments of the Delaware Tribe and who have attained the age of eighteen (18) years. Said referendum shall be supervised by the Bureau of Indian Affairs.

K. Upon approval of the Delaware citizens of a governing document, an election for tribal officers shall be held and a referendum regarding use and/or distribution of judgment funds belonging to the Delaware Tribe shall be held.

L. The Principal Chief of Cherokee Nation shall appoint two (2) people and they shall select a third person of their choosing to meet with appropriate people to see that this section is executed.

TITLE 12

CIVIL PROCEDURE

CHAPTER 1

ADOPTION OF FEDERAL RULES OF CIVIL PROCEDURE—FEDERAL RULES OF EVIDENCE

§ 1. Federal Rules of Civil Procedure—Federal Rules of Evidence

A. The Federal Rules of Civil Procedure shall be used in Cherokee Nation courts in all suits of a civil nature whether cases at law or in equity unless superseded by a Cherokee Nation rule of civil procedure.

B. The Federal Rules of Evidence shall be used in Cherokee Nation courts in all suits of a civil nature whether cases at law or in equity unless superseded by a Cherokee Nation rule of evidence.

CHAPTER 2

STATUTE OF LIMITATIONS

§ 11. Express or implied contracts

Judgment shall not be rendered upon any written contract, obligation, or note of hand, in any suit brought before the Courts of this Nation, unless such suit be instituted thereafter as required by law within five (5) years next after the time at which the cause of action shall have accrued to the person bringing the same, or to the person through whom he claims. Nor shall any judgment be rendered upon any contract or obligation express or implied not in writing in any suit brought before the Courts of this Nation, unless suit be instituted thereafter as required by law within three (3) years next after the time at which the cause of action shall have accrued to the person bringing the same, or to the person through whom he claims.

§ 12. Property injury—Personal injury

Judgment shall not be rendered for the recovery of any claim or demand for trespass upon real property, taking, detaining or injuring personal property, including actions for the specific recovery of personal property, for injury to the rights of others, and for relief on the ground of fraud, except as provided in the preceding sections, in any suit brought before the Courts of this Nation, unless such suit be instituted for the recovery thereof, as required by law, within two (2) years next after the time at which the cause of action shall have been accrued to the person bringing the same, or to the person through whom he claims. Nor shall any judgment be rendered for the recovery of any claim for libel, slander, assault, battery, malicious prosecution, or false imprisonment unless such suit be instituted for the recovery thereof, as required by law, within one (1) year next after the time at which the cause of action shall have been accrued to the person bringing the same, or to the person through whom he claims.

§ 13. Tolling of period for minors or incompetents

The statutory limitations period shall not begin to run against minors until they reach their majority or against persons "non compos mentis" until their disability is removed. However, it is made the

duty of every administrator, guardian, and executor to bring suit for the claims or demands due any estate or ward, within the time herein above specified; and any administrator, executor or guardian, neglecting or failing to do so, shall be liable to the parties in interest for such failure or neglect. However, any suit alleging neglect of duty against an administrator, guardian or executor must be brought within five (5) years.

§ 14. Action for relief not provided for

An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

CHAPTER 3

INTEREST ON JUDGMENTS

§ 21. Interest on judgments

All promissory notes, executes, or judgments, payable in cash, shall bear interest at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Court Clerk of Cherokee Nation by the Treasurer of Cherokee Nation on the first regular business day in January of each year, plus four (4) percentage points.

CHAPTER 4

CHANGE OF NAME

§ 31. Right to petition for change of name

Any citizen of Cherokee Nation, who has been domiciled in the Nation for more than thirty (30) days, and has been an actual resident of the county next preceding the filing of the action, may petition for a change of name in a civil action in the District Court. If the person be a minor, the action may be brought by guardian or next friend as in other actions.

§ 32. Petition

The petition shall be verified and shall state:

1. The name and address of the petitioner;
2. The facts as to domicile and residence;
3. The date and place of birth;
4. The birth certificate number, and place where the birth is registered, if registered;

5. The name desired by petitioner;
6. A clear and concise statement of the reasons for the desired change;
7. A positive statement that the change is not sought for any illegal or fraudulent purpose, or to delay or hinder creditors.

§ 33. Notice—Protest—Hearing date—Continuance

Notice of filing of such petition shall be given, in the manner provided for publication notice in civil cases, by publishing the same one (1) time at least ten (10) days prior to the date set for hearing in some newspaper authorized by law to publish legal notices printed in the county where the petition is filed. The notice shall contain the style and number of the case, the time, date and place where the same is to be heard, and that any person may file a written protest in the case prior to the date set for the hearing. The hearing date may be any day after completion of the publication. The Court or Judge, for cause, may continue the matter to a later date.

§ 34. Evidence—Determination

The material allegations of the petition shall be sustained by sworn evidence, and the prayer of the petition shall be granted unless the Court or Judge finds that the change is sought for an illegal or fraudulent purpose, or that a material allegation in the petition is false.

§ 35. Judgment

The judgment shall recite generally the material facts and the change granted, or if denied, the reasons for the denial. A certified or authenticated copy of such judgment may be filed in any office, where proper to do so, and shall be regarded as a judgment in a civil action.

§ 36. Illegal or fraudulent purpose

Any person who obtains a judgment under this act, willfully intending to use change his or her name except as provided in 12 CNCA §§ 31 to 35 inclusive, other than by marriage or decree of divorce or by adoption.

CHAPTER 5

CIVIL PROTECTIVE ORDERS

§ 501. Short title

This act shall be known and may be cited as the "Civil Protective Order Act."

§ 502. Definitions [Reserved]

§ 503. Jurisdiction for civil protective orders

A. Exclusive jurisdiction. The Cherokee Nation District Court shall exercise exclusive jurisdiction:

1. Upon any restricted individual Indian allotment within Cherokee Nation Tribal Jurisdiction Service Area.
2. Under any other established theory of exclusive jurisdiction.

B. Concurrent jurisdiction. The Cherokee Nation District Court may exercise concurrent jurisdiction:

1. When the respondent is a citizen or member of a federally-recognized tribe and is domiciled or found within the exterior reservation boundaries of the original patent to Cherokee Nation; and
2. Over Indian Country within the exterior boundaries of Cherokee Nation Tribal Jurisdiction Service Area.
3. When any act of domestic violence occurs either:
 - a. upon lands owned by Cherokee Nation,
 - b. upon lands within a dependent Indian community or developed by the Housing Authority of Cherokee Nation,
 - c. upon lands within the exterior reservation boundaries of the original patent of Cherokee Nation.
4. When the Court is being asked to recognize and enforce a valid protective order of another court of competent jurisdiction; and
5. Over any proceedings for protective orders until such time as an alternative choice of forum shall have been decided.

C. Courts shall construe this section liberally to exercise maximum jurisdiction.

D. This section is not exclusive of the situations in which the Court may exercise jurisdiction.

§§ 504 to 510. Reserved

§ 511. Change of Judge for civil protective orders

- A. Motions for a change of Judge must be filed within five (5) days of service upon the perpetrator.
- B. Relationship by blood or marriage is not sole cause for a change of Judge.

§ 512. Availability of civil protective orders

A. Any of the following persons may seek relief under this chapter by filing a civil petition with the Court alleging that interpersonal or domestic violence has been committed by the respondent. The person may petition for relief on behalf of any victim including minors within the family or household members:

1. Any person claiming to be the victim of recent domestic violence;
2. Any family member or household member of a person claimed to be the victim of domestic violence on behalf of the alleged victim;
3. A police officer;
4. A victim advocate; and/or
5. The Tribal Prosecutor.

B. There is no minimum requirement of residency to petition for a protective order.

§ 513. Procedures for filing civil petitions for protective orders

A. No filing fees shall be required for filing a petition nor shall a bond be required to obtain relief under this chapter.

B. Petitioner, or the victim on whose behalf a petition has been filed, is not required to obtain an annulment, separation or divorce as a prerequisite to obtaining a protective order.

C. Standard petition forms with instructions for completion shall be available upon request from the Court Clerk or investigating Marshal.

D. A protective order does not preclude the rights of any party or child that are to be adjudicated at subsequent hearings in the proceeding.

§ 514. Procedures for issuance of temporary and permanent protective orders

A. If the Court has a reasonable belief that the petitioner or the person on whose behalf the petition is filed is the victim of an act of interpersonal or domestic violence committed by the respondent, the Court shall immediately grant a temporary ex parte protective order based upon the facts contained within the verified statement or affidavit.

B. Within fourteen (14) days of the issuance of a temporary ex parte protective order, excluding holidays and weekends, unless by agreement, a hearing shall be held to determine whether the order should extend for an additional period of time, made permanent or modified in any respect.

C. Service must be made upon the respondent at least five (5) days prior to the hearing. If service cannot be made, the Court may set a new date.

D. Service shall be pursuant to the procedure set forth in Cherokee Nation Code Annotated and the District Court Rules.

E. The Court may issue protection to both parties only if each party has completed a petition pursuant to the provisions of this Code and the Court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.

F. Any protective order granted pursuant to this chapter shall be forwarded by the Court to the Cherokee Nation Marshal Service dispatcher within twenty-four (24) hours of issuance. In the case of a temporary emergency ex parte protective order issued in accordance with 12 CNCA § 518 or a temporary ex parte protective order, it shall be filed immediately upon issuance. The Marshal's Office shall make information available to each officer as to the existence and status of every protective order issued under this chapter.

§ 515. Content of a protective order in general

A. A petition shall briefly describe the incident(s) of domestic violence and shall be a verified petition or supported by an affidavit made under oath stating the facts and circumstances justifying the requested order.

B. In addition to any other required information, the petition for a protective order must contain a statement listing each civil or criminal action involving both parties.

C. Protective orders shall include provisions:

1. Restraining the respondent from committing any acts of domestic violence;
2. Restraining the respondent from harassing, stalking, threatening telephoning or otherwise contacting the petitioner directly or indirectly, personally or through another person, or engaging in any other conduct that would place any named family or household members in reasonable fear of bodily injury;
3. Prohibiting the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury;
4. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon in the respondent's immediate possession or control or subject to the respondent's immediate control, so that the Respondent will not use, display or threaten to use the firearm or other dangerous weapon in any acts of violence. If so ordered, the respondent shall surrender the

firearm or other dangerous weapon to law enforcement;

5. Requiring that an accounting be made to the Court for all authorized transfers, encumbrances, dispositions and expenditures; and

6. Notifying the parties involved that the knowing violation of any provision of the order may constitute contempt of court punishable by fines, imprisonment or both.

D. Where the Court in its protective order makes findings of any of the following behaviors, it shall order counseling, which shall include the development of behavior-specific relationship skills.

1. Using coercion and threats, such as:

- a. making and/or carrying out threats to do something to hurt another person;
- b. threatening to leave a spouse, to commit suicide, to report a spouse to welfare;
- c. threatening to file false domestic violence, restraining order or child sexual abuse charges;
- d. making a spouse to drop charges;
- e. making a spouse do illegal things;
- f. denying or refusing access to needed medical care or refusing to take prescribed medications.

2. Counseling should include development in skills of negotiation and fairness:

- a. seeking mutually satisfying resolutions to conflict;
- b. accepting change;
- c. being willing to compromise.

3. Using intimidation, such as:

- a. making a spouse afraid by using looks, actions, gestures;
- b. smashing things;
- c. destroying the property belonging to a spouse, relative or family member;
- d. displaying weapons (such as knives).

4. Counseling should include developing skills in non-threatening behavior, such as:

a. talking and acting so that family members feel safe and comfortable expressing themselves and doing things.

5. Using economic abuse, such as:

a. refusing to contribute income to basic expenses;

b. making a spouse or family member ask for money;

c. giving the victim(s) an allowance to limit their economic participation;

d. taking a spouse's money;

e. not letting a spouse or family member know about or have access to family income;

f. forcing a spouse to take higher-paying, more hazardous, less satisfying job;

g. preventing a spouse from getting or keeping a job.

6. Counseling should include developing skills in economic partnership:

a. making money decisions together;

b. making sure both partners benefit from financial arrangements;

c. expecting all family members to contribute in good faith to the financial success of the family.

7. Using emotional abuse, such as:

a. putting someone down;

b. making someone feel bad about herself or himself;

c. using sex as a weapon;

d. calling someone names;

e. making someone think they are crazy;

f. playing mind-games;

g. humiliating someone;

h. making someone feel guilty.

8. Counseling should include building skill in respect:

- a. listening to others non-judgmentally;
- b. being emotionally affirming and understanding;
- c. sharing responsibility for mutually-satisfying intimacy;
- d. valuing opinions.

9. Using gender privilege, such as:

- a. treating someone like a servant;
- b. treating someone as just a wallet;
- c. making all the big decisions;
- d. acting like the "master or mistress of the house";
- e. being the only one who defines the male and female roles.

10. Counseling should include the development of skills in shared responsibility:

- a. mutually agreeing on a fair distribution of work;
- b. making family decisions together.

11. Using isolation, such as:

- a. controlling what someone does, who that person sees and talks to, what that person reads, where someone goes;
- b. limiting a spouse's or family member's outside involvement;
- c. using jealousy to justify actions.

12. Counseling should include the development of skills in trust and support:

- a. supporting your partner's goals in life;
- b. respecting your partner's right to his own feelings, friends, activities and opinions.

13. Using children, such as:

- a. making a spouse feel guilty about the children;
- b. using the children to relay messages;
- c. alienating children from a parent;
- d. using visitation to harass a parent;
- e. threatening to take the children away;

14. Counseling should include developing skills in responsible parenting:

- a. sharing parental responsibilities;
- b. being a positive non-violent role model for the children;

15. Minimizing, denying and blaming, such as:

- a. making light of the abuse and not taking the other person's concerns about it seriously;
- b. saying the abuse didn't happen;
- c. shifting responsibility for abusive behavior;
- d. saying that the victim deserved it;
- e. saying that the victim caused it;
- f. saying it was the only way the victim would pay attention.

16. Counseling should include developing skills in honesty and accountability:

- a. accepting responsibility for self;
- b. acknowledging past use of violence;
- c. admitting being wrong;
- d. communicating openly and truthfully.

E. A protective order may include any other relief the Court deems appropriate, including but not limited to:

- 1. Excluding the respondent from the residence of the victim (whether or not the respondent and

the victim share the residence), school, place of employment or a specified place frequented by the petitioner and/or any named family or household member;

2. Awarding temporary child custody and/or establishing temporary visitation rights or restrictions with regard to the minor children of the parties;

3. If visitation is granted there shall be set rules for the exchange of the children for visitation. These rules may include, but are not limited to times, places and persons allowed to visit;

4. Ordering temporary use and possession of personal property, including motor vehicles, to either party;

5. Ordering the respondent to make timely payments on existing debts of the respondent or of the parties, including but not limited to mortgage or rental payments and necessary utilities in order to maintain the petitioner in their residence;

6. Ordering the respondent to pay child support in accordance with Cherokee Nation child support laws and guidelines;

7. Ordering the respondent to pay such support as may be necessary for the support of a party and any minor children of the parties and/or reasonable attorney fees and costs.

8. Ordering the respondent to surrender all firearms and weapons to the custody of law enforcement while the protective order is in effect;

9. When appropriate, restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing or altering property except as authorized by the Court; and

10. Ordering other lawful relief as the Court deems necessary for the protection of the victim of domestic violence, including orders or directives to law enforcement or other appropriate departments and programs; and

F. No order or agreement under this section affects title to any real property in any manner.

§ 516. Duration and amendments to permanent protective orders in general

A. A protective order shall be enforced until further order of the Court but not to exceed three hundred sixty five (365) days and may be subject to amendment for extension at the discretion of the Court or at the request of one of the parties.

B. After thirty (30) days, the Court may, in its discretion, revoke, modify, extend or amend a protective order upon subsequent petition filed by either party.

§ 517. Temporary emergency ex parte protective orders

A. During the hours that the Court is closed, the Court shall provide for the availability of a Judge or other authorized personnel who shall authorize the issuance of temporary emergency ex parte protective orders by any appropriate and effective method. The following conditions apply:

1. Temporary emergency ex parte orders will be issued upon a good cause showing that it is necessary to protect the applicant or others from interpersonal or domestic violence;
2. Immediate and present danger of interpersonal or domestic violence to the applicant or others constitutes good cause for purposes of this section;
3. Any order issued under this section expires seventy-two (72) hours after its issuance unless it is continued by the Judge or authorized personnel in the event of continuing unavailability of the Court. At any time, the applicant may seek a temporary ex parte protective order from the Court; and
4. Any order issued under this section and any documentation in support of the Order must be immediately certified to the Court.

B. If an officer cannot make an arrest, but there is probable cause to believe a person is in immediate and present danger of domestic violence, the Judge or other person authorized to issue temporary emergency ex parte protective orders may issue a temporary emergency ex parte protective order.

§ 518. False allegations of domestic violence—Effect

If, after investigation, the Court finds that a party's allegations of domestic violence in a domestic violence protective order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding or termination of parental rights proceeding are false and not made in good faith, the Court shall order the party making the false allegations to pay court costs and reasonable attorney fees incurred by the other party in responding to the allegation.

§ 519. Foreign domestic violence protective orders—Full faith and credit recognition and enforcement

A. Subject to registration, a domestic violence protective order issued by a court of competent jurisdiction of another state, Indian tribe, the District of Columbia or a commonwealth, territory or possession of the United States must be accorded full faith and credit by the Cherokee Nation Court and enforced as if the order was issued by the Cherokee Nation Court.

1. A foreign domestic violence protective order is enforceable in the Cherokee Nation's jurisdiction, and as extended by cross-deputization or cooperative enforcement agreements, if all of the following are satisfied:
 - a. The respondent received notice of the protective order in compliance with requirements of the issuing jurisdiction;

b. The protective order is in effect in the issuing jurisdiction;

c. The issuing court had jurisdiction over the parties and the subject matter;

d. The respondent was afforded reasonable notice and opportunity to be heard sufficient to protect that person's right to due process. In the case of ex parte protective orders, notice and opportunity to be heard must have been provided within the time required by the law of the issuing jurisdiction and in any event within a reasonable time after the protective order was issued, sufficient to protect the respondent's due process rights. Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any prosecution for violation of the foreign protective order or any process filed seeking enforcement of the protective order; and

e. If the protective order also provides protection for the respondent, a petition, application or other written pleading must have been filed with the issuing court seeking such a protective order and the issuing court must have made specific findings that the respondent was entitled to the protective order.

B. A person entitled to protection under a foreign domestic violence protective order may file the foreign protective order in the Clerk of Court's office. The person filing the protective order shall also file an affidavit with the Clerk of Court certifying the validity and status of the foreign protective order and attesting to the person's belief that the protective order has not been amended, rescinded or superseded by any other orders from a court of competent jurisdiction. If a foreign protective order is filed under this section, the Clerk of Court shall transmit a copy of the protective order to the Cherokee Marshal Service. Filing of a foreign protective order under this Section is not a prerequisite to the order's enforcement by Cherokee Nation. A fee for filing the foreign protective order shall not be assessed.

C. A law enforcement officer may rely upon any foreign domestic violence protective order that has been provided to the officer by any source. The officer may make arrests for violation of the protective order in the same manner as for violation of a protective order issued by Cherokee Nation. A law enforcement officer may rely on the statement of the person protected by the protective order that the protective order is in effect and that the respondent was personally served with a copy of the protective order. A law enforcement officer acting in good faith and without malice in enforcing a foreign protective order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the protective order.

D. Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence protective order known by that person to be false or invalid or who denies having been served with a protective order when that person has been served with such an order is guilty of a crime.

§ 520. Tribal registry for protective orders

A. The Court shall maintain a registry of all orders for protective orders issued by the Court. The

Clerk of Court shall provide the Cherokee Nation Marshal's Office with certified protective orders within twenty-four (24) hours after issuance.

B. The Clerk of Court shall also provide the Cherokee Nation Marshal's Office with any modifications of, revocations of, withdrawal of and/or expiration of protective orders.

C. The information contained in the registry is available at all times to the Court, law enforcement agencies and domestic violence shelters.

D. Facsimile copies shall be recognized.

CHAPTER 6

GARNISHMENT

§ 1170. Definitions

A. For the purposes of this section and 12 CNCA §§ 1171.2 through 1171.4:

1. **"IV–D agency"** means an agency of a state or federally-recognized tribe entering, enforcing, or collecting child support payments under Subchapter IV of Chapter 7 of the Social Security Act found in Title 42 of the United States Code.

2. **"Arrearage"** means the total amount of unpaid support obligations.

3. **"Child support"** means and includes all payments or other obligations due and owing to the person entitled by the obligor pursuant to a child support order, including but not limited to medical insurance or health care premiums and other medical expenses, current child care obligations, child care arrearages and any fixed child care obligations and such other expenses and requirements as determined by the District Court.

4. **"Delinquency"** means any payment under an order for support which becomes due and remains unpaid.

5. **"Disposable income"** means income or earnings less any amounts required by law to be withheld, including, but not limited to, federal, state, and local taxes, Social Security, and public assistance payments.

6. **"Income"** or **"earnings"** means any form of payment to an individual regardless of source including, but not limited to, wages, gaming winnings, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district, or any entity created by law.

7. **"Income assignment"** is a provision of a support order which directs the obligor to assign a

portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person designated by the support order or assignment for payment of support or arrearages or both. The assignment shall be in an amount which is sufficient to meet the periodic support arrearages or other maintenance payments or both imposed by the Court order or administrative order. The income assignment shall be made a part of the support order.

8. "**Notice of income assignment**" means the standardized form prescribed by the United States Secretary of Health and Human Services that is required to be used in all cases to notify a payor of an order to withhold for payment of child support and other maintenance payments.

9. "**Obligor**" means the person who is required to make payments under an order for support.

10. "**Payor**" means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "**payor**" and "**obligor**" may be the same person.

11. "**Person entitled**" or "**obligee**" means the person to whom a duty of support is owed as designated in the support order or as otherwise specified by the Court.

12. "**Support order**" means an order for the payment of child support issued by the District Court, the Office of Child Support Enforcement or the IV–D agency of another state or tribe.

B. For the purposes of prejudgment garnishments, "**judgment creditor**" includes prejudgment garnishors.

§ 1171. Right to garnishment

A. Any creditor shall be entitled to proceed by garnishment in the District Court if said court has jurisdiction against a person who shall be indebted to the creditor's debtor or has any property in his possession or under his control belonging to such creditor's debtor, in the cases, upon the conditions, and in the manner described by law.

No garnishment shall be accepted by Cherokee Nation or any of its business entities unless said garnishment is issued by a court with jurisdiction over Cherokee Nation or its business entities. All foreign orders of garnishment, except those for child support, must be domesticated within the Cherokee Nation District Court in accordance with the laws or court rules of Cherokee Nation. Foreign garnishments for child support shall be delivered to the Cherokee Nation Office of Child Support Enforcement to be enforced in accordance with Cherokee Nation law and the policies and procedures of the Office of Child Support Enforcement.

B. Subject to the limitations and exceptions otherwise provided by law, there shall be two classes of garnishments:

1. Prejudgment garnishments, which shall consist only of general garnishments pursuant to 12 CNCA § 1173.3; and

2. Postjudgment garnishments, which shall consist of the following types of garnishments:

- a. Income assignment for child support pursuant to the provisions of 12 CNCA § 1171.2;
- b. Noncontinuing earnings garnishment pursuant to 12 CNCA § 1173;
- c. Garnishment for collection of child support pursuant to 12 CNCA § 1173.2;
- d. General garnishment pursuant to 12 CNCA § 1173.3; and
- e. Continuing earnings garnishment pursuant to 12 CNCA § 1173.4.
- f. Automatic gambling winnings garnishment pursuant to 12 CNCA §§ 1197 and 1198.

§ 1171.1. Money earned from prejudgment garnishment—Exemption

A. Money that was earned by a natural person as wages, salary, bonus or commission for personal services shall be exempt from garnishment issued before judgment of a court of competent jurisdiction except as provided for support in a divorce proceedings interlocutory order pursuant to the law of the jurisdiction which issued the order of support, and as otherwise specifically provided by statute.

B. Seventy-five percent (75%) of all earnings for personal or professional services earned during the last ninety (90) days shall be exempt from garnishment except for collection of child support obligations.

§ 1171.2. Child support payments—Garnishment—Filing fee

A. Any person awarded custody of and support for a minor child by a court of competent jurisdiction or awarded periodic child support payments by the Office of Child Support Enforcement, or the IV–D agency of another state or tribe on behalf of a recipient of Temporary Assistance for Needy Families or on behalf of a person not receiving Temporary Assistance for Needy Families, upon proper application, shall be entitled to proceed to collect any current child support and child support due and owing through income assignment pursuant to the provisions of this section and 12 CNCA §§ 1171.3 and 1171.4 or by garnishment, if the minor child is in the custody and care of the person entitled to receive the child support or as is otherwise provided by the Court or administrative order at the time of the income assignment or garnishment proceedings.

B. The maximum part of the aggregate disposable earnings of any person for any work week which is subject to garnishment or income assignment for the support of a minor child shall not exceed:

- 1. fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such

order is used; and

2. sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child. The fifty percent (50%) specified in paragraph 1 of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve- (12) week period which ends with the beginning of such work week.

C. No filing fee shall be required for a garnishment to collect current or past due child support.

§ 1171.3. Income assignments

A. In all child support cases arising out of an action for divorce, paternity or other proceedings, the Court shall order the payment of child support as provided under 43 CNCA § 508.

B. 1. A notice of income assignment shall be sent by the applicant to the payor on a standardized form prescribed by the Secretary of the United States Department of Health and Human Services and available through the Office of Child Support Enforcement. The notice shall be sent by certified mail, return receipt requested or served according to law. The payor shall be required to comply with the provisions of this subsection and the provisions stated in the notice.

2. The income assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice. The amount withheld shall be sent to the centralized support registry as provided for in 43 CNCA § 502 within seven (7) days after the date upon which the obligor is paid. The payor shall include with each payment a statement reporting the date the obligor's support obligation was withheld.

3. Each pay period the payor shall withhold the amounts specified in the notice from the obligor's income and earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to 12 CNCA § 1171.2.

4. The income assignment is binding upon the payor until released or until further order of the Court.

5. All payments shall be made through the centralized support registry as provided in 43 CNCA § 502.

6. If the amount of support due under all income assignments against the obligor exceeds the maximum amount authorized by 12 CNCA § 1171.2, the payor shall pay the amount due up to the statutory limit, and the payor shall send written notice to the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor wrongfully fails to pay or notify as required in this subsection, the payor may be liable for an amount up to the

accumulated amount due upon receipt of the notice.

7. If the payor is the obligor's employer, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days of the date the obligor terminates employment, and shall provide the obligor's last-known address and the name of the obligor's new employer, if known.

8. If the payor has no income due or to be due to the obligor in the payor's possession or control or if the obligor has terminated employment with the payor prior to the receipt of notice of income assignment required pursuant to this subsection, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days. Failure to notify the person or agency entitled to support within the required time limit may subject the payor to liability for an amount up to the accumulated amount due upon receipt of the notice of income assignment.

9. The payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may be fined up to Two Hundred Dollars (\$200.00) for each failure to make the required deductions if the payor:

a. fails to withhold or pay the support in accordance with the provisions of the income assignment notice; or

b. fails to notify the person or agency designated to receive payments as required.

10. The payor may combine withheld amounts from earnings of two or more obligors subject to the same support order in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

11. An income assignment for child support shall have priority over any prior or subsequent garnishments of the same wages.

12. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursement for costs incurred by the payor for the income assignment.

13. The income assignment shall remain in effect regardless of a change of payor.

14. The income assignment shall remain in effect as long as current support is due or until all arrearages for support are paid, whichever is later. Payment of arrearages shall not prevent the income assignment from taking effect.

15. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote until the time of reinstatement or promotion. Violation of this subsection may result in a fine of up to Two Hundred

Dollars (\$200.00) against the payor for each violation.

C. Income assignment shall be available to collect any amounts due for child support, child care and medical expenses, as well as current support alimony payments; provided, child support shall be paid prior to any alimony payments.

D. Any existing support order or income assignment which is brought before the court shall be modified by the Court to conform to the provisions of this section.

E. Any person obligated to pay support, who has left or is beyond the jurisdiction of the Court, may be prosecuted under any other proceedings available pursuant to the laws of this Nation for the enforcement of the duty of support and maintenance.

F. The income assignment proceedings specified in this section shall be available to other states or tribes for the enforcement of support and maintenance or to enforce out-of-state orders.

G. 1. In all child support cases in which child support services are being provided under the Nation's IV-D program, all orders for support are subject to immediate income assignment without need for a hearing by the District Court.

2. In all child support cases arising out of an action for divorce, paternity, or other proceeding in which services are not being provided under the Nation's IV-D program, the Court shall order the income of any parent ordered to pay child support to be subject to immediate income assignment regardless of whether child support payments are in arrears at the time of the order, unless:

a. one of the parties demonstrates and the Court finds that there is good cause not to require immediate income withholding. Any finding that there is good cause not to require immediate income assignment must be based upon at least:

i. a written determination and explanation by the Court of why implementing immediate income assignment would not be in the best interests of the child; and

ii. proof of timely payment of previously ordered support in cases involving modification of support orders; or

b. a written agreement is reached between the parties which provides for an alternative arrangement including in-kind payments. For purposes of this subparagraph, "**written agreement**" means a written alternative arrangement signed by both the custodial and noncustodial parents which has been reviewed by the Court and entered into the record by the Court.

H. The noncustodial parent may dispute a withholding only on the grounds of a mistake in the amount of the monthly withholding, amount of arrearage, or in the identity of the alleged noncustodial parent.

I. Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a tribal support order are at least equal to the support payable for one (1) month.

J. In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

K. In cases brought by the Cherokee Nation Office of Child Support Enforcement (OCSE), OCSE shall promptly request of its payment system provider that amounts which have been improperly withheld be refunded and OCSE shall promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

§ 1172. Affidavit—Contents

A. Garnishment proceedings, whether prejudgment or postjudgment, shall be commenced by the filing of an affidavit, on a form prescribed by the Judicial Branch of Cherokee Nation, stating:

1. The name(s) of the plaintiff(s);
2. The name(s) of the defendant(s);
3. In the case of prejudgment garnishments, the amount of the plaintiff's original claim against the defendant or defendants over and above all offsets;
4. In the case of postjudgment garnishments, the amount of the interest-bearing balance;
5. In the case of postjudgment garnishments, the rate and the date the interest begins to accrue; and
6. That the plaintiff verily believes that some person who is subject to the jurisdiction of Cherokee Nation, naming him, whether within or without the Nation, is indebted to or has property in his possession or under his control belonging to the defendant, or either or any of the defendants, in the action or execution and that the indebtedness or property is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution.

B. The affidavit may be filed by the plaintiff or the plaintiff's attorney at or before the time of filing of a garnishment summons.

C. Only one garnishee may be embraced in any affidavit or garnishment summons.

§ 1172.1. Prejudgment and postjudgment summons—Procedure

A. A garnishee summons shall not be issued in any action prior to judgment until:

1. Defendant has been served with a notice, to which the affidavit required by 12 CNCA § 1172 is

attached, which notifies the defendant that the issuance of a garnishee summons is requested and that the defendant may object to the issuance of the summons by filing a written objection with the Court Clerk and delivering or mailing a copy to the plaintiff's attorney within five (5) days of the service of the notice. The service of the notice on the defendant satisfies the notice requirement of 12 CNCA § 1174;

2. If no written objection is filed within the five- (5) day period, and if the undertaking has been executed as provided herein, the Court Clerk shall issue the garnishee summons;

3. Should a written objection be filed within the five- (5) day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If, at the hearing, the plaintiff proves the probable merit of the plaintiff's cause and the truth of the matters asserted in the affidavit and if the plaintiff executes an undertaking, as provided herein, the Court may issue the garnishee summons; and

4. An undertaking on the part of the plaintiff has been executed by one or more sufficient sureties, approved by the Clerk or the Court and filed in the Clerk's office, in a sum not less than double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages which the defendant may sustain by reason of the garnishment, together with a reasonable attorney fee, if the order be wrongfully obtained.

B. If the Court finds that the defendant cannot be given notice as provided by paragraph 1 of subsection (A) of this section, although a reasonable effort was made to notify the defendant, and at the hearing the plaintiff proves the probable merit of the plaintiff's cause of action and the truth of the matters asserted in the affidavit and the plaintiff has executed an undertaking as provided herein, the Court may issue a garnishee summons after which the defendant may move to have the garnishee summons quashed. Notice of a motion to quash, with the date of the hearing, shall be served on the attorney for the plaintiff. The motion shall be heard promptly, and in any case within five (5) days after the date that it is filed. The Court must grant the defendant's motion unless, at the hearing on defendant's motion, the plaintiff proves the probable merit of the plaintiff's cause and the truth of the matters asserted in the affidavit. The Court Clerk may issue an order to pay the money into the Court after the hearing, at the direction of the Court.

C. A prejudgment or postjudgment garnishment may be amended as in other civil actions. Upon request of the garnishor, alias or additional summons shall issue against the garnishee.

§ 1172.2. Garnishment summons—Payment of funds by garnishee

A. When a garnishment summons is issued in any action after the judgment is filed, the Court Clerk shall attach to the garnishment summons a notice of garnishment and exemptions required by 12 CNCA § 1174(C) and an application for the defendant to request a hearing. If the garnishee is indebted to or holds property or money belonging to the defendant, the garnishee shall immediately mail by first-class mail a copy of the notice of garnishment and exemptions and the application for hearing to the defendant at the last-known address of the defendant shown on the records of the garnishee at the time the garnishment summons was served on the garnishee. If more

than one address is shown on the records of the garnishee at the time of service of the summons, the garnishee shall discharge the duty by mailing the required items to any one of the addresses shown on its records. In lieu of mailing, the garnishee may hand-deliver a copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The garnishee shall have no liability except for willful failure to mail or hand-deliver the copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The answer of the garnishee shall contain a statement indicating substantial compliance with this section. If the application requesting a hearing is filed, the Court shall set the matter for hearing within not less than two (2) nor more than ten (10) days from receipt of the returned application, and the Court Clerk shall give notice of the hearing to each of the parties by first-class mail. The defendant shall have the burden of proof to show that some or all of the assets subject to the garnishment are exempt. The Court shall issue an order determining the exemption and directing distribution of funds, as appropriate. The Court may direct such other orders to the judgment creditor as are necessary to prevent subsequent garnishment of the exempt property.

B. In any case in which the garnishee is required by law or by order of the Court to pay garnishment funds, the garnishee shall pay the funds directly to the judgment creditor, unless otherwise ordered by the Court upon good cause shown, to pay the funds directly to the Court Clerk or unless due to federal law or federal regulation it is necessary that payment be made directly to the Court Clerk.

C. Any funds paid to the Court Clerk on a judgment, whether or not pursuant to a garnishment summons shall be paid to the judgment creditor's attorney, or to the judgment creditor if there is no attorney within twenty-one (21) days from receipt by the Court Clerk, notwithstanding the various times set forth above unless otherwise directed by the Court. No order of disbursement shall be necessary. In distribution of funds to the judgment creditor's attorney or judgment creditor, if received pursuant to a garnishment, the Court shall not have the duty to determine whether or not the garnishee has complied with the mailing or hand-delivery required of this section or be held liable for complete or partial noncompliance with the notice delivery requirement by the garnishee.

§ 1173. Garnishee summons

A. Any judgment creditor may obtain a noncontinuing lien on earnings. For the purposes of this section, "**earnings**" means any form of payment to an individual including, but not limited to, salary, commission, gambling winnings, or other compensation, but does not include reimbursements for travel expenses.

B. A noncontinuing earnings garnishment shall be commenced by filing the affidavit provided for by 12 CNCA § 1172.

C. The form for the summons required by this section shall be prescribed by the Judicial Branch of Cherokee Nation.

D. The summons shall be served upon the garnishee, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and

claim for exemptions, in the manner provided for the service of summons in the Federal Rules of Civil Procedure and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the Judicial Branch of Cherokee Nation.

F. Within seven (7) days after the end of the defendant's then-current pay period or thirty (30) days from the date of service of the garnishment summons, whichever is earlier, the garnishee shall file the answer with the Court Clerk and the garnishee shall pay the amount withheld from the pay period to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, with a copy of the answer which shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of the indebtedness or liability. When the garnishee shall be in doubt respecting the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of the claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons to the extent the property is not exempt from garnishment.

- H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee except for a garnishment lien or summons to collect child support.

2. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under

a previous garnishment lien or garnishment summons and by giving the date when all previous garnishment liens or garnishment summonses are expected to end.

I. 1. When a postjudgment noncontinuing earnings garnishment under 12 CNCA § 1173 or a continuing earnings garnishment under 12 CNCA § 1173.4 is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of 12 CNCA § 1171.2 and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

Upon the filing of such affidavit and the undertaking and, when a hearing is required, after said hearing, where the garnishment is for the collection of support, garnishee summons shall be issued by the Judge of the District Court if prejudgment garnishment is sought or by the Clerk of the District Court if postjudgment garnishment is sought and served upon each of the garnishees, in the manner provided for service of summons under the laws or court rules of Cherokee Nation, and shall be returned with proof of service within ten (10) days of its date. The garnishee summons shall be on a form prescribed by the Judicial Branch of Cherokee Nation.

§§ 1173.1, 1173.2. Reserved

§ 1173.3. General garnishment

A. A general garnishment shall be commenced by filing the affidavit provided for by 12 CNCA § 1172.

B. The summons required by this section shall be on a form prescribed by the Judicial Branch of Cherokee Nation.

C. The summons required by subsection (B) of this section shall be served upon the garnishee together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions in the manner provided for by the laws or court rules of Cherokee Nation and shall be returned with proof of service within ten (10) days of its date.

D. The garnishee's answer shall be on a form prescribed by the Judicial Branch of Cherokee Nation.

E. Within ten (10) days after service of the garnishment, the garnishee shall file its answer with the court clerk and pay or deliver to the judgment creditor's attorney or to the judgment creditor if

there is no attorney the indebtedness or property belonging to or owed to the defendant, together with a copy of the answer which shall state:

1. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of such other claimants and, so far as known, the nature of the claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

F. The garnishment summons and affidavit served on the garnishee under this section are a lien on the defendant's property due at the time of service of the summons to the extent the property is not exempt from garnishment.

§ 1173.4. Continuing lien on earnings—Definitions

A. Any judgment creditor may obtain a continuing lien on earnings. For the purposes of this section, "**earnings**" means any form of payment to an individual including, but not limited to, salary, wages, commission, gaming winnings, or other compensation, but does not include reimbursements for travel expenses.

B. A continuing earnings garnishment shall be commenced by filing the affidavit provided for by 12 CNCA § 1172.

C. The summons required by this section shall be on a form prescribed by the Judicial Branch of Cherokee Nation.

D. The summons required by this section shall be served upon each of the garnishees, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions, in the manner provided for the service of summons in the Federal Rules of Civil Procedure and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the Judicial Branch of Cherokee Nation.

F. Within seven (7) days after the end of each pay period, or, if the judgment debtor does not have regular pay periods, after any payment by the garnishee to the judgment debtor, the garnishee shall file an answer with the Court Clerk, and pay the amount withheld to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, together with a copy of the answer which shall state:

1. Whether the garnishee was the employer of the defendant named in the notice, was indebted to the defendant, or was under any liability to the defendant in any manner or upon any account for earnings, specifying the beginning and ending dates of the pay period, if applicable, existing at the time of the service of the affidavit and summons, the total amounts earned in the entire pay period, and all of the facts and circumstances necessary to a complete understanding of any indebtedness or liability. When the garnishee shall be in doubt respecting the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of their claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons, to the extent the property is not exempt from garnishment. This lien attaches to subsequent nonexempt earnings until one of the following occurs:

1. the total earnings subject to the lien equals the balance of the judgment against the defendant owing to the plaintiff;

2. the employment relationship is terminated;

3. the judgment against the defendant is vacated, modified, or satisfied in full;

4. the summons is dismissed; or

5. one hundred eighty (180) days from the date of service of the affidavit and summons have elapsed; provided, an affidavit and summons shall continue in effect and shall apply to a pay period beginning before the end of the one hundred eighty- (180) day period even if the conclusion extends beyond the end of the period.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee during the period it is in effect, regardless of whether the amounts withheld by the garnishee are reduced by the Court or by agreement of the parties, except for a garnishment lien or garnishment summons issued for the collection of child support.

2. a. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons, and by giving the date when all previous garnishment liens or garnishment summons are expected to end.

b. The subsequent summons is not effective if a summons or lien on the same cause of action is pending at the time of service unless the subsequent summons in the same cause of action is served after the one-hundred-fiftieth (150th) day of the previous garnishment lien.

I. 1. When a postjudgment wage garnishment under 12 CNCA § 1173 or a continuing earnings garnishment under this section is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of 12 CNCA § 1171.2 and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

J. A continuing earnings garnishment may be suspended or modified for a specific period of time within the effective period of the garnishment by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the Clerk of the Court in which the judgment was entered, and a copy of which shall be mailed by first-class mail, postage prepaid by the judgment creditor to the garnishee.

K. Any garnishment issued against a debtor already subject to a continuing or noncontinuing earnings garnishment shall take effect immediately upon the conclusion of the prior garnishment, and shall be effective for its full period of time or as otherwise provided in this section.

§ 1174. Notice to defendant of garnishment proceedings

A. In all cases of garnishment before judgment, the defendant in the principal action shall be given notice of the issuance in said action of any garnishee summons, the date of issuance of said summons, and the name of the garnishee.

B. In all cases of garnishment for the collection of child support, the defendant shall be given notice as required by this section.

C. In all cases of postjudgment garnishment, the Court Clerk shall attach notice, in a form prescribed by the Judicial Branch of Cherokee Nation, with the garnishment, in the manner provided by 12 CNCA § 1172.2 that the defendant may be entitled to claim an exemption for any assistance received pursuant to the terms of the federal or Oklahoma Social Security Act and other exemptions that may be available to the defendant, and that any such claim should be filed with the Court Clerk within five (5) days from receipt of notice in a form prescribed by the Judicial Branch of Cherokee Nation, requesting a hearing as to the status of any assets which the defendant asserts are exempt. Any proceeding to claim an exemption initiated subsequent to five (5) days after receipt of notice shall be by motion unless otherwise agreed by the parties.

D. Said notification may be accomplished by:

1. Serving a copy of the garnishee summons on the defendant or on his attorney of record in the manner provided for the service of summons; or

2. Sending the notice or a copy of the garnishee summons to the defendant or his attorney of record by registered or certified mail with return receipt requested, which receipt shall be filed in the action; or

3. Attaching the notice on the summons issued in the principal action prior to its service; or

4. Including the notice in the publication notice when service in the principal action is by publication; or

5. Publication one (1) time in a newspaper of general circulation in the county in which the action is filed at least five (5) days prior to the date on which the garnishee's answer is due if the defendant is a nonresident or if the defendant's whereabouts are unknown to plaintiff.

§ 1175. Subsequent proceedings

The judgment creditor may in like manner subsequently proceed against other garnishees, or against the same garnishees, upon a new affidavit, if the judgment creditor shall have reason to believe they have subsequently become liable.

§ 1176. Reserved

§ 1177. Trial of issue—Judgment on answer

The answer of the garnishee shall in all cases be conclusive of the truth of the facts therein stated, with reference to the garnishee's liability to the defendant unless the judgment creditor shall within twenty (20) days from the receipt of the garnishee's answer, from the date of the deposition of the garnishee, or from receipt of the garnishee's answers to interrogatories, whichever is later, serve upon the garnishee or the garnishee's attorney of record personally or by certified mail, return receipt requested, a notice in writing that the judgment creditor elects to take issue with the garnishee's answer; in which case, the issue shall stand for trial as a civil action in which the affidavit on the part of the judgment creditor shall be deemed the petition and the garnishee's answer the answer thereto. If an issue for trial shall be joined between the judgment creditor and a garnishee resident in another county other than that in which the action is pending, the Court may, on motion, change the place of trial of such issue to the county of the garnishee's residence. The judgment creditor may, in all cases, move the Court, upon the answer of the garnishee, and of the defendant, if the defendant shall also answer, for such judgment to which the judgment creditor shall be entitled, but any such judgment shall be no bar beyond the facts stated in the answer.

§ 1178. Affidavit required of garnishee

A. For the purposes of this section, "**earnings**" means any form of payment to an individual including, but not limited to, salary, wages, commission, gaming winnings, or other compensation, but does not include reimbursement for travel expenses.

B. Where the garnishment summons is on earnings and is issued under 12 CNCA § 1173, the garnishee shall, within seven (7) days after the end of defendant's present pay period or where a payment of earnings is due, or thirty (30) days from the service of the summons, whichever is earlier, file an affidavit with the Clerk of the Court in which the action is pending and deliver or mail a copy thereof to the judgment creditor or the judgment creditor's attorney of record. The affidavit shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the garnishee summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to such property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant, or any other person, makes claim, at the garnishee's option, the names and addresses of such other claimants and, so far as known, the nature of the claims; and

5. The garnishee shall state that he has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

C. The garnishee's answer shall be on a form prescribed by the Judicial Branch of Cherokee Nation.

§ 1178.1. Summons for collection of support—Affidavit—Garnishee's answer

A. For the purposes of this section, "**wages**" or "**earnings**" means any form of payment to an individual including, but not limited to, salary, commission, or other compensation, but does not include reimbursement for travel expenses.

B. Where the garnishment summons is for the collection of support and is issued under 12 CNCA § 1173.2, the garnishee shall, within ten (10) days from the service of the garnishee's summons or within seven (7) days after the end of defendant's current pay period or thirty (30) days from the date of service of this summons, whichever is earlier, file an affidavit with the Clerk of the Court in which the action is pending and deliver or mail a copy thereof to the judgment creditor's attorney or to the judgment creditor if there is no attorney. The affidavit shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the pay period and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

2. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

3. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to such property, the facts and circumstances in the affidavit;

4. At the garnishee's option any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor, to apply the indebtedness or property disclosed;

5. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person, makes claim, at the garnishee's option the names and addresses of

such other claimants and, so far as known, the nature of the claims; and

6. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

C. The answer of the garnishee shall be on a form prescribed by the Judicial Branch of Cherokee Nation.

**§ 1178.2. Garnishment summons not on earnings or for collection of child support—
Affidavit—Garnishee's answer**

A. Where the garnishment summons is not on earnings, is not for the collection of child support and is issued under 12 CNCA § 1173.3, the garnishee shall, within ten (10) days from the service of the garnishee's summons, file an affidavit with the Clerk of the Court in which the action is pending and deliver or mail a copy thereof to the judgment creditor's attorney or to the judgment creditor if there is no attorney. The affidavit shall state:

1. Whether the garnishee was indebted or under any liability to the defendant named in the notice in any manner or upon any account specifying if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

2. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

3. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to such property, the facts and circumstances in the affidavit;

4. At the garnishee's option, any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

5. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of such other claimants and, so far as known, the nature of the claims; and

6. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

B. The answer of the garnishee shall be on a form prescribed by the Judicial Branch of Cherokee

Nation.

§ 1179. Failure of garnishee to answer

If any garnishee, having been duly summoned, shall fail to file and deliver or mail the answer as required by 12 CNCA § 1172.2, 1178, 1178.1 or 1178.2, to appear for deposition or to answer interrogatories as provided in 12 CNCA § 1183, the Court shall enter an order to the garnishee to file and deliver or mail the answer, to appear for deposition, or to answer the interrogatories within a time prescribed by the Court, not to be less than seven (7) days, in the order and also to deliver within the same period of time to the Court or the judgment creditor any money or property of defendant that the garnishee is required to pay or deliver under this title. The Court shall also direct the manner in which notice of the order shall be given to the garnishee. The order for giving notice shall specify a manner of giving notice which is calculated to be most likely to give actual notice to the garnishee or its managing officers, directors, or agents. The order shall specifically inform the garnishee that the garnishee has failed to respond to the summons and shall specifically advise the garnishee that judgment will be rendered against it in the principal amount of the judgment against the defendant plus costs, which amounts will be specified, upon failure to conform with the requirements of the order. If the garnishee shall fail to file and deliver or mail the answer affidavit as required in the order, appear for deposition, or to answer interrogatories as provided in the order, then the Court shall render judgment against the garnishee for the amount of the judgment and costs due the judgment creditor from the defendant in the principal action together with the costs of the garnishment, including a reasonable attorney fee to the judgment creditor for prosecuting the garnishment. The garnishee may also be subject to punishment for contempt; provided, however, the Court shall have power to vacate or modify any order issued pursuant to this section in the manner provided for under the statutes or court rules of Cherokee Nation.

§ 1180. Persons authorized to make answer

The answer of a corporation summoned as a garnishee may be made by any officer or attorney thereof; and of any other garnishee may be made by any agent or attorney of the garnishee.

§ 1181. Mutual defense by garnishee and defendant

At any time before final order or judgment against the garnishee, the defendant may in all cases, by answer duly verified defend the proceedings against any garnishee, upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such defendant, or for any other reason is not liable to garnishment; or upon any ground upon which a garnishee might defend the same; and may participate in the trial of any issue between the plaintiff and garnishee for the protection of his interests. The garnishee may at his option, defend the principal action for the defendant, if the latter does not, but shall be under no obligations so to do.

§ 1182. Proceedings deemed actions—Judgment and enforcement—Trial and dismissal—Unmatured or unliquidated debts

The proceedings against a garnishee shall be deemed an action by the judgment creditor against

garnishee and defendant, as parties defendant, and all of the provisions for enforcing judgment shall be applicable thereto. No trial shall be had of the garnishee action until the judgment creditor shall have judgment in the principal action, and if the defendant have judgment, the garnishee action shall be dismissed with costs, unless the judgment creditor shall perfect an appeal according to law, in which event the garnishment proceeding shall be continued until the disposition of the appeal, and it shall not be necessary to appeal the garnishment proceedings, or make the garnishee a party to the appeal. The Court shall render such judgment in all cases as shall be just to all of the parties and shall properly protect their respective interests, and may adjudge the recovery of any indebtedness, the conveyance, transfer, or delivery to the appropriate law enforcement official, or any officer appointed by the judgment, of any property disclosed or found to be liable to be applied to the judgment creditor's demand, or by the judgment pass the title thereto; and may therein, or by its order when proper, direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other things paid over or delivered to the Clerk or officer. The judgment against a garnishee shall acquit and discharge from all demands by the defendant or the defendant's representatives for all moneys, goods, effects, or credits paid, delivered or accounted for by the garnishee by force of such judgment; provided, it shall be no defense to proceedings against a garnishee that the debt owing by the garnishee to the defendant was unliquidated or was not due.

§ 1183. Examination of garnishee by deposition or interrogatories

The garnishee may be examined by the judgment creditor in any manner prescribed by the Federal Rules of Civil Procedure for discovery. Discovery may commence at any time after the service of the garnishee summons. If the garnishee is a corporation, any principal officer thereof may be so examined. Within forty-five (45) days after the filing of the answer affidavit by the garnishee, the judgment creditor may commence discovery concerning any matter contained in the answer or germane to any liability on the garnishee's part to the principal defendant. Attached to any discovery request or notice of deposition shall be a statement that, upon failure to answer or appear, a judgment may be taken against the garnishee by default for the amount of the judgment and costs which the judgment creditor shall recover or has recovered against the defendant in the principal action, together with costs of the garnishment, and that the garnishee may also be proceeded against for contempt. A copy of the discovery request or notice of deposition and such statement shall be served upon the garnishee or the garnishee's attorney of record in the manner provided for service of summons. The garnishee within twenty (20) days of the date of service of a discovery request shall deliver by mail a copy to the judgment creditor or the judgment creditor's attorney of record, full and true answers to all discovery requests, verified by affidavit, in the manner prescribed by the laws or court rules of Cherokee Nation.

§ 1184. Disclaimer by garnishee—Interpleading interested party

When the answer of the garnishee shall disclose that any other person than the defendant claims the indebtedness or property in his hands, and the name and residence of such claimant, the Court may, on motion, order that such claimant be interpleaded, as a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order, in such form as the Court shall direct, be served upon him; and that after such service shall have been made, the garnishee may pay or deliver to the officer or the Clerk such indebtedness or property, and have a receipt

therefore, which shall be a complete discharge from all liability to any party for the amount paid or property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action, and may be made without the state, or by publication thereof, if the order shall so direct. Upon such service being made, such claimant shall be deemed a defendant to the garnishee action and within ten (10) days shall answer, setting forth his claim or any defense which the garnishee might have made. In case of default, judgment may be rendered, which shall conclude any claim upon the part of such defendant.

§ 1185. Garnishee's liability

From the time of the service of the summons upon the garnishee he shall stand liable to the plaintiff to the amount of the property, moneys, credits and effects in his possession or under his control, belonging to the defendant or in which he shall be interested, to the extent of his right or interest therein, and of all debts due or to become due to the defendant, except such as may be by law exempt from execution. Any property, moneys, credits and effects held by a conveyance or title void as to the creditors of the defendant, shall be embraced in such liability. In case such moneys, credits and effects in the possession or under the control of the garnishee shall exceed the amount of the plaintiff's claim, the garnishee shall stand liable to the plaintiff only for the amount of the plaintiff's claim as disclosed by the garnishment affidavit together with such further amount as shall be equal to all costs and damages, which the plaintiff may recover in the action and garnishment proceedings.

§ 1186. No judgment upon garnishee's liability under certain circumstances

No judgment shall be rendered upon a liability of the garnishee arising:

First, by reason of his having drawn, accepted, made, endorsed or guaranteed any negotiable bill, draft, note, or other security.

Second, by reason of any money or other thing received or collected by him as a law enforcement officer, by force of an execution or other legal process in favor of the defendant.

Third, by reason of any money in his hands as a public officer, and for which he is accountable to the defendant merely as such officer.

Fourth, by reason of any money or other thing owing from him to the defendant, unless before judgment against the defendant it shall become due absolutely and without depending on any future emergency. Judgment may be given for any money or other thing owing, although it has not become payable, in which case the garnishee shall not be required to pay or deliver it before the time appointed by the contract.

§ 1187. No action against garnishee until termination of garnishee action

No action shall be commenced by the defendant or his assignee against a garnishee upon any claim or demand liable to garnishment, or to recover any property garnished, or execution be issued upon

a judgment in favor of defendant against such garnishee subsequent to the service of the garnishee summons upon him, until the termination of the garnishee action; and if an action shall have been commenced or an execution issued, it shall be stayed by the Court or a Judge thereof, upon the garnishee's application; except that upon cause shown, the Court or a Judge may by order permit the commencement of such an action, or the issue of an execution, or the further prosecution of one stayed.

§ 1188. Defendant's bond

The defendant may, at any time after the garnishment affidavit is filed, and before judgment, file with the Clerk of the Court an undertaking, executed by at least two sureties, authorized to issue bonds by Cherokee Nation, to the effect that they will, on demand, pay to the plaintiff the amount of the judgment that may be recovered against such defendant in the action, with all costs not exceeding a sum specified, which sum shall not be less than double the amount demanded by the complaint on file, or in such less sum as the Court shall, upon application, direct. The sureties shall justify their responsibility by affidavit annexed stating a sum which each is worth, in property, over and above all his debts and liabilities and property exempt from execution, the aggregate of which sums shall be double the amount specified in the undertaking. The defendant shall serve a copy of such undertaking, with a notice where and when the same was filed, on the plaintiff. Within three (3) days after the receipt thereof the plaintiff shall give notice to the defendant that he excepts to the sufficiency of the sureties, or he shall be deemed to have waived all objections to them.

§ 1189. When plaintiff excepts, sureties appear for justification—Discharge of garnishee

When the plaintiff excepts, the sureties shall appear for justification before the Judge of the District Court or the county judge of the county in which the action is brought, at a time and place to be mentioned in the notice given by the plaintiff, and may be examined on oath on the part of the plaintiff touching their sufficiency, in such manner as the Judge in his discretion may think proper. The examination shall be reduced to writing and subscribed by the sureties, if required by the plaintiff. If the Judge find the sureties sufficient he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the Clerk of the District Court. Thereafter all the garnishees shall be discharged, and the garnishment proceedings shall be deemed discontinued, and any money or property paid or delivered to any officer shall be surrendered to the person entitled thereto, and the costs shall be taxable as disbursements of the plaintiff in the action if he recovers. The Judge may in his discretion require the costs of the justification before him, including fees to the sureties as witnesses, to be forthwith paid by the party requiring justification.

§ 1190. Costs

A. A garnishee may deduct a fee of Ten Dollars (\$10.00) from the funds of the defendant in the garnishee's possession as reimbursement for costs incurred in answering. If the garnishee is not indebted to the defendant and the garnishee's answer evidencing that is filed and mailed or delivered to the judgment creditor or to the judgment creditor's attorney of record, the garnishee may assess the judgment creditor a fee of Ten Dollars (\$10.00) as reimbursement for such costs.

B. 1. In case of the trial of any issue between the judgment creditor and any garnishee, costs shall be awarded to the judgment creditor and against the garnishee, in addition to the garnishee's liability, if the judgment creditor recovered more than the garnishee admitted by the garnishee's answer; and if the judgment creditor does not, the garnishee shall recover costs from the judgment creditor. The costs shall include a reasonable attorney fee to be taxed in favor of the prevailing party.

2. In the case of the trial to determine the amount to be recovered for due and owing child support, where any liability on the part of the garnishee is disclosed, costs shall be awarded to the judgment creditor and against the defendant, including a reasonable attorney fee.

C. In all other cases under this article not expressly provided for, the Court may, in its discretion, award costs in favor of or against any party.

D. In addition to sums otherwise due pursuant to a judgment, a judgment creditor, if represented by an attorney, shall be entitled to an attorney fee of Fifty Dollars (\$50.00) for prosecuting a garnishment pursuant to subparagraphs b, c, and d of paragraph 2 of subsection (B) of 12 CNCA § 1171, and an attorney fee of One Hundred Dollars (\$100.00) for prosecuting a garnishment pursuant to 12 CNCA § 1171(B)(2)(e), not to exceed a total of One Hundred Fifty Dollars (\$150.00) in any twelve- (12) month period.

§ 1191. Reserved

§ 1192. Garnishment—Employees of Cherokee Nation or its business entities

That it shall be lawful for any creditor of any person, firm or corporation within the boundaries of Cherokee Nation, to whom an employee of Cherokee Nation or any of its wholly-owned business entities is indebted, to cause a garnishment to issue to, and to garnishee wages due such creditor of the employee to the same extent and in like manner as if such creditor of the employee was a creditor of a private individual, firm or corporation; provided, however, that such employee of Cherokee Nation shall be entitled to the exemptions as to amount of such wages, salary, fund or compensation due thereto, as is exempt from attachment, execution or garnishment in favor of officers or employees of private individuals or corporations.

§ 1193. Summons when Cherokee Nation employee is garnisheed

When an employee of Cherokee Nation or one of its wholly-owned business entities is garnisheed, summons shall be served on the payroll manager of Cherokee Nation or the business entity. The payroll manager shall not enforce any garnishment that was not issued by Cherokee Nation District Court except for child support garnishments from IV–D agencies of other states or tribes.

§ 1194. Cherokee Nation as garnishee—Judgments

No judgment shall be rendered against Cherokee Nation as garnishee, but judgment may be

rendered against any person served pursuant to 12 CNCA § 1193, who shall willfully fail, neglect or refuse to answer garnishment summons; provided, no person employed by Cherokee Nation shall be held personally liable unless the failure, neglect, or refusal to answer is willful.

§ 1195. Garnishment bond not required when Nation is plaintiff

That in all actions in which Cherokee Nation is party plaintiff, no garnishment bond shall be required of the plaintiff, but that a garnishment writ shall issue upon the filing of proper affidavits, as provided by law.

§ 1196. Judgment—Garnishee liability to defendant

If the plaintiff takes issue with the answer of the garnishee, the plaintiff may have a copy of the garnishee's answer and a copy of the plaintiff's notice which takes issue with the answer served on the defendant. If the defendant is served copies of the garnishee's answer and the plaintiff's notice, the determination of the Court as to the liability of the garnishee to the defendant will be binding on the defendant in any future action involving him and the garnishee whether or not the defendant participates in the trial of the issues raised by the garnishee's answer.

§ 1197. Garnishment of gaming winnings

Cherokee Nation Enterprises (CNE) shall verify that no child support arrearage is owed by any customer who wins an Internal Revenue Service reportable amount. Verification will be by comparing the social security number of the patron with the social security numbers provided by Cherokee Nation Office of Child Support Enforcement. CNE shall not be required to perform such comparison until the Office of Child Support Enforcement provides the information necessary, or access to the necessary information, to compare the social security number of the patron to the social security numbers of persons owing child support arrearages under Cherokee Nation issued or enforced child support orders and that indicates the amount of the arrearage owed. CNE shall collect the amounts indicated in the arrearage information and shall not be liable for any errors in said arrearage information.

§ 1198. Withholding gaming winnings

A. Cherokee Nation Enterprises shall withhold seventy-five percent (75%) of the amount of the gaming payout or prize awarded, not to exceed the amount owed, and forward that amount to Cherokee Nation Office of Child Support Enforcement. Failure to comply with this section shall result in CNE being liable for the amount it failed to withhold.

B. In circumstances where a patron is awarded a non-monetary prize and owes a child support arrearage, the patron shall be afforded the following options: 1) accept the cash equivalent of the prize offered minus the arrearage; or 2) pay the arrearage in cash or guaranteed funds and then take possession of the prize. After five (5) business days, the day of the prize winning event not included, if the patron has not made his/her election, CNE shall award the cash equivalent of the prize but withhold and remit the child support arrearage to the Office of Child Support

Enforcement or as directed by said Office, and then make any remaining funds available to the patron in accordance with CNE unclaimed jackpot procedures. The amount retained by CNE to pay the child support arrearage shall not exceed seventy-five percent (75%) of the net amount of the prize. Net amount is the amount of the prize after all deductions required by law are made not including the child support arrearage.

C. For the purposes of this section, "**winnings**" include prizes awarded to patrons as the result of promotions, or for other reasons, and which do not require a wager to be placed in order to win the prize. The prize must be of a sufficient amount to require that a report be made to the Internal Revenue Service.

CHAPTER 7

DECLARATORY JUDGMENTS

§ 1201. Short title

This act shall be known as the "Cherokee Nation Declaratory Judgment Act of 2009".

§ 1202. Purpose

The purpose of this act is to establish authority for the Judicial Branch to exercise declaratory judgments.

§ 1203. Determination of rights, status or other legal relations—Exceptions

The District Court may, in cases of actual controversy, determine rights, status, or other legal relations, including but not limited to a determination of the construction or validity of any foreign judgment or decree, deed, contract, trust, or other instrument or agreement or of any statute, municipal ordinance, or other governmental regulation, whether or not other relief is or could be claimed, except that no declaration shall be made concerning liability or non-liability for damages on account of alleged tortious injuries to persons or to property either before or after judgment or for compensation alleged to be due under workers' compensation laws for injuries to persons. The determination may be made either before or after there has been a breach of any legal duty or obligation, and it may be either affirmative or negative in form and effect; provided however, that a Court may refuse to make a determination where the judgment, if rendered, would not terminate the controversy, or some part thereof, giving rise to the proceeding.

§ 1204. Pleading

A determination of rights, status, or other legal relations may be obtained by means of a pleading seeking that relief alone or as incident to or part of a petition, counterclaim, or other pleading seeking other relief, and when a party seeks other relief, a Court may grant declaratory relief where appropriate.

§ 1205. Parties—Venue

A. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

B. The venue of the action shall be established by existing statutes; provided, where the action involves an individual defendant, the venue shall be in the county of the defendant's residence or where the defendant may be served with summons. If the action involves two or more defendants who reside in different counties, the venue shall be in any county where any defendant resides or may be served with summons.

C. In any proceeding which involves the validity of a municipal ordinance or regulation, the municipality shall be made a party, and shall be entitled to be heard, and if a statute or regulation is alleged to be unconstitutional, the Attorney General of Cherokee Nation shall also be served with a copy of the proceeding and be entitled to be heard.

§ 1206. Effect of determination—Review

Any determination of rights, status, or other legal relations shall have the force and effect of a final judgment, and it shall be reviewable in the same manner as other judgments.

§ 1207. Further relief

Further relief based upon determination of rights, status, or other legal relations may be granted whenever such relief becomes necessary and proper after the determination has been made. Application may be made by petition to any Court having jurisdiction for an order directed to any party or parties whose rights have been determined to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the Court in its order.

§ 1208. Issues of fact

When a proceeding under this act involves the determination of an issue of fact, such issue must be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the Court in which the proceeding is pending.

CHAPTER 8

UNIFORM ARBITRATION ACT

§ 1301. Definitions

In this Uniform Arbitration Act:

1. "**Arbitration organization**" means an association, agency, board, commission, or other entity

that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

2. **"Arbitrator"** means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

3. **"Court"** means a District Court of Cherokee Nation.

4. **"Knowledge"** means actual knowledge.

5. **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

6. **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 1302. Notice

A. Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

B. A person has notice if the person has knowledge of the notice or has received notice.

C. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

§ 1303. When chapter applies

A. This chapter governs an agreement to arbitrate made on or after the effective date of this chapter.

B. This chapter governs an agreement to arbitrate made before the effective date of this chapter if all the parties to the agreement or to the arbitration proceeding so agree in a record.

C. On or after July 1, 2005, this chapter governs an agreement to arbitrate whenever made.

§ 1304. Effect of agreement to arbitrate—Nonwaivable provisions

A. Except as otherwise provided in subsections (B) and (C), a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this Act to the extent permitted by law.

B. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

1. waive or agree to vary the effect of the requirements of 12 CNCA § 1305(A), 12 CNCA § 1306(A), 12 CNCA § 1308, 12 CNCA § 1317(A), 12 CNCA § 1317(B), 12 CNCA § 1326, or 12 CNCA § 1328;
2. agree to unreasonably restrict the right under 12 CNCA § 1309 to notice of the initiation of an arbitration proceeding;
3. agree to unreasonably restrict the right under 12 CNCA § 1312 to disclosure of any facts by a neutral arbitrator, or
4. waive the right under 12 CNCA § 1316 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

C. A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or 12 CNCA § 1303(A) or (C), 12 CNCA § 1307, 12 CNCA § 1314, 12 CNCA § 1318, 12 CNCA § 1320(D) or (E), 12 CNCA § 1322, 12 CNCA § 1323, 12 CNCA § 1324, 12 CNCA § 1325(A) or (B), 12 CNCA § 1329 or 12 CNCA § 1330.

§ 1305. Application for judicial relief

A. Except as otherwise provided in 12 CNCA § 1328, an application for judicial relief under this chapter must be made by petition to the Court and heard in the manner provided by law or rule of court for making and hearing petitions.

B. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial petition to the Court under this act must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

§ 1306. Validity of agreement to arbitrate

A. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

B. The Court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

C. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

D. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the Court, unless the Court otherwise orders.

§ 1307. Petition to compel or stay arbitration

A. On petition of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

1. if the refusing party does not appear or does not oppose the petition, the Court shall order the parties to arbitrate; and
2. if the refusing party opposes the petition, the Court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

B. On petition of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the Court shall proceed summarily to decide the issue. If the Court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

C. If the Court finds that there is no enforceable agreement, it may not pursuant to subsection (A) or (B) of this section order the parties to arbitrate.

D. The Court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

E. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a petition under this section must be made in that court. Otherwise a petition under this section may be made in any court as provided in 12 CNCA § 1327.

F. If a party makes a petition to the Court to order arbitration, the Court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the Court renders a final decision under this section.

G. If the Court orders arbitration, the Court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the Court may limit the stay to that claim.

§ 1308. Provisional remedies

A. Before an arbitrator is appointed and is authorized and able to act, the Court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

B. After an arbitrator is appointed and is authorized and able to act:

1. the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

2. a party to an arbitration proceeding may move the Court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

C. A party does not waive a right of arbitration by making a petition under subsection (A) or (B) of this section.

§ 1309. Initiation of arbitration

A. A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

B. Unless a person objects for lack or insufficiency of notice under 12 CNCA § 1315(C) not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

§ 1310. Consolidation of separate arbitration proceedings

A. Except as otherwise provided in subsection (C) of this section, upon petition of a party to an agreement to arbitrate or to an arbitration proceeding, the Court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

1. there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

2. the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

3. the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

4. prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

B. The Court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

C. The Court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

§ 1311. Appointment of arbitrator—Service as a neutral arbitrator

A. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the Court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

B. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

§ 1312. Disclosure by arbitrator

A. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

1. a financial or personal interest in the outcome of the arbitration proceeding; and
2. an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

B. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

C. If an arbitrator discloses a fact required by subsection (A) or (B) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under 12 CNCA § 1323(A)(2) for vacating an award made by the arbitrator.

D. If the arbitrator did not disclose a fact as required by subsection (A) or (B) of this section, upon timely objection by a party, the Court under 12 CNCA § 1323(A)(2) may vacate an award.

E. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under 12 CNCA § 1323(A)(2).

F. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a petition to vacate an award on that ground under 12 CNCA § 1323(A)(2).

§ 1313. Action by majority

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under 12 CNCA § 1315(C).

§ 1314. Immunity of arbitrator—Competency to testify—Attorney fees and costs

A. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a Judge of a Court of this Nation acting in a judicial capacity.

B. The immunity afforded by this section supplements any immunity under other law.

C. The failure of an arbitrator to make a disclosure required by 12 CNCA § 1312 does not cause any loss of immunity under this section.

D. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a Judge of a Court of this Nation acting in a judicial capacity. This subsection does not apply:

1. to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

2. to a hearing on a petition to vacate an award under 12 CNCA § 1323(A)(1) or (2) if the petitioner establishes prima facie that a ground for vacating the award exists.

E. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (D) of this section, and the Court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the Court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

§ 1315. Arbitration process

A. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

B. An arbitrator may decide a request for summary disposition of a claim or particular issue:

1. if all interested parties agree; or

2. upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

C. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five (5) days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The Court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

D. At a hearing under subsection (C) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

E. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with 12 CNCA § 1311 to continue the proceeding and to resolve the controversy.

§ 1316. Representation by lawyer

A party to an arbitration proceeding may be represented by a lawyer.

§ 1317. Witnesses—Subpoenas—Depositions—Discovery

A. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the Court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in

a civil action.

B. In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

C. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

D. If an arbitrator permits discovery under subsection (C), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a Court could if the controversy were the subject of a civil action in this Nation.

E. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a Court could if the controversy were the subject of a civil action in this Nation.

F. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this Nation.

G. The Court may enforce a subpoena or discovery-related order for the attendance of a witness within this Nation and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in a state or another Indian nation upon conditions determined by the Court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in a state or another Indian nation must be served in the manner provided by law for service of subpoenas in a civil action in this Nation and, upon motion to the Court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this Nation.

§ 1318. Judicial enforcement of preaward ruling by arbitrator

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under 12 CNCA § 1319. A prevailing party may make a motion to the Court for an expedited order to confirm the award under 12 CNCA § 1322, in which case the Court shall summarily decide the motion. The Court shall issue an order to confirm the award unless the Court vacates, modifies, or corrects the award under 12 CNCA § 1323 or 12 CNCA § 1324.

§ 1319. Award

A. An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

B. An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the Court. The Court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The Court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

§ 1320. Change of award by arbitrator

A. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

1. upon a ground stated in 12 CNCA § 1324(A)(1) or (3);
2. because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
3. to clarify the award.

B. A motion under subsection (A) of this section must be made and notice given to all parties within twenty (20) days after the movant receives notice of the award.

C. A party to the arbitration proceeding must give notice of any objection to the motion within ten (10) days after receipt of the notice.

D. If a motion to the Court is pending under 12 CNCA § 1322, § 1323, or § 1324, the Court may submit the claim to the arbitrator to consider whether to modify or correct the award:

1. upon a ground stated in 12 CNCA § 1324(A)(1) or (3);
2. because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
3. to clarify the award.

E. An award modified or corrected pursuant to this section is subject to 12 CNCA §§ 1319(A), 1322, 1323, and 1324.

§ 1321. Remedies—Fees and expenses of arbitration proceeding

A. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

B. An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

C. As to all remedies other than those authorized by subsections (A) and (B) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the Court is not a ground for refusing to confirm an award under 12 CNCA § 1322 or for vacating an award under 12 CNCA § 1323.

D. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

E. If an arbitrator awards punitive damages or other exemplary relief under subsection (A) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

§ 1322. Confirmation of award

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the Court for an order confirming the award at which time the Court shall issue a confirming order unless the award is modified or corrected pursuant to 12 CNCA § 1320 or 1324 or is vacated pursuant to 12 CNCA § 1323.

§ 1323. Vacating award

A. Upon motion to the Court by a party to an arbitration proceeding, the Court shall vacate an award made in the arbitration proceeding if:

1. the award was procured by corruption, fraud, or other undue means;
2. there was:
 - a. evident partiality by an arbitrator appointed as a neutral arbitrator,
 - b. corruption by an arbitrator, or
 - c. misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

3. an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to 12 CNCA § 1315, so as to prejudice substantially the rights of a party to the arbitration proceeding;

4. an arbitrator exceeded the arbitrator's powers;

5. there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under 12 CNCA § 1315(C) not later than the beginning of the arbitration hearing; or

6. the arbitration was conducted without proper notice of the initiation of an arbitration as required in 12 CNCA § 1309 so as to prejudice substantially the rights of a party to the arbitration proceeding.

B. A motion under this section must be filed within ninety (90) days after the movant receives notice of the award pursuant to 12 CNCA § 1319 or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to 12 CNCA § 1320, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety (90) days after the ground is known or by the exercise of reasonable care would have been known by the movant.

C. If the Court vacates an award on a ground other than that set forth in subsection A(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subsection A(1) or (2) of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subsection A(3), (4), or (6) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in 12 CNCA § 1319(B) for an award.

D. If the Court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

§ 1324. Modification or correction of award

A. Upon motion made within ninety (90) days after the movant receives notice of the award pursuant to 12 CNCA § 1319 or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to 12 CNCA § 1320, the Court shall modify or correct the award if:

1. there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

2. the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

3. the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

B. If a motion made under subsection (A) of this section is granted, the Court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the Court shall confirm the award.

C. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

§ 1325. Judgment on award—Attorney fees and litigation expenses

A. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the Court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

B. A Court may allow reasonable costs of the motion and subsequent judicial proceedings.

C. On application of a prevailing party to a contested judicial proceeding under 12 CNCA § 1322, 1323, or 1324, the Court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

§ 1326. Jurisdiction

A. A District Court of Cherokee Nation having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

B. An agreement to arbitrate providing for arbitration in Cherokee Nation confers exclusive jurisdiction on the Court to enter judgment on an award under this chapter.

§ 1327. Venue

A motion pursuant to 12 CNCA § 1305 must be made in the District Court of Cherokee Nation.

§ 1328. Appeals

A. An appeal may be taken from:

1. an order denying a motion to compel arbitration;
2. an order granting a motion to stay arbitration;
3. an order confirming or denying confirmation of an award;

4. an order modifying or correcting an award;
 5. an order vacating an award without directing a rehearing; or
 6. a final judgment entered pursuant to this chapter.
- B. An appeal under this section must be taken as from an order or a judgment in a civil action.

§ 1329. Uniformity of application and construction

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states and tribal nations that enact it.

§ 1330. Relationship to Electronic Signatures in Global and National Commerce Act

The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7002.

TITLE 13

COMMON CARRIERS

Reserved for Future Use

TITLE 14

COMMISSIONS AND OTHER ENTITIES

CHAPTER 1

APPOINTMENT OF BOARDS AND COMMISSIONS

§ 1. Short title

This act shall be known as the "Appointment of Boards and Commissions Act of 2004".

§ 2. Purpose

The purpose of this act is to make certain technical and substantive amendments to the appointment procedure for members of boards, commissions or authorities of Cherokee Nation, including boards of entities in which the Nation is the majority owner. This act would require that all appointments be consistently applied.

§ 3. Definitions

For purposes of this chapter:

1. **"Entities"** means all boards, commissions, operations, agencies and majority-owned businesses of Cherokee Nation.
2. **"Member(s)"** means individual persons who are appointed to serve on the governing body of entities.

§ 4. Appointments

- A. All members of entities of the Nation, if not designated by title in the applicable authorizing legislation or governing documents, shall be appointed by the Principal Chief and confirmed by the Council of Cherokee Nation, with the exception of the Election Commission (26 CNCA § 11) and the Editorial Board (LA 07–00, as amended by LA 08–01).
- B. Terms, number of members and all other requirements of entities are not affected by this chapter.
- C. This procedure shall be implemented for all future appointments, in accordance with subsection (A) of this section.

TITLE 15

CONTRACTS

CHAPTER 1

CONTRACT PUBLICATION

§ 1. Short title

This act shall be known and may be cited as "The Contract Publication Act of 2003".

§ 2. Purpose

The purpose of this act shall be to ensure that all laws and regulations are properly followed in awarding contracts given by Cherokee Nation to individuals, businesses or agencies; further the purpose of this act is to make available that information to other branches of government and the Cherokee people.

§ 3. Reports relating to contracts

A. Each Executive Director of a Department of Cherokee Nation shall submit to the Treasurer by November 1 of each year, a report listing all acquisitions exceeding Five Thousand Dollars (\$5,000.00) of the Department for the preceding fiscal year which will include the following information:

1. Professional service contracts;
2. Nonprofessional service contracts; and
3. Contracts for the leasing of property including real property contracts and any lease agreements for products or equipment.

B. The report shall contain:

1. The name of the supplier;
2. A description of each acquisition;
3. The purchase price of the acquisition; and
4. The total amount expended to date for the preceding fiscal year for the acquisition.

C. The report shall specifically identify sole source, sole brand acquisitions, and acquisitions by TERO vendors.

D. The Executive Director of the Department of Cherokee Nation shall submit the report to the Treasurer and to the Office of the Controller. The Executive Director of any Department shall submit the report to any Member of the Cherokee Nation Council if a Member so requests.

E. The Treasurer shall review the report for compliance with statutes and rules or other provisions of law applicable.

F. All contract awards given by Cherokee Nation to individuals, businesses or agencies over One Hundred Thousand Dollars (\$100,000.00) will be published annually in January on the Cherokee Nation website and in the *Cherokee Phoenix*.

TITLE 16

CONVEYANCES

Reserved for Future Use

TITLE 17

RESERVED

Reserved for Future Use

TITLE 18
CORPORATIONS
CHAPTER 1
CHEROKEE NATION GENERAL CORPORATION ACT
ARTICLE 1
GENERAL PROVISIONS

§ 1. Short title

Sections 1 through 146 of this Title shall be known and may be cited as the "Cherokee Nation General Corporation Act". Section captions are part of the Cherokee Nation General Corporation Act.

§ 2. Scope of act

A. The provisions of the Cherokee Nation General Corporation Act shall be applicable to every for-profit corporation, whether stock or nonstock, existing as of the effective date of this act or thereafter formed or qualified to transact business in Cherokee Nation, and to all securities thereof, except to the extent that:

1. any such corporation is expressly excluded from the operation of the Cherokee Nation General Corporation Act or portions thereof; or
2. special provisions concerning any such corporation conflict with the provisions of the Cherokee Nation General Corporation Act, in which case such special provisions shall govern.

B. Any conflicts with the provisions of the Cherokee Nation General Corporation Act and any tax or unclaimed property laws of Cherokee Nation shall be governed by the tax or unclaimed property provisions, including those provisions relating to personal liability of corporate officers and directors.

C. The provisions of the Cherokee Nation General Corporation Act concerning qualifications of foreign corporations and providing requirements and duties relating to such corporations shall apply to insurance companies until such times as an Insurance Commission or similar agency to govern insurance is formed.

D. The provisions of the Cherokee Nation General Corporation Act concerning qualifications of

foreign corporations and providing requirements and duties relating to such corporations shall apply to foreign transportation companies until such time as a Corporation Commission or similar agency to govern transportation is formed.

§ 3. Rights, liabilities and duties under prior statutes

All rights, privileges and immunities vested or accrued by and pursuant to any laws enacted prior to the adoption or subsequent amendment of the Cherokee Nation General Corporation Act, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities and penalties imposed or required by and pursuant to laws enacted prior to the adoption or amendment of the Cherokee Nation General Corporation Act, shall not be impaired, diminished or affected.

§ 4. Reserved power of Cherokee Nation to amend or repeal—Cherokee Nation General Corporation Act part of corporation's charter or certificate of incorporation

The Cherokee Nation General Corporation Act may be amended or repealed at the pleasure of the Council of Cherokee Nation, but any amendment or repeal shall not take away or impair any remedy available pursuant to the provisions of the Cherokee Nation General Corporation Act against any corporation or its officers for any liability which shall have been previously incurred. The Cherokee Nation General Corporation Act and any amendments thereto shall be a part of the charter or certificate of incorporation of every corporation except so far as the same are inapplicable and inappropriate to the objects of the corporation. The provisions of this section shall not affect or impair as to any corporation any rights protected or guaranteed by the Constitution of Cherokee Nation or of the United States.

ARTICLE 2

FORMATION

§ 5. Incorporators—How corporation formed—Purposes

A. Any tribal citizen of Cherokee Nation pursuant to Article III, Section 1 [now Article IV, § 1] of the Cherokee Nation Constitution, Cherokee Nation, any partnership, association or corporation in which the majority of the shares are owned by Cherokee Nation or one or more tribal citizens may, singly or jointly with any person, partnership, association or corporation, and without regard to his or their residence, domicile or place of incorporation, incorporate or organize a corporation pursuant to the provisions of the Cherokee Nation General Corporation Act by filing with the Office of the Principal Chief or his authorized representative a certificate of incorporation which shall be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7.

B. A corporation may be incorporated or organized pursuant to the provisions of the Cherokee Nation General Corporation Act to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of Cherokee Nation.

C. A corporation incorporated under the Cherokee Nation General Corporation Act must maintain

its principal office in Indian Country, as defined by 18 U.S.C. § 1151 within Cherokee Nation boundaries.

§ 6. Certificate of incorporation—Contents

A. The certificate of incorporation shall set forth:

1. The name of the corporation which shall contain one of the words "association", "company", "corporation", "club", "foundation", "fund", "incorporated", "institute", "society", "union", "syndicate", or "limited" or one of the abbreviations "co.", "corp.", "inc.", "ltd.", or words or abbreviations of like import in other languages provided that such abbreviations are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the Office of the Principal Chief or his authorized representative from:

a. names of other corporations organized under the laws of Cherokee Nation then existing or which existed at any time during the preceding three (3) years; or

b. names of foreign corporations registered in accordance with the laws of Cherokee Nation then existing or which existed at any time during the preceding three (3) years; or

c. names of then existing limited partnerships whether organized pursuant to the laws of Cherokee Nation or licensed or registered as foreign limited partnerships in Cherokee Nation; or

d. trade names or fictitious names filed with the Office of the Principal Chief or his authorized representative; or

e. corporate or limited partnership names reserved with the Office of the Principal Chief or his authorized representative.

2. The address, including the street, number, city and county, of the corporation's registered office in Cherokee Nation, and the name of the corporation's registered agent at such address;

3. The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the general corporation law of Cherokee Nation, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

4. If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class, and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the

shares of each such class. The provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation. The conditions of membership of such corporations shall likewise be stated in the certificate of incorporation or the certificate may provide that the conditions of membership shall be stated in the bylaws;

5. The name and mailing address of the incorporator or incorporators;

6. If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and

B. In addition to the matters required to be set forth in the certificate of incorporation pursuant to the provisions of subsection (A) of this section, the certificate of incorporation may also contain any or all of the following matters:

1. Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, or the members of a nonstock corporation, if such provisions are not contrary to the laws of Cherokee Nation. Any provision which is required or permitted by any provision of the Cherokee Nation General Corporation Act to be stated in the bylaws may instead be stated in the certificate of incorporation;

2. The following provisions, in substantially the following form: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its shareholders or any class of them, the District Court of Cherokee Nation, on the application in a summary way of this corporation or of any creditor or shareholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of 18 CNCA § 106 or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of 18 CNCA § 100, may order a meeting of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, to be summoned in such manner as the Court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the Court to which the application has been made, shall be binding on all the creditors or class of creditors, and/or on all the shareholders or class of shareholders, of this corporation, as the case may be, and also on this corporation.";

3. Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any

securities of the corporation convertible into such stock. No shareholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to him in the certificate of incorporation. Preemptive rights, if granted, shall not extend to fractional shares;

4. Provisions requiring, for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by the provisions of the Cherokee Nation General Corporation Act;

5. A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

6. A provision imposing personal liability for the debts of the corporation on its shareholders or members to a specified extent and upon specified conditions; otherwise, the shareholders or members of a corporation shall not be personally liable for the payment of the corporation's debts, except as they may be liable by reason of their own conduct or acts;

7. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

a. for any breach of the director's duty of loyalty to the corporation or its shareholders; or

b. for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

c. under 18 CNCA § 53; or

d. for any transaction from which the director derived an improper personal benefit.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.

C. It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by the provisions of the Cherokee Nation General Corporation Act.

§ 7. Execution, acknowledgment, filing and effective date of original certificate of incorporation and other instruments—Exceptions

A. Whenever any provision of the Cherokee Nation General Corporation Act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of the Cherokee Nation General Corporation Act, such instrument shall be executed as follows:

1. The certificate of incorporation and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the certificate of incorporation,

shall be signed by the incorporator or incorporators;

2. All other instruments shall be signed:

a. by the chairman or vice-chairman of the board of directors, or by the president, or by a vice-president, and attested by the secretary or an assistant secretary; or by such officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice-president and by the secretary or assistant secretary of a corporation;

b. if it appears from the instrument that there are no such officers, then by a majority of the directors or by such directors as may be designated by the board;

c. if it appears from the instrument that there are no such officers or directors, then by the holders of record, or such of them as may be designated by the holders of record, of a majority of all outstanding shares of stock; or

d. by the holders of record of all outstanding shares of stock.

B. Whenever any provision of the Cherokee Nation General Corporation Act requires any instrument to be acknowledged, such requirement is satisfied by either:

1. The formal acknowledgment by the person or one of the persons signing the instrument that it is his act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. Such acknowledgment shall be made before a person who is authorized by the law of the place of execution to take acknowledgments of deeds and who, if he has a seal of office, shall affix it to the instrument; or

2. The signature, without more, of the person or persons signing the instrument, in which case such signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under penalties of perjury, that the instrument is his act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.

C. Whenever any provision of the Cherokee Nation General Corporation Act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of the Cherokee Nation General Corporation Act, such requirement means that:

1. Two signed instruments, one of which may be a conformed copy, shall be delivered to the Office of the Principal Chief or his authorized representative;

2. All corporate franchise taxes authorized by law to be collected by the Cherokee Nation Tax Commission shall be tendered to the Cherokee Nation Tax Commission as prescribed by 68 CNCA § 1201 et seq.;

3. All fees authorized by law to be collected by the Office of the Principal Chief or his authorized representative in connection with the filing of the instrument shall be tendered to the Office of the

Principal Chief or his authorized representative; and

4. Upon delivery of the instrument, and upon tender of the required taxes and fees, the Office of the Principal Chief or his authorized representative shall certify that the instrument has been filed in his office by endorsing upon the signed instrument the word "Filed", and the date of its filing. This endorsement is the "filing date" of the instrument, and is conclusive of the date of its filing in the absence of actual fraud. Upon request, the Office of the Principal Chief or his authorized representative shall also endorse the hour that the instrument was filed, which endorsement shall be conclusive of the hour of its filing in the absence of actual fraud. The Office of the Principal Chief or his authorized representative shall thereupon file and index the endorsed instrument.

D. Any instrument filed in accordance with the provisions of subsection (C) of this section shall be effective upon its filing date. Any instrument may provide that it is not to become effective until a specified date subsequent to the time it is filed, but such date shall not be later than a time on the ninetieth (90th) day after the date of its filing.

E. If another section of the Cherokee Nation General Corporation Act specifically prescribes a manner of executing, acknowledging or filing a specified instrument or a time when such instrument shall become effective which differs from the corresponding provisions of this section, then the provisions of such other section shall govern.

F. Whenever any instrument authorized to be filed with the Office of the Principal Chief or his authorized representative under any provision of this title has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, sealed or acknowledged, such instrument may be corrected by filing with the Office of the Principal Chief or his authorized representative a certificate of correction of such instrument which shall be executed, acknowledged and filed in accordance with the provisions of this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. The corrected instrument shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the corrected instrument shall be effective from the filing date of the corrected instrument.

G. If any instrument authorized to be filed with the Office of the Principal Chief or his authorized representative pursuant to any provision of this title is filed inaccurately, defectively or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Office of the Principal Chief or his authorized representative shall have no liability to any person for the preclearance for filing, the acceptance for filing, or the filing and indexing of such instrument by the filing and indexing of such instrument by the Office of the Principal Chief or his authorized representative.

H. Any signature on any instrument authorized to be filed with the Office of the Principal Chief or his authorized representative under any provisions of this Title may be a facsimile.

§ 8. Certificate of incorporation—Definition

The term "**certificate of incorporation**", as used in the Cherokee Nation General Corporation Act, unless the context requires otherwise, includes not only the original certificate of incorporation filed to create a corporation but also all other certificates, agreements of merger or consolidation, plans of reorganization, or other instruments, howsoever designated, which are filed pursuant to the provisions of 18 CNCA §§ 6, 23 through 26, 32, 76 through 87, or 118, or any other section of this Title, and which have the effect of amending or supplementing in some respect a corporation's original certificate of incorporation.

§ 9. Certificate of incorporation and other certificates—Evidence

A copy of a certificate of incorporation, or of a restated certificate of incorporation, or of any other certificate which has been filed in the Office of the Principal Chief or his authorized representative as required by any provision of this title, when duly certified by the Office of the Principal Chief or his authorized representative, shall be received in all courts, public offices, and official bodies as prima facie evidence of:

1. Due execution, acknowledgment and filing of the instrument;
2. Observance and performance of all acts and conditions necessary to have been observed and performed precedent to the instrument becoming effective; and
3. Of any other facts required or permitted by law to be stated in the instrument.

§ 10. Commencement of corporate existence

Upon the filing with the Office of the Principal Chief or his authorized representative of the certificate of incorporation, executed and acknowledged in accordance with the provisions of 18 CNCA § 7, the incorporator or incorporators who signed the certificate, and his or their successors and assigns, from the date of such filing, shall be and constitute a body corporate by the name set forth in the certificate, subject to the provisions of 18 CNCA § 7(D) and subject to dissolution or other termination of its existence as provided for in the Cherokee Nation General Corporation Act.

§ 11. Powers of incorporators

If the persons who are to serve as directors until the first annual meeting of shareholders have not been named in the certificate of incorporation, the incorporator or incorporators, until the directors are elected, shall manage the affairs of the corporation and may do whatever is necessary and proper to perfect the organization of the corporation, including the adoption of the original bylaws of the corporation and the election of directors.

§ 12. Organization meeting of incorporators or directors named in certificate of incorporation

A. After the filing of the certificate of incorporation, an organization meeting of the incorporator or incorporators, or of the board of directors if the initial directors were named in the certificate of

incorporation, shall be held either within or without Cherokee Nation at the call of a majority of the incorporators or directors, as the case may be, for the purposes of adopting bylaws, electing directors if the meeting is of the incorporators, to serve or hold office until the first annual meeting of shareholders or until their successors are elected and qualify, electing officers if the meeting is of the directors, doing any other or further acts to perfect the organization of the corporation, and transacting such other business as may come before the meeting.

B. The persons calling the meeting shall give to each other incorporator or director, as the case may be, at least two (2) days' written notice thereof by any usual means of communication, which notice shall state the time, place and purposes of the meeting as fixed by the persons calling it. Notice of the meeting need not be given to anyone who attends the meeting or who signs a waiver of notice either before or after the meeting.

C. Any action permitted to be taken at the organization meeting of the incorporators or directors, as the case may be, may be taken without a meeting if each incorporator or director, where there is more than one, or the sole incorporator or director where there is only one, signs an instrument which states the action so taken.

§ 13. Bylaws

A. The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators, by the initial directors if they were named in the certificate of incorporation, or, before a corporation has received any payment for any of its stock, by its board of directors. After a corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws shall be in the shareholders entitled to vote, or, in the case of a nonstock corporation, in its members entitled to vote; provided, however, any corporation, in its certificate of incorporation, may confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a nonstock corporation, upon its governing body by whatever name designated. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the shareholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.

B. The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its shareholders, directors, officers or employees.

§ 14. Emergency bylaws and other powers in emergency

A. The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the shareholders, which, notwithstanding any different provision in the Cherokee Nation General Corporation Act, in the certificate of incorporation, or bylaws, shall be operative during any emergency resulting from an attack on the United States or on a locality in which the corporation conducts its business or customarily holds meetings of its board of directors or its shareholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the board of

directors or a standing committee thereof cannot readily be convened for action. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

1. A meeting of the board of directors or a committee thereof may be called by an officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;
2. The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and
3. The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time, not longer than reasonably necessary after the termination of the emergency, as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

B. The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

C. The board of directors, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers to do so.

D. No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct.

E. To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency and upon its termination the emergency bylaws shall cease to be operative.

F. Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during such an emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

G. To the extent required to constitute a quorum at any meeting of the board of directors during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

H. Nothing contained in this section shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of the Cherokee Nation General Corporation Act which have been or may be adopted by corporations created pursuant to the provisions of the Cherokee Nation General Corporation Act.

ARTICLE 3

POWERS

§ 15. General powers

In addition to the powers enumerated in 18 CNCA § 16, every corporation, its officers, directors and shareholders shall possess and may exercise all the powers and privileges granted by the provisions of the Cherokee Nation General Corporation Act or by any other law or by its certificate of incorporation, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation.

§ 16. Specific powers

Every corporation created pursuant to the provisions of the Cherokee Nation General Corporation Act shall have power to:

1. Have perpetual succession by its corporate name, unless a limited period of duration is stated in its certificate of incorporation;
2. Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitrate or other proceeding, in its corporate name;
3. Have a corporate seal, which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
4. Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated, subject to the limitations prescribed by 18 CNCA § 20;
5. Appoint or elect such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;
6. Adopt, amend and repeal bylaws;
7. Wind up and dissolve itself in the manner provided for in the Cherokee Nation General Corporation Act;
8. Conduct its business, carry on its operations, and have offices and exercise its powers within or without Cherokee Nation;
9. Make donations for the public welfare or for charitable, scientific or educational purposes, and

in time of war or other national emergency in aid thereof;

10. Be an incorporator, promoter or manager of other corporations of any type or kind;

11. Participate with others in any corporation, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;

12. Transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority;

13. Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of:

a. a corporation, all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation;

b. a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation; or

c. a corporation, all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and to make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;

14. Lend money for its corporate purposes, invest and reinvest its funds, and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested;

15. Pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers, and employees, and for any or all of the directors, officers, and employees of its subsidiaries;

16. Provide insurance for its benefit on the life of any of its directors, officers, or employees, or on the life of any shareholder for the purpose of acquiring at his death shares of its stock owned by such shareholder;

17. Provided that corporations in which Cherokee Nation is the sole or majority shareholder cannot give, pledge or loan its credit to any individual, firm, company, corporation or association without

prior approval of the Cherokee Nation Tribal Council. The Tribal Council shall develop procedures to facilitate this act without interfering with the daily operations of tribally-owned corporations or businesses. The Tribal Council hereby pre-approves a corporation in which Cherokee Nation is majority shareholder to make purchases of real property in an amount not to exceed Six Million Dollars (\$6,000,000.00) in the aggregate during a fiscal year. Said corporation shall acquire Tribal Council approval to make additional purchases of real property in excess of the six million dollar fiscal year limit. Said tribal corporation through its officers shall report to the Executive and Finance Committee of Cherokee Nation Tribal Council on the status of real property acquisitions.

The amendment by LA 53–12, increasing the limit on real property purchases from Six Million Dollars to Fifteen Million Dollars, was in effect for only nine months and reverted back on October 1, 2013.

§ 17. Powers respecting securities of other corporations or entities

A. Any corporation organized under the laws of Cherokee Nation may guarantee, purchase, take, receive, subscribe for or otherwise acquire; own, hold, use or otherwise employ; sell, lease, exchange, transfer, or otherwise dispose of; mortgage, lend, pledge or otherwise deal in and with, bonds and other obligations of, or shares or other securities or interests in, or issued by, any other domestic or foreign corporation, partnership, association, or individual, or by any government or agency or instrumentality thereof, subject to the limitation prescribed in subsection (B) of this section. A corporation while the owner of any such securities may exercise all the rights, powers and privileges of ownership, including the right to vote.

B. No trust company, or bank or banking company shall own, hold, or control, in any manner whatever, the stock of any other trust company or bank or banking company, except such stock as may be pledged in good faith to secure bona fide indebtedness, acquired upon foreclosure, execution sale, or otherwise for the satisfaction of debt; and such stock shall be disposed of in the time and manner hereinbefore provided.

§ 18. Monthly cash dividend

Those for-profit corporations in which Cherokee Nation is the sole or majority shareholder, and that are incorporated under Cherokee Nation law, shall issue a monthly cash dividend in the amount of thirty-five percent (35%) of net income. Five percent (5%) of said dividend will be set aside exclusively for contract health services for Cherokee Nation citizens, including, but not limited to, eyeglasses, dentures, prostheses, cancer treatments and hearing aids provided the amount of increase (over current thirty percent [30%]) is conditioned upon CNE and CNB remaining in compliance with the financial covenants of any credit agreement and guaranty. In addition, the Board of Directors of such corporations will have the discretion to declare any special quarterly dividend that they deem appropriate. Funds expended under this section shall be expended to Cherokee Nation citizens who reside anywhere within the fourteen- (14) county jurisdictional area.

§§ 19, 20. Reserved

ARTICLE 4

REGISTERED OFFICE AND REGISTERED AGENT

§ 21. Registered office in Cherokee Nation—Principal office or place of business in Cherokee Nation

A. Every corporation shall have and maintain in Cherokee Nation a registered office which may, but need not be, the same as its place of business.

B. Whenever the term "**corporation's principal office or place of business in Cherokee Nation**" or "**principal office or place of business of the corporation in Cherokee Nation**", or other term of like import, is or has been used in a corporation's certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation's registered office required by this section. It shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with the provisions of this section.

§ 22. Registered agent in Cherokee Nation—Resident agent

A. Every domestic corporation shall have and maintain in Cherokee Nation a registered agent, which agent may be either an individual resident in the state whose business office is identical with the corporation's registered office, or a domestic corporation, which may be itself, or a foreign corporation authorized to transact business in Cherokee Nation, having a business office identical with such registered office.

B. Every foreign corporation qualified to transact business in Cherokee Nation shall have and maintain the Office of the Principal Chief or his authorized representative as its registered agent in Cherokee Nation. In addition, such foreign corporation may have and maintain in Cherokee Nation a registered agent, which agent may be either an individual resident of Cherokee Nation whose business office is identical with the corporation's registered office, or a domestic corporation, or a foreign corporation authorized to transact business in Cherokee Nation, having a business office identical with such registered office; provided that if such additional registered agent is designated, service of process shall be on such agent and not on the Office of the Principal Chief or his authorized representative.

C. Whenever the term "**resident agent**" or "**resident agent in charge of a corporation's principal office or place of business in Cherokee Nation**", or other term of like import which refers to a corporation's agent required by statute to be located in Cherokee Nation, is or has been used in a corporation's certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation's registered agent required by this section. It shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with the provisions of this section.

§ 23. Change of location of registered office—Change of registered agent

Any corporation, by resolution of its board of directors, may change the location of its registered office in Cherokee Nation to any other place in Cherokee Nation. By like resolution, the registered agent of a corporation may be changed to any other person or corporation, including itself. In either such case, the resolution shall be as detailed in its statement as is required by the provisions of 18 CNCA § 6(A)(2). Upon the adoption of such a resolution, a certificate certifying the change shall be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7.

§ 24. Change of address or name of registered agent

A. A registered agent may change the address of the registered office of the corporation or corporations for which he is the registered agent to another address in Cherokee Nation by filing with the Office of the Principal Chief or his authorized representative a certificate in the name of each affected corporation, executed and acknowledged by such registered agent, setting forth the name of the corporation represented by such registered agent, the address at which the registered office for the corporation has been maintained, the new address to which the registered office will be changed as of a given date and at which new address such registered agent will thereafter maintain the registered office for the corporation recited in the certificate.

B. In the event of a change of name of any person or corporation acting as registered agent in Cherokee Nation, such registered agent shall file with the Office of the Principal Chief or his authorized representative a certificate in the name of each affected corporation, executed and acknowledged by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the name of the corporation represented by such registered agent, and the address at which such registered agent has maintained the registered office for the corporation.

§ 25. Resignation of registered agent coupled with appointment of successor

The registered agent of one or more corporations may resign and appoint a successor registered agent by filing in the name of each affected corporation a certificate with the Office of the Principal Chief or his authorized representative, stating the name and address of the successor agent, in accordance with the provisions of 18 CNCA § 6(A)(2). There shall be attached to each such certificate a statement of the affected corporation ratifying and approving such change of registered agent. Each such statement shall be executed and acknowledged in accordance with the provisions of 18 CNCA § 7. Upon such filing, the successor registered agent shall become the registered agent of each corporation which has ratified and approved each substitution and the successor registered agent's address, as stated in each certificate, shall become the address of each such corporation's registered office in Cherokee Nation. The Office of the Principal Chief or his authorized representative shall then issue his certificate that the successor registered agent has become the registered agent of the corporation so ratifying and approving such change, and setting out the names of such corporation.

§ 26. Resignation of registered agent not coupled with appointment of successor—Absence of

registered agent

A. The registered agent of one or more corporations may resign without appointing a successor by filing in the name of each affected corporation a certificate with the Office of the Principal Chief or his authorized representative; but such resignation shall not become effective until sixty (60) days after each certificate is filed. There shall be included in the certificate a statement of such registered agent, if an individual, or of the president, a vice-president, or the secretary thereof, if a corporation, that at least thirty (30) days prior to the date of the filing of the certificate, due notice of the resignation of the registered agent was sent by certified or registered mail to the corporation for which such registered agent was acting, at the principal office thereof, if known to the registered agent or, if not, to the last-known address of the attorney or other individual at whose request the registered agent was appointed for such corporation and such address shall be specified therein.

B. After receipt of the notice of the resignation of its registered agent provided for in subsection (A) of this section, the corporation for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning in the same manner as provided for in 18 CNCA § 23 for change of registered agent. If such corporation, being a corporation of Cherokee Nation, fails to obtain and designate a new registered agent prior to the expiration of the period of sixty (60) days after the filing by the registered agent of the certificate of resignation, the Office of the Principal Chief or his authorized representative shall be deemed to be the registered agent of such corporation until a new registered agent is designated. The Office of the Principal Chief or his authorized representative shall charge the fee prescribed by 18 CNCA § 23 for acting as registered agent.

C. If a corporation has no registered agent or the registered agent cannot be found, then service on the corporation may be made by serving the Office of the Principal Chief or his authorized representative as its agent as provided in 12 CNCA and in Rule 4 of the Federal Rules of Civil Procedure.

ARTICLE 5

DIRECTORS AND OFFICERS

§ 27. Board of directors—Powers—Number—Qualifications—Terms and quorum—committees—Classes of directors—Reliance upon books—Action without meeting, etc.

A. The business and affairs of every corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act shall be managed by or under the direction of a board of directors, except as may be otherwise provided for in the Cherokee Nation General Corporation Act or in its certificate of incorporation. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by the provisions of the Cherokee Nation General Corporation Act shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

B. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided for in the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be shareholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until his successor is elected and qualified or until his earlier resignation or removal. Provided, that a director shall not serve more than four (4) consecutive years without confirmation by the Tribal Council to a corporation whose majority shareholder is Cherokee Nation. Any director may resign at any time upon written notice to the corporation. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. Unless the certificate of incorporation provides otherwise, the bylaws may provide that a number less than a majority shall constitute a quorum which in no case shall be less than one-third (1/3) of the total number of directors except that when a board of one director is authorized under the provisions of this section, then one director shall constitute a quorum. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

C. The board of directors, by resolution passed by a majority of the whole board, may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation (except that a committee, to the extent authorized in the resolution or resolution providing for the issuance of shares of stock adopted by the board of directors as provided for in 18 CNCA § 32(A), may fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation in accordance with the provisions of 18 CNCA § 81 or 82, recommending to the shareholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the shareholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution, bylaws or certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, authorize the issuance of stock, or to adopt a certificate of

ownership and merger pursuant to the provisions of 18 CNCA § 83.

D. The directors of any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the shareholders, may be divided into one, two or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one (1) year thereafter; of the third class two (2) years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for such term, and have such voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the certificate of incorporation may be greater than or less than those of any other director or class of directors. If the certificate of incorporation provides that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in the Cherokee Nation General Corporation Act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors.

E. A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of his duties, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation.

F. Unless otherwise restricted by the certificate of incorporation or bylaws:

1. Any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee;
2. The board of directors of any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act may hold its meetings, and have an office or offices, outside of Cherokee Nation;
3. The board of directors shall have the authority to fix the compensation of directors; and
4. Members of the board of directors of any corporation, or any committee designated by such board, may participate in a meeting of such board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to the provisions of this subsection shall constitute presence in person at such meeting.

G. 1. The certificate of incorporation of any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act which is not authorized to issue capital stock may provide that less than one-third (1/3) of the members of the governing body may constitute a quorum thereof and may otherwise provided that the business and affairs of the corporation shall be managed in a manner different from that provided for in this section.

2. Except as may be otherwise provided by the certificate of incorporation, the provisions of this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to shareholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively.

H. 1. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

a. Unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided for in subsection (D) of this section, shareholders may effect such removal only for cause; or

b. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he is a part.

2. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the certificate of incorporation, the provisions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

I. There shall be an advisory board of directors to all corporations in which Cherokee Nation is a majority shareholder. This advisory board shall consist of eight (8) Members of the Cherokee Nation Tribal Council. The Tribal Council shall appoint these Members in accordance with their rules and procedures. The advisory board shall have full access to all information and meetings of the board of directors and have all privileges of the board of directors except exercise of voting privileges or otherwise acting upon a matter. The attendance of a board of directors meeting by Tribal Council Members who do not serve on the advisory board, for the purpose of observing such meetings rather than for the purpose of discussing or acting upon a matter, shall not be construed as a "meeting" of the Tribal Council under the Freedom of Information and Privacy Rights Act of 2001 (67 CNCA § 101 et seq.), regardless of the number of Tribal Council Members present at such meeting.

§ 28. Officers; titles, duties, selection, term; failure to elect; vacancies

A. Every corporation organized in accordance with the provisions of the Cherokee Nation General

Corporation Act shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws and as may be necessary to enable it to sign instruments and stock certificates which comply with the provisions of 18 CNCA §§ 7(A)(2) and 39. One of the officers shall have the duty to record the proceedings of the meetings of the shareholders and directors in a book to be kept for that purpose. Any number of offices may be held by the same person unless the certificate of incorporation or bylaws provide otherwise.

B. Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body. Each officer shall hold his office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation.

C. The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

D. A failure to elect officers shall not dissolve or otherwise affect the corporation.

E. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise, shall be filled as the bylaws provide. In the absence of such provision, the vacancy shall be filled by the board of directors or other governing body.

§ 29. Loans to employees and officers; guaranty of obligations of employees and officers

Any corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be construed to deny, limit or restrict the powers of guaranty or warranty of any corporation at common law or under any statute.

§ 30. Interested directors; quorum

A. No contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

1. The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the

disinterested directors, even though the disinterested directors be less than a quorum;

2. The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or

3. The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee thereof, or the shareholders.

B. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

§ 31. Indemnification of officers, directors, employees and agents; insurance

A. A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

B. A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court shall deem proper.

C. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection (A) or (B) of this section, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

D. Any indemnification under the provisions of subsection (A) or (B) of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (A) or (B) of this section. Such determination shall be made:

1. by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or
2. if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or
3. by the shareholders.

E. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized by the provisions of this section. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

F. The indemnification and advancement of expenses provided by or granted pursuant to the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

G. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

H. For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation, including any constituent of a constituent, absorbed in a consolidation or merger which, if its separate existence had continued, would have

had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

I. For purposes of this section, references to "**other enterprises**" shall include employee benefit plans; references to "**finances**" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "**serving at the request of the corporation**" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services, by such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "**not opposed to the best interests of the corporation**" as referred to in this section.

J. The indemnification and advancement of expenses provided by or granted pursuant to this section, unless otherwise provided when authorized or ratified, shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE 6

STOCK AND DIVIDENDS

§ 32. Classes and series of stock—Rights, etc.

A. Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the certificate of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock

adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided for in the Cherokee Nation General Corporation Act shall apply to all or any such classes of stock.

B. Any stock which is entitled upon any distribution of the corporation's assets, whether by dividend or by liquidation, to a preference over another class or series of stock may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event. Any stock of a regulated investment company registered under the Investment Company Act of 1940, as heretofore or hereafter amended ¹, may be given the right to require the corporation to redeem or repurchase the stock at the option of the holder of the stock, provided such redemption or repurchase would not impair or cause a further impairment of the capital of the corporation. Any stock of a corporation which has a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it. Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection (A) of this section.

C. The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection (A) of this section, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as otherwise provided for in the Cherokee Nation General Corporation Act.

D. The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection (A) of this section.

E. Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions

providing for the issue of such stock adopted by the board of directors as provided for in subsection (A) of this section.

F. If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided for in 18 CNCA § 55, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or 18 CNCA § 37, 18 CNCA § 55(A) or 18 CNCA § 63(A), or with respect to this section a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holder of certificates representing stock of the same class and series shall be identical.

G. 1. When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the certificate of incorporation or in any amendment thereto but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the certificate of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series as to which the resolution or resolutions apply shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of 18 CNCA § 7. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such series to which such resolution or resolutions apply may be increased, but not above the total number of authorized shares of the class, or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed, acknowledged and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. Unless otherwise provided in the certificate of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the

qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which states that no shares of the class or series have been issued, sets forth a copy of the resolution or resolutions, and, if the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of 18 CNCA § 7. When no shares of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to such class or series, may be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7 and, when such certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all matters set forth in the certificate of designations with respect to such class or series of stock.

2. When any certificate filed pursuant to the provisions of this subsection becomes effective, it shall have the effect of amending the certificate of incorporation; except that neither the filing of such certificate nor the filing of a restated certificate of incorporation pursuant to 18 CNCA § 80 shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

¹ 15 U.S.C. § 80a-1 et seq.

§ 33. Issuance of stock, lawful consideration—Fully paid stock

A. The consideration, as determined pursuant to the provisions of 18 CNCA § 34(A) and (B), for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in such form and in such manner as the board of directors shall determine. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. The capital stock so issued shall be deemed to be fully paid and nonassessable stock, if:

1. the entire amount of such consideration has been received by the corporation in the form of cash, services rendered, personal property, real property, leases of real property, or a combination thereof; or

2. not less than the amount of the consideration determined to be capital pursuant to the provisions of 18 CNCA § 35 has been received by the corporation in such form and the corporation has received a binding obligation of the subscriber or purchaser to pay the balance of the subscription or purchase price.

B. The provisions of subsection (A) of this section shall not be construed to prevent the board of directors from issuing partly paid shares in accordance with the provisions of 18 CNCA § 37.

§ 34. Consideration for stock

A. Shares of stock with par value may be issued for such consideration, having a value not less than the par value thereof, as is determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

B. Shares of stock without par value may be issued for such consideration as is determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

C. Treasury shares may be disposed of by the corporation for such consideration as may be determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

D. If the certificate of incorporation reserves to the shareholders the right to determine the consideration for the issue of any shares, the shareholders, unless the certificate requires a greater vote, shall do so by a vote of a majority of the outstanding stock entitled to vote thereon.

§ 35. Determination of amount of capital—Capital, surplus and net assets defined

Any corporation, by resolution of its board of directors, may determine that only a part of the consideration which shall be received by the corporation for any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined, at the time of issue of any shares of the capital stock of the corporation issued for cash or within sixty (60) days after the issue of any shares of the capital stock of the corporation issued for property other than cash, what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The amount of the consideration so determined to be capital in respect of any shares without par value shall be the stated capital of such shares. The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any designated class or classes. The excess, if any, at any given time, of the net assets of the corporation over the amount so determined to be capital shall be surplus. "Net assets" means the amount by which total assets exceed total liabilities. Capital and surplus are not liabilities for this purpose.

§ 36. Fractions of shares

A corporation may, but shall not be required to, issue fractions of a share. If it does not issue

fractions of a share, it shall:

1. arrange for the disposition of fractional interests by those entitled thereto; or
2. pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or
3. issue scrip or warrants in registered form (either represented by a certificate or be uncertificated) or in bearer form (represented by a certificate) which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or warrants aggregating a full share.

A certificate for a fractional share or an uncertificated fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing the full shares or uncertificated full shares before a specified date, or subject to the conditions that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the board of directors may impose.

§ 37. Partly paid shares

A. Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated and the corporation shall comply with applicable provisions of subsection (B) of this section. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

B. Rules for determining whether certain obligations and interests are securities or financial assets.

1. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.
2. An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in an investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.
3. An interest in a partnership or limited liability company is not a security unless it is dealt in

traded on securities exchanges or in securities markets or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

4. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

5. A commodity contract is not a security or a financial asset. A "commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that in each case, is:

a. traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities law; or

b. traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

§ 38. Rights and options respecting stock

Subject to any provisions in the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors. The terms upon which, including the time or times, which may be limited or unlimited in duration, at or within which, and the price or prices at which any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided for in 18 CNCA § 34.

§ 39. Stock certificates, uncertificated shares

The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Notwithstanding the adoption of any such resolution, shares represented by a certificate shall not become uncertificated shares until such certificate is surrendered to the corporation. Every holder of stock in a corporation shall be entitled to have a certificate signed by, or in the name of, the corporation by the chairman or vice-chairman

of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of such corporation certifying and representing the number of shares owned by him in such corporation. Subject to applicable provisions of the Uniform Commercial Code—Investment Securities, such entitlement shall apply equally to a holder of uncertificated shares, notwithstanding the adoption of a resolution by the board of directors providing for the issuance of uncertificated shares, who makes written request of the corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

§ 40. Shares of stock—Personal property, transfer and taxation

The shares of stock in every corporation shall be deemed personal property and transferable as provided for in the Uniform Commercial Code—Investment Securities. No stock or bonds issued by any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act shall be taxed by Cherokee Nation when the same shall be owned by nonresidents of Cherokee Nation or by foreign corporations.

§ 41. Corporation's powers respecting ownership, voting, etc., of its own stock—Rights of stock called for redemption

A. Every corporation may purchase, redeem, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided, however, that no corporation shall:

1. purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation, except that a corporation may purchase or redeem out of capital any of its own shares which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with the provisions of 18 CNCA §§ 78 and 79. Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption or exchange of its shares of stock if at the time such note, debenture or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired; or

2. purchase, for more than the price at which they may then be redeemed, any of its shares which are redeemable at the option of the corporation; or

3. redeem any of its shares unless their redemption is authorized by 18 CNCA § 32(B) and then only in accordance with the provisions of such section and the certificate of incorporation.

B. Nothing in this section shall be construed to limit or affect a corporation's right to resell any of its shares theretofore purchased or redeemed out of surplus and which have not been retired, for such consideration as shall be fixed by the board of directors or by the shareholders if the certificate of incorporation so provides.

C. Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in this section shall be construed as limiting the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

D. Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem such shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

§ 42. Issuance of additional stock—When and by whom

The directors, at any time and from time to time, if all of the shares of capital stock which the corporation is authorized by its certificate of incorporation to issue have not been issued, subscribed for, or otherwise committed to be issued, may issue or take subscriptions for additional shares of its capital stock up to the amount authorized in its certificate of incorporation.

§ 43. Liability of shareholder or subscriber for stock not paid in full

A. When the whole of the consideration payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of or subscriber for such shares shall be bound to pay on each share held or subscribed for by him the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued or to be issued by the corporation.

B. The amounts which shall be payable as provided in subsection (A) of this section may be recovered as provided for in 18 CNCA § 124, after a writ of execution against the corporation has been returned unsatisfied as provided for in that section.

C. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable for any unpaid portion of such consideration, but the transferor shall remain liable therefor.

D. No person holding shares in any corporation as collateral security shall be personally liable as a shareholder but the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a shareholder, but the estate or funds held by such executor, administrator, guardian, trustee or

other fiduciary in such fiduciary capacity shall be liable.

E. No liability under the provisions of this section or under the provisions of 18 CNCA § 124 shall be asserted more than six (6) years after the issuance of the stock or the date of the subscription upon which the assessment is sought.

F. In any action by a receiver or trustee of an insolvent corporation or by a judgment creditor to obtain an assessment under the provisions of this section, any shareholder or subscriber for stock of the insolvent corporation may appear and contest the claim or claims of such receiver or trustee.

§ 44. Payment for stock not paid in full

The capital stock of a corporation shall be paid for in such amounts and at such times as the directors may require. The directors, from time to time, may demand payment, in respect of each share of stock not fully paid, of such sum of money as the necessities of the business, in the judgment of the board of directors, may require, not exceeding in the whole the balance remaining unpaid on such stock, and such sum so demanded shall be paid to the corporation at such times and by such installments as the directors shall direct. The directors shall give written notice of the time and place of such payments, which notice shall be mailed at least thirty (30) days before the time for such payment, to each holder of or subscriber for stock which is not fully paid at his last-known post office address.

§ 45. Failure to pay for stock—Remedies

When any shareholder fails to pay any installment or call upon his stock which may have been properly demanded by the directors, at the time when such payment is due, the directors may collect the amount of any such installment or call or any balance thereof remaining unpaid, from the said shareholder by an action at law, or they shall sell at public sale such part of the shares of such delinquent shareholder as will pay all demands then due from him with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement at least one (1) week before the sale, in the newspaper *Cherokee Phoenix*, and such notice shall be mailed by the corporation to such delinquent shareholder at his last-known post office address, at least twenty (20) days before such sale. If no bidder can be had to pay the amount due on the stock, and if the amount is not collected by an action at law, which may be brought within the county where the corporation has its registered office, within one (1) year from the date of the bringing of such action at law, said stock and the amount previously paid in by the delinquent shareholder on the stock shall be forfeited to the corporation.

§ 46. Revocability of pre-incorporation subscriptions

Unless otherwise provided for by the terms of the subscription, a subscription for stock of a corporation to be formed shall be irrevocable, except with the consent of all other subscribers or the corporation, for a period of six (6) months from its date.

§ 47. Formalities required of stock subscriptions

A subscription for stock of a corporation, whether made before or after the formation of a corporation, shall not be enforceable against a subscriber, unless in writing and signed by the subscriber or by his agent.

§ 48. Situs of ownership of stock

For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in Cherokee Nation, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of Cherokee Nation, whether organized in accordance with the provisions of the Cherokee Nation General Corporation Act or otherwise, shall be regarded as in Cherokee Nation.

§ 49. Dividends—Payment—Wasting asset corporations

A. The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either out of its surplus, as defined in and computed in accordance with the provisions of 18 CNCA §§ 35 and 79, or in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. If the capital of the corporation, computed in accordance with the provisions of 18 CNCA §§ 35 and 79, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired.

B. Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets) may determine the net profits derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets.

§ 50. Special purpose reserves

The directors of a corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

§ 51. Liability of directors as to dividends or stock redemption

A member of the board of directors, or a member of any committee designated by the board of

directors, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the board of directors, or by any other person as to matters the director reasonably believes are within such officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed.

§ 52. Declaration and payment of dividends

No corporation shall pay dividends except in accordance with the provisions of the Cherokee Nation General Corporation Act. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock. If the dividend is to be paid in shares of the corporation's theretofore unissued capital stock, the board of directors, by resolution, shall direct that there be designated as capital in respect of such shares an amount which is not less than the aggregate par value of par value shares being declared as a dividend and, in the case of shares without par value being declared as a dividend, such amount as shall be determined by the board of directors. No such designation as capital shall be necessary if shares are being distributed by a corporation pursuant to a split-up or division of its stock rather than as payment of a dividend declared payable in stock of the corporation.

§ 53. Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption—Exoneration from liability—Contribution among directors—Subrogation

A. In case of any willful or negligent violation of the provisions of 18 CNCA §§ 141 and 152, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within six (6) years after paying any unlawful dividend or after any unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued.

Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after he has notice of the same.

B. Any director against whom a claim is successfully asserted under the provisions of this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

C. Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by him as a result of such claim, to be subrogated to the rights of

the corporation against shareholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful pursuant to the provisions of the Cherokee Nation General Corporation Act, in proportion to the amounts received by such shareholders respectively.

ARTICLE 7

STOCK TRANSFERS

§ 54. Transfer of stock, stock certificates and uncertificated stock

Except as otherwise provided for in the Cherokee Nation General Corporation Act, the transfer of stock and the certificates of stock which represent the stock or uncertificated stock shall be governed by the Uniform Commercial Code—Investment Securities. To the extent that any provision of the Cherokee Nation General Corporation Act is inconsistent with any provision of the Uniform Commercial Code—Investment Securities, the provisions of the Uniform Commercial Code—Investment Securities shall be controlling.

§ 55. Restriction on transfer of securities

A. A written restriction on the transferor registration of transfer of a security of a corporation, if permitted by this section and noted conspicuously on the certificate representing the security or, in the case of uncertificated shares, contained in the notice sent pursuant to the provisions of 18 CNCA § 32(F), may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate representing the security or, in the case of uncertificated shares, contained in the notice sent pursuant to the provisions of 18 CNCA § 32(F), a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

B. A restriction on the transfer or registration of transfer of securities of a corporation may be imposed either by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

C. A restriction on the transfer of securities of a corporation is permitted by the provisions of this section if it:

1. obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or
2. obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement

respecting the purchase and sale of the restricted securities; or

3. requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities; or

4. prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable.

D. Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under Subchapter S of the United States Internal Revenue Code¹ or of maintaining any other tax advantage to the corporation is conclusively presumed to be for a reasonable purpose.

E. Any other lawful restriction on transfer or registration of transfer of securities is permitted by the provisions of this section.

¹ 26 U.S.C. § 1361 et seq.

ARTICLE 8

MEETINGS, ELECTIONS, VOTING AND NOTICE

§ 56. Meetings of shareholders

A. Meetings of shareholders may be held at such place, either within or without Cherokee Nation, as may be designated by or in the manner provided for in the bylaws or, if not so designated, at the registered office of the corporation in Cherokee Nation.

B. An annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided for in the bylaws. Any other proper business may be transacted at the annual meeting.

C. A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided for in the Cherokee Nation General Corporation Act. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as is convenient. If there be a failure to hold the annual meeting for a period of thirty (30) days after the date designated therefor, or if no date has been designated, for a period of thirteen (13) months after the organization of the corporation or after its last annual meeting, the district court may summarily order a meeting to be held upon the application of any shareholder or director. The shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The district court may issue

such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of shareholders entitled to vote, and the form of notice of such meeting.

D. Special meetings of the shareholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws.

E. All elections of directors shall be by written ballot, unless otherwise provided for in the certificate of incorporation.

§ 57. Voting rights of shareholders—Proxies—Limitations

A. Unless otherwise provided for in the certificate of incorporation and subject to the provisions of 18 CNCA § 58, each shareholder shall be entitled to one vote for each share of capital stock held by such shareholder. If the certificate of incorporation provides for more or less than one vote for any share on any matter, every reference in the Cherokee Nation General Corporation Act to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

B. Each shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

C. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

§ 58. Fixing date for determination of shareholders of record

A. In order that the corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

B. 1. In order that the corporation may determine the shareholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date

shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by the Cherokee Nation General Corporation Act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by the Cherokee Nation General Corporation Act, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

2. The provisions of this subsection shall be effective with respect to corporate actions taken by written consent, and to such written content or consents, as to which the first written consent is executed or solicited after June 10, 1996.

C. In order that the corporation may determine the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

§ 59. Cumulative voting

The certificate of incorporation of any corporation may provide that at all elections of directors of the corporation, or at elections held under specified circumstances, each holder of stock or of any class or classes or of a series or series thereof shall be entitled to as many votes as shall equal the number of votes which, except for such provision as to cumulative voting, he would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected by him, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two (2) or more of them as he may see fit.

§ 60. Voting rights of members of nonstock corporations—Quorum—Proxies

A. The provisions of 18 CNCA §§ 56 through 59 and 61 shall not apply to corporations not authorized to issue stock.

B. Unless otherwise provided for in the certificate of incorporation of a nonstock corporation, each member shall be entitled at every meeting of members to one vote in person or by proxy, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period.

C. Unless otherwise provided for in the Cherokee Nation General Corporation Act, the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation, one-third (1/3) of the members of such corporation shall constitute a quorum at a meeting of such members, and the affirmative vote of a majority of such members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by the provisions of the Cherokee Nation General Corporation Act, the certificate of incorporation or bylaws.

D. If the election of the governing body of any nonstock corporation shall not be held on the day designated by the bylaws, the governing body shall cause the election to be held as soon thereafter as convenient. The failure to hold such an election at the designated time shall not work any forfeiture or dissolution of the corporation, but the district court may summarily order such an election to be held upon the application of any member of the corporation. At any election pursuant to such order the persons entitled to vote in such election who shall be present at such meeting, either in person or by proxy, shall constitute a quorum for such meeting, notwithstanding any provision of the certificate of incorporation or the bylaws of the corporation to the contrary.

§ 61. Quorum and required vote for stock corporations

Subject to the provisions of the Cherokee Nation General Corporation Act, in respect of the vote that shall be required for a specified action, the certificate of incorporation or bylaws of any corporation authorized to issue stock may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, but in no event shall a quorum consist of less than one-third (1/3) of the shares entitled to vote at the meeting. In the absence of such specification in the certificate of incorporation or bylaws of the corporation:

1. a majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of shareholders;
2. in all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the shareholders;
3. directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and

4. where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

§ 62. Voting rights of fiduciaries, pledgors and joint owners of stock

A. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he has expressly empowered the pledgee, to vote thereon, in which case only the pledgee, or his proxy may represent such stock and vote thereon.

B. If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

1. If only one (1) vote, his act binds all; or

2. If more than one (1) vote, the act of the majority so voting binds all; or

3. If more than one (1) vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or any person voting the shares, or a beneficiary, if any, may apply to the district court to appoint an additional person to act with the persons so voting the shares, which shall then be voted as determined by a majority of such persons and the person appointed by such court. If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection shall be a majority or even-split in interest.

§ 63. Voting trusts and other voting agreements

A. One or more shareholders, by agreement in writing, may deposit capital stock of an original issue with or transfer capital stock to any person or persons, or corporation or corporations authorized to act as trustee, for the purpose of vesting in such person or persons, corporation or corporations, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, not exceeding ten (10) years, upon the terms and conditions stated in such agreement. The agreement may contain any other lawful provisions not inconsistent with such purpose. After the filing of a copy of the agreement in the registered office of the corporation in Cherokee Nation, which copy shall be open to the inspection of any shareholder of the corporation or any beneficiary of the trust under the agreement daily during

business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with him or them, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and canceled and new certificates or uncertificated stock shall be issued therefor to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as shareholder, trustee or otherwise, except for his or their own individual malfeasance. In any case where two or more persons are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

B. The trustee or trustees shall execute and deliver to the beneficiary or beneficiaries voting trust certificates. Such voting trust certificates shall be transferable in the same manner as certificates of stock under the provisions of this act.

C. At any time within two (2) years prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided for in this subsection, one or more beneficiaries of the trust under the voting trust agreement, by written agreement and with the written consent of the voting trustee or trustees, may extend the duration of the voting trust agreement for an additional period not exceeding ten (10) years from the expiration date of the trust as originally fixed or as last extended, as provided for in this subsection. The voting trustee or trustees, prior to the time of expiration of any such voting trust agreement, as originally fixed or as previously extended, as the case may be, shall file in the registered office of the corporation in Cherokee Nation a copy of such extension agreement and of his or their consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement; but no such extension agreement shall affect the rights or obligations of persons not parties thereto.

D. An agreement between two or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them. No such agreement shall be effective for a term of more than ten (10) years, but, at any time within two (2) years prior to the time of the expiration of such agreement, the parties may extend its duration for as many additional periods, each not to exceed ten (10) years, as they may desire.

E. The validity of any such voting trust or other voting agreement, otherwise lawful, shall not be affected during a period of ten (10) years from the date when it was created or last extended by the fact that under its terms it will or may last beyond such ten- (10) year period.

F. This section shall not be construed to invalidate any voting or other agreement among shareholders or any irrevocable proxy which is not otherwise illegal.

§ 64. List of shareholders entitled to vote—Penalty for refusal to produce—Stock ledger

A. The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified on the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present.

B. Upon the willful neglect or refusal of the directors to produce such a list at any meeting for the election of directors, they shall be ineligible for election to any office at such meeting.

C. The stock ledger shall be the only evidence as to who are the shareholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote in person or by proxy at any meeting of shareholders.

§ 65. Inspection of books and records

A. As used in this section, "**shareholder**" means a shareholder of record.

B. Any shareholder, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, shall have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a shareholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the shareholder. The demand under oath shall be directed to the corporation at its registered office in Cherokee Nation or at its principal place of business.

C. 1. If the corporation or an officer or agent thereof refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to the provisions of subsection (B) of this section or does not reply to the demand within five (5) business days after the demand has been made, the shareholder may apply to the district court for an order to compel such inspection. The court may summarily order the corporation to permit the shareholder to inspect the corporation's stock ledger, an existing list of shareholders, and its other books and records, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the shareholder a list of its shareholders as of a specific date on condition that the

shareholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the Court deems appropriate.

2. Where the shareholder seeks to inspect the corporation's books and records, other than its stock ledger or list of shareholders, he shall first establish that:

a. he has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents; and

b. the inspection he seeks is for a proper purpose.

3. Where the shareholder seeks to inspect the corporation's stock ledger or list of shareholders and he has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection he seeks is for an improper purpose. The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other or further relief as the Court may deem just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within Cherokee Nation and kept in Cherokee Nation upon such terms and conditions as the order may prescribe.

D. Any director shall have the right to examine the corporation's stock ledger, a list of its shareholders and its other books and records for a purpose reasonably related to his position as a director. The district court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the stock list and to make copies or extracts therefrom. The court, in its discretion, may prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

§ 66. Voting, inspection and other rights of bondholders and debenture holders

Every corporation, in its certificate of incorporation, may confer upon the holders of any bonds, debentures or other obligations issued or to be issued by the corporation the power to vote in respect to the corporate affairs and management of the corporation to the extent and in the manner provided in the certificate of incorporation, and may confer upon such holders of bonds, debentures or other obligations the same right of inspection of its books, accounts and other records, and also any other rights, which the shareholders of the corporation have or may have by reason of the provisions of the Cherokee Nation General Corporation Act or of its certificate of incorporation. If the certificate of incorporation so provides, such holders of bonds, debentures or other obligations shall be deemed to be shareholders, and their bonds, debentures or other obligations shall be deemed to be shares of stock, for the purpose of any provision of the Cherokee Nation General Corporation Act which requires the vote of shareholders as a prerequisite to any corporate action and the certificate of incorporation may divest the holders of capital stock, in whole or in part, of their right to vote on any corporate matter whatsoever, except as set forth in 18 CNCA § 77(B)(2).

§ 67. Notice of meetings and adjourned meetings

A. Whenever shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

B. Unless otherwise provided for in the Cherokee Nation General Corporation Act, the written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each shareholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the shareholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given, in the absence of fraud, shall be prima facie evidence of the facts stated therein.

C. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

§ 68. Vacancies and newly created directorships

A. 1. Unless otherwise provided in the certificate of incorporation or bylaws:

a. Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the shareholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director; and

b. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

2. If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any shareholder or an executor, administrator, trustee or guardian of a shareholder, or other fiduciary entrusted with like responsibility for the person or estate of a shareholder, may call a special meeting of shareholders in accordance with the provisions of the certificate of incorporation or the bylaws, or may apply to the district court for a decree summarily ordering an election as provided for in 18 CNCA § 56.

B. In the case of a corporation the directors of which are divided into classes, any directors chosen under subsection (A) of this section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

C. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board, as constituted immediately prior to any such increase, the district court, upon application of any shareholder or shareholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, may summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office, which election shall be governed by the provisions of Section 56 of this act as far as applicable.

D. Unless otherwise provided in the certificate of incorporation or bylaws, when one or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided for in this section in the filling of other vacancies.

§ 69. Form of records

Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept in, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device, provided that the records so kept can be converted into clearly legible written form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect the same. Where records are kept in such manner, a clearly legible written form produced from the cards, tapes, photographs, microphotographs or other information storage device shall be admissible in evidence and shall be accepted for all other purposes, to the same extent as an original written record of the same information would have been, when said written form accurately portrays the record.

§ 70. Contested election of directors—Proceedings to determine validity

A. Upon application of any shareholder or director, or any officer whose title to office is contested, or any member of a corporation without capital stock, the district court may hear and determine the validity of any election of any director, member of the governing body, or officer of any corporation, and the right of any person to hold such office, and, in case any such office is claimed by more than one person, may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the district court may order an election to be held in accordance with the provisions of 18 CNCA § 56 or 18 CNCA § 60. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and the registered agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such

corporation and such person at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant shareholder. The court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

B. Upon application of any shareholder or any member of a corporation without capital stock, the district court may hear and determine the result of any vote of shareholders or members, as the case may be, upon matters other than the election of directors, officers or members of the governing body. Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting notice of the application as it deems proper under the circumstances.

§ 71. Appointment of custodian or receiver of corporation on deadlock or for other cause

A. The District Court, upon application of any shareholder, may appoint one or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when:

1. at any meeting held for the election of directors the shareholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

2. the business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the shareholders are unable to terminate this division; or

3. the corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

B. A custodian appointed pursuant to the provisions of this section shall have all the powers and title of a receiver appointed by the Court under applicable law, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court shall otherwise order and except in cases arising pursuant to paragraph 3 of subsection (A) of this section.

§ 72. Powers of court in elections of directors

A. The District Court, in any proceeding instituted pursuant to the provisions of 18 CNCA § 56, 18 CNCA § 60 or 18 CNCA § 70, may determine the right and power of persons claiming to own stock, or in the case of a corporation without capital stock, of the persons claiming to be members, to vote at any meeting of the shareholders or members.

B. The District Court may appoint a master to hold any election provided for in 18 CNCA § 56, 18 CNCA § 60 or 18 CNCA § 70 under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of disobedience of any order made by the Court; and, in

case of disobedience by a corporation of any order made by the Court, may enter a decree against such corporation for a penalty of not more than Five Thousand Dollars (\$5,000.00).

§ 73. Consent of shareholders in lieu of meeting

A. Except as provided in subsection (B) of this section or unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Cherokee Nation General Corporation Act to be taken at any annual or special meeting of shareholders of a corporation or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

B. With respect to a domestic corporation with a class of voting stock listed or traded on a national securities exchange or registered under Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as amended, which has one thousand or more shareholders of record, unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Cherokee Nation General Corporation Act to be taken at any annual or special meeting of shareholders of such corporation or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action to taken, shall be signed by the holders of all outstanding stock entitled to vote thereon and shall be delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. The provisions of this subsection shall be effective with respect to corporate actions by written consent, and to such written consent or consents, as to which the first written consent is executed or solicited after June 10, 1996.

C. Unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Cherokee Nation General Corporation Act to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt

requested.

D. Every written consent shall bear the date of signature of each shareholder or member who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

E. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders or members, as the case may be, who have not consented in writing. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by shareholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of shareholders or members, that written consent has been given in accordance with the provisions of this section, and that written notice has been given as provided for in this section.

§ 74. Waiver of notice

Whenever notice is required to be given under any provision of the Cherokee Nation General Corporation Act or of the certificate of incorporation or bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the shareholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the certificate of incorporation or the bylaws.

§ 75. Exception to requirements of notice

A. Whenever notice is required to be given, pursuant to any provision of this title or of the certificate of incorporation or bylaws of any corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this title, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

B. Whenever notice is required to be given pursuant to any provision of the Cherokee Nation General Corporation Act or the certificate of incorporation or bylaws of any corporation, to any shareholder or, if the corporation is a nonstock corporation, to any member to whom:

1. notice of two (2) consecutive annual meetings and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two (2) consecutive annual meetings; or

2. all, and at least two, payments, if sent by first-class mail, of dividends or interest on securities during a twelve- (12) month period, have been mailed addressed to such person at his address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of the Cherokee Nation General Corporation Act, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to the provisions of this subsection.

ARTICLE 9

AMENDMENT OF CERTIFICATE OF INCORPORATION—CHANGES IN CAPITAL AND CAPITAL STOCK

§ 76. Amendment of certificate of incorporation before receipt of payment for stock

A. Before a corporation has received any payment for any of its stock, it may amend its certificate of incorporation at any time or times, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of filing the amendment.

B. The amendment of certificate of incorporation authorized by the provisions of this section shall be adopted by a majority of the incorporators, if directors were not named in the original certificate of incorporation or have not yet been elected, or, if directors were named in the original certificate of incorporation or have been elected and have qualified, by a majority of the directors. A certificate setting forth the amendment and certifying that the corporation has not received any payment for any of its stock and that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7. Upon such filing, the corporation's certificate of incorporation shall be deemed to be amended accordingly as of the date on which the original certificate of incorporation became effective, except as to those persons who are substantially and adversely affected by the amendment and as to those persons the amendment shall be effective from the filing date.

**§ 77. Amendment of certificate of incorporation after receipt of payment for stock—
Nonstock corporations**

A. 1. After a corporation has received payment for any of its capital stock, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and if a change in stock or the rights of shareholders, or an exchange, reclassification or cancellation of stock or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

a. to change its corporate name; or

b. to change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or

c. to increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares; or

d. to cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or

e. to create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or

f. to change the period of its duration.

2. Any or all changes or alterations provided for in paragraph 1 of this subsection may be effected by one certificate of amendment.

B. Every amendment authorized by the provisions of subsection (A) of this section shall be made and effected in the following manner:

1. If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the shareholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of shareholders. Such special or annual meeting shall be called and held upon notice in accordance with the provisions of 18 CNCA § 67. The notice shall set forth such amendment in full or a brief summary

of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the shareholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of 18 CNCA § 7.

2. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, references, or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased, but not below the number of shares thereof then outstanding, by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of the provisions of this paragraph, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

3. If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If at a subsequent meeting, held, on notice stating the purpose thereof, not earlier than fifteen (15) days and not later than sixty (60) days from the meeting at which such resolution has been passed, a majority of all the members of the governing body, shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of 18 CNCA § 7. The certificate of incorporation of any such corporation without capital stock may contain a provision requiring an amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation in which event only one meeting of the governing body thereof shall be necessary, and such proposed amendment shall be submitted to the members or to any specified class of members of such corporation without capital stock in the same manner, so far as applicable, as is provided for in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof, a certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of 18 CNCA § 7. In the event the amendment to the certificate of incorporation of a nonstock corporation results in the change of the name of such corporation, a notice of the name change shall be published one (1) time in the newspaper *Cherokee Phoenix*. Proof of such publication shall be filed in the Office of the Principal Chief or his authorized representative.

4. Whenever the certificate of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by the provisions of the Cherokee Nation General Corporation Act, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

§ 78. Retirement of stock

A. A corporation, by resolution of its board of directors, may retire any shares of its capital stock that are issued but are not outstanding.

B. Whenever any shares of the capital stock of a corporation are retired, they shall resume the status of authorized and unissued shares of the class or series to which they belong unless the certificate of incorporation otherwise provides. If the certificate of incorporation prohibits the reissuance of such shares, or prohibits the reissuance of such shares as a part of a specific series only, a certificate stating that reissuance of the shares, as part of the class or series, is prohibited identifying the shares and reciting their retirement shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of 18 CNCA § 7. When such certificate becomes effective, it shall have the effect of amending the certificate of incorporation so as to reduce accordingly the number of authorized shares of the class or series to which such shares belong or, if such retired shares constitute all of the authorized shares of the class or series to which they belong, of eliminating from the certificate of incorporation all reference to such class or series of stock.

C. If the capital of the corporation will be reduced by or in connection with the retirement of shares, the reduction of capital shall be effected pursuant to the provisions of 18 CNCA § 79.

§ 79. Reduction of capital

A. A corporation, by resolution of its board of directors, may reduce its capital in any of the following ways:

1. By reducing or eliminating the capital represented by shares of capital stock which have been retired; or

2. By applying to an otherwise authorized purchase or redemption of outstanding shares of its capital stock some or all of the capital represented by the shares being purchased or redeemed, or any capital that has not been allocated to any particular class of its capital stock; or

3. By applying to an otherwise authorized conversion or exchange of outstanding shares of its capital stock some or all of the capital represented by the shares being converted or exchanged, or some or all of any capital that has not been allocated to any particular class of its capital stock, or both, to the extent that such capital in the aggregate exceeds the total aggregate par value or the stated capital of any previously unissued shares issuable upon such conversion or exchange; or

4. By transferring to surplus:

- a. some or all of the capital not represented by any particular class of its capital stock; or
- b. some or all of the capital represented by issued shares of its par value capital stock, which capital is in excess of the aggregate par value of such shares; or
- c. some of the capital represented by issued shares of its capital stock without par value.

B. Notwithstanding the other provisions of this section, no reduction of capital shall be made or effected unless the assets of the corporation remaining after such reduction shall be sufficient to pay any debts of the corporation for which payment has not been otherwise provided. No reduction of capital shall release any liability of any shareholder whose shares have not been fully paid.

§ 80. Restated certificate of incorporation

A. A corporation, whenever desired, may integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative as a result of there having up to that time been filed with the Office of the Principal Chief or his authorized representative one or more certificates or other instruments pursuant to any of the sections referred to in 18 CNCA § 8, and it may at the same time also further amend its certificate of incorporation by adopting a restated certificate of incorporation.

B. If the restated certificate of incorporation merely restates and integrates but does not further amend the certificate of incorporation, as up to that time amended or supplemented by any instrument that was filed pursuant to any of the sections mentioned in 18 CNCA § 8, it may be adopted by the board of directors without a vote of the shareholders, or it may be proposed by the directors and submitted by them to the shareholders for adoption, in which case the procedure and vote required by 18 CNCA § 77 for amendment of the certificate of incorporation shall be applicable. If the restated certificate of incorporation restates and integrates and also further amends in any respect the certificate of incorporation, as up to that time amended or supplemented, it shall be proposed by the directors and adopted by the shareholders in the manner and by the vote prescribed by 18 CNCA § 77 or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by 18 CNCA § 76.

C. A restated certificate of incorporation shall be specifically designated as such in its heading. It shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the Office of the Principal Chief or his authorized representative. A restated certificate shall also state that it was duly adopted in accordance with the provisions of this section. If it was adopted by the board of directors without a vote of the shareholders, unless it was adopted pursuant to the provisions of 18 CNCA § 76, it shall state that it only restates and integrates and does not further amend the provisions of the corporation's certificate of incorporation as up to that time amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated certificate. A

restated certificate of incorporation may omit:

1. such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares; and
2. such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective.

Any such omissions shall not be deemed a further amendment.

D. A restated certificate of incorporation shall be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7. Upon its filing with the Office of the Principal Chief or his authorized representative, the original certificate of incorporation, as up to that time amended or supplemented, shall be superseded. From that time forward, the restated certificate of incorporation, including any further amendments or changes made thereby, shall be the certificate of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

E. Any amendment or change effected in connection with the restatement and integration of the certificate of incorporation shall be subject to any other provision of the Cherokee Nation General Corporation Act, not inconsistent with the provisions of this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

ARTICLE 10

MERGER OR CONSOLIDATION

§ 81. Merger or consolidation of domestic corporations

A. Any two or more corporations existing under the laws of Cherokee Nation may merge into a single corporation, which may be any one of the constituent corporations or may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;
2. the mode of carrying the same into effect;
3. in the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation of the surviving or resulting corporation;

4. in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;

5. the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights or securities of any other corporation which the holders of such shares are to receive in exchange for or upon conversion of such shares and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and

6. such other details or provisions as are deemed desirable, including without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of 18 CNCA § 36. The agreement so adopted shall be executed and acknowledged in accordance with the provisions of 18 CNCA § 7. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement required by the provisions of subsection (B) of this section shall be submitted to the shareholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock whether voting or nonvoting, of the corporation at his address as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable; provided, however, such notice shall be effective only with respect to mergers or consolidations for which the notice of the shareholders meeting to vote thereon has been mailed after the effective date of this title. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or the assistant secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective in accordance with the provisions of 18 CNCA § 7. In lieu of filing an agreement of merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of 18 CNCA § 7 and which states:

1. the name and state of incorporation of each of the constituent corporations;

2. that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this

section;

3. the name of the surviving or resulting corporation;

4. in the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation, stating the address thereof; and

7. that a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation. For purposes of 18 CNCA §§ 84 and 86, the term "**shareholder**" shall be deemed to include "member".

D. 1. Any agreement of merger or consolidation may contain a provision that at any time prior to the filing of the agreement with the Office of the Principal Chief or his authorized representative, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the shareholders of all or any of the constituent corporations. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the Office of the Principal Chief or his authorized representative, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any constituent corporation shall not:

a. alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation;

b. alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation; or

c. alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation.

2. For purposes of 18 CNCA § 83, the references to "**agreement of merger**" in this subsection shall mean the resolution of merger adopted by the board of directors of the parent corporation.

E. In the case of a merger, the certificate of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the certificate of incorporation are

set forth in the certificate of merger.

F. Notwithstanding the requirements of subsection (C) of this section, unless required by its certificate of incorporation, no vote of shareholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if:

1. the agreement of merger does not amend in any respect the certificate of incorporation of such constituent corporation;

2. each share of stock of such constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and

3. either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed twenty percent (20%) of the shares of common stock of such constituent corporation outstanding immediately prior to the effective date of the merger. No vote of shareholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its shareholders pursuant to the provisions of this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to the provisions of this subsection and that, as of the date of such certificate, the outstanding shares of the corporation were such as to render the provisions of this subsection applicable. The agreement so adopted and certified shall then be filed and shall become effective in accordance with the provisions of 18 CNCA § 7. Such filing shall constitute a representation by the person who executes the certificate that the facts stated in the certificate remain true immediately prior to such filing.

§ 82. Merger or consolidation of domestic and foreign corporations—Service of process upon surviving or resulting corporation

A. Any one or more corporations of Cherokee Nation may merge or consolidate with one or more other corporations of Cherokee Nation, any other federally-recognized Indian tribe, any other state or states of the United States, or of the District of Columbia if the laws of such other tribe, state or states or of the District permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of

this section. In addition, any one or more corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of Cherokee Nation if the surviving or resulting corporation will be a corporation of Cherokee Nation, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction.

B. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;
2. the mode of carrying the same into effect;
3. the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights, or securities of any other corporation which the holder of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;
4. such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of 18 CNCA § 36; and
5. such other provisions or facts as shall be required to be set forth in the certificate of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be adapted, approved, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of a Cherokee Nation corporation, in the same manner as is provided for in 18 CNCA § 81. The agreement shall be filed and shall become effective for all purposes of the laws of Cherokee Nation when and as provided for in 18 CNCA § 81 with respect to the merger or consolidation of corporations of Cherokee Nation. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of 18 CNCA § 7, which states:

1. the name and state of incorporation of each of the constituent corporations;
2. that an agreement of merger or consolidation has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this subsection;
3. the name of the surviving or resulting corporation;
4. in the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
5. in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;
6. that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation and the address thereof;
7. that a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation;
8. if the corporation surviving or resulting from the merger or consolidation is to be a corporation of Cherokee Nation, the authorized capital stock of each constituent corporation which is not a corporation of Cherokee Nation; and
9. the agreement, if any, required by the provisions of subsection (D) of this section. For purposes of 18 CNCA § 85, the term "**shareholder**" in subsection (D) of this section shall be deemed to include "member".

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than Cherokee Nation, it shall agree that it may be served with process in Cherokee Nation in any proceeding for enforcement of any obligation of any constituent corporation of Cherokee Nation, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of 18 CNCA § 91, and shall irrevocably appoint the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Office of the Principal Chief or his authorized representative. In the event of such service upon the Office of the Principal Chief or his authorized representative in accordance with the provisions of this subsection, the Office of the Principal Chief or his authorized representative shall immediately notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such surviving or resulting corporation

at its address so specified unless such surviving or resulting corporation shall have designated in writing to the Office of the Principal Chief or his authorized representative a different address for such purpose, in which case it shall be mailed to the last address to designated. Such letter shall enclose a copy of the process and any other papers served on the Office of the Principal Chief or his authorized representative pursuant to the provisions of this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Office of the Principal Chief or his authorized representative that service is being effected pursuant to the provisions of this subsection and to pay the Office of the Principal Chief or his authorized representative the fee provided for in 18 CNCA § 142(7), which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Office of the Principal Chief or his authorized representative shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date service was made. The Office of the Principal Chief or his authorized representative shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Office of the Principal Chief or his authorized representative.

E. The provisions of 18 CNCA § 81(D) shall apply to any merger or consolidation pursuant to the provisions of this section. The provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is a corporation of the Cherokee Nation. The provisions of 18 CNCA § 81(F) shall apply to any merger pursuant to the provisions of this section.

§ 83. Merger of parent corporation and subsidiary or subsidiaries

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of the stock of a corporation or corporations is owned by another corporation and one of such corporations is a corporation of Cherokee Nation and the other or others are corporations of Cherokee Nation or of any state or states or of the District of Columbia and the laws of such state or states or of the District of Columbia permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge such other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such other corporations, into one of such other corporations by executing, acknowledging and filing, in accordance with the provisions of 18 CNCA § 7, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of the adoption thereof; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation

on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after twenty (20) days' notice of the purpose of the meeting mailed to each such shareholder at his address as it appears on the records of the corporation if the parent corporation is a corporation of Cherokee Nation or state that the proposed merger has been adopted, approved, certified, executed and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is not a corporation of Cherokee Nation. If the surviving corporation exists under the laws of the District of Columbia or any state other than Cherokee Nation, the provisions of 18 CNCA § 82(D) shall also apply to a merger pursuant to the provisions of this section.

B. Subject to the provisions of 18 CNCA § 6(A)(1), if the surviving corporation is a Cherokee Nation corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be so changed.

C. The provisions of 18 CNCA § 81(D) shall apply to a merger pursuant to the provisions of this section, and the provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is the subsidiary corporation and is a corporation of Cherokee Nation. Any merger which effects any changes other than those authorized by the provisions of this section or made applicable by this subsection shall be accomplished in accordance with the provisions of 18 CNCA § 81 or 18 CNCA § 82. The provisions of 18 CNCA § 91 shall not apply to any merger effected pursuant to the provisions of this section, except as provided for in subsection (D) of this section.

D. In the event all of the stock of a subsidiary Cherokee Nation corporation party to a merger effected pursuant to the provisions of this section is not owned by the parent corporation immediately prior to the merger, the shareholders of the subsidiary Cherokee Nation corporation party to the merger shall have appraisal rights as set forth in 18 CNCA § 91.

E. A merger may be effected pursuant to the provisions of this section although one or more of the corporations is a corporation organized under the laws of a jurisdiction other than one of the United States; provided that the laws of such jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction; and provided further that the surviving or resulting corporation shall be a corporation of Cherokee Nation.

§ 84. Merger or consolidation of domestic nonstock, not for profit corporations

A. Any two or more nonstock corporations of Cherokee Nation, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. 1. The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

a. the terms and conditions of the merger or consolidation;

b. the mode of carrying the same into effect;

c. such other provisions or facts required or permitted by the Cherokee Nation General Corporation Act to be stated in a certificate of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;

d. the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation; and

e. such other details or provisions as are deemed desirable.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of his corporation, at his address as it appears on the records of the corporation at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable; provided, however such notice shall be effective only with respect to mergers or consolidations for which the notice of the members meeting to vote thereon has been mailed after the effective date of this title. At the meeting, the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement, each member who has the right to vote for the election of the members of the governing body of his corporation being entitled to one vote. If the votes of two-thirds (2/3) of the total number of members of each such corporation who have the voting power above mentioned shall be for the adoption of the agreement, then that fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation. The agreement so adopted and certified shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of 18 CNCA § 7. The provisions of 18 CNCA § 81(C)(1) through (6) shall apply to a merger under this section.

D. If, under the provisions of the certificate of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members

of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided for in subsection (B) of this section shall be submitted to the members of the governing body of such corporation or corporations, at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting two-thirds (2/3) of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation and thereafter the same procedure shall be followed to consummate the merger or consolidation.

E. The provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if such charitable nonstock corporation would thereby have its charitable status lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

§ 85. Merger or consolidation of domestic and foreign nonstock, not for profit corporation; service of process upon surviving or resulting corporation

A. Any one or more nonstock, not for profit corporations of Cherokee Nation may merge or consolidate with one or more other nonstock, not for profit corporations of any state of the United States or of the District of Columbia, if the laws of such state or of the District of Columbia permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock, not for profit corporation formed by the consolidation, which may be a corporation of Cherokee Nation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more nonstock, not for profit corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more nonstock, not for profit corporations of Cherokee Nation if the surviving or resulting corporation will be a corporation of Cherokee Nation, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

B. 1. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

a. the terms and conditions of the merger or consolidation;

b. the mode of carrying the same into effect;

c. the manner of converting the memberships of each of the constituent corporations into members of the corporation surviving or resulting from such merger or consolidation;

d. such other details and provisions as shall be deemed desirable; and

e. such other provisions or facts as shall then be required to be stated in a certificate of incorporation by the laws of Cherokee Nation which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed and, in the case of Cherokee Nation, in the same manner as is provided for in 18 CNCA § 84. The agreement shall be filed and shall become effective for all purposes of the laws of Cherokee Nation when and as provided for in 18 CNCA § 84 with respect to the merger of nonstock, not for profit corporations of Cherokee Nation. Insofar as they may be applicable, the provisions of 18 CNCA § 82(C)(1) through (9) shall apply to a merger under this section.

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any jurisdiction other than Cherokee Nation, it shall agree that it may be served with process in Cherokee Nation in any proceeding for enforcement of any obligation of any constituent corporation of Cherokee Nation, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Office of the Principal Chief or his authorized representative. In the event of such service upon the Office of the Principal Chief or his authorized representative in accordance with the provisions of this subsection, the Office of the Principal Chief or his authorized representative shall immediately notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Office of the Principal Chief or his authorized representative a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served upon the Office of the Principal Chief or his authorized representative. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Office of the Principal Chief or his authorized representative that service is being made pursuant to the provisions of this subsection, and to pay the Office of the Principal Chief or his authorized representative the fee prescribed by 18 CNCA § 142(7), which fee shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Office of the Principal Chief or his authorized representative shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the

fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date when the service was made. The Office of the Principal Chief or his authorized representative shall not be required to retain such information for a period longer than five (5) years from his receipt of service of process.

E. The provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section if the corporation surviving the merger is a corporation of Cherokee Nation.

§ 86. Merger or consolidation of domestic stock and nonstock corporations

A. Any one or more nonstock corporations of Cherokee Nation, whether or not organized for profit, may merge or consolidate with one or more stock corporations of Cherokee Nation, whether or not organized for profit. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving constituent corporation or a new corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;
2. the mode carrying the same into effect;
3. such other provisions or facts required or permitted by the Cherokee Nation General Corporation Act to be stated in the certificate of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;
4. the manner of converting the shares of stock of a stock corporation and the interests of the members of nonstock corporation into shares or other securities of a stock corporation or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation, and if any shares of any such stock corporation or membership interests of any such nonstock corporation are not to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and

5. such other details or provisions as are deemed desirable.

C. In a merger or consolidation provided for in this section, the interests of members of a constituent nonstock corporation may be treated in various ways so as to convert such interests into interests of value, other than shares of stock, in the surviving or resulting stock corporation or into shares of stock Office of the Principal Chief or his authorized representative in the surviving or resulting stock corporation, voting or nonvoting, or into creditor interests or any other interests of value equivalent to their membership interests in their nonstock corporation. The voting rights of members of a constituent nonstock corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving or resulting stock corporation by members of a constituent nonstock corporation, nor need the voting rights of shares of stock in a constituent stock corporation be considered as an element of value in measuring the reasonable equivalence of the value of the interests in the surviving or resulting nonstock corporations received by shareholders of a constituent stock corporation, and the voting or nonvoting shares of a stock corporation may be converted into voting or nonvoting regular, life, general, special or other type of membership, however designated, creditor interests or participating interests, in the nonstock corporation surviving or resulting from such merger or consolidation of a stock corporation and a nonstock corporation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

D. The agreement, required by subsection (B) of this section in the case of each constituent stock corporation, shall be adopted, approved, certified, executed and acknowledged by each constituent corporation in the same manner as is provided for in 18 CNCA § 81 and, in the case of each constituent nonstock corporation, shall be adopted, approved, certified, executed and acknowledged by each of said constituent corporations in the same manner as is provided for in 18 CNCA § 84. The agreement shall be filed and shall become effective for all purposes of the laws of Cherokee Nation when and as provided for in 18 CNCA § 81 with respect to the merger of stock corporations of Cherokee Nation. Insofar as they may be applicable, the provisions of 18 CNCA § 81(C)(1) through (7) shall apply to a merger under this section.

E. The provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section, if the surviving corporation is a corporation of Cherokee Nation. The provisions of 18 CNCA § 81(D) shall apply to any constituent stock corporation participating in a merger or consolidation pursuant to the provisions of this section. The provisions of 18 CNCA § 81(F) shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

§ 87. Merger or consolidation of domestic and foreign stock and nonstock corporations

A. Any one or more corporations of Cherokee Nation, whether stock or nonstock corporations and whether or not organized for profit, may merge or consolidate with one or more other corporations of any state or states of the United States or of the District of Columbia, whether stock or nonstock corporations and whether or not organized for profit, if the laws under which the other corporation or corporations are formed shall permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the place of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving or new corporation may be either a stock corporation or a membership corporation, as shall be specified in the agreement of merger required by the provisions of subsection (B) of this section.

B. The method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in 18 CNCA § 86 in the case of Cherokee Nation corporations. The agreement of merger or consolidation shall also set forth such other matters or provisions as shall then be required to be set forth in certificates of incorporation by the laws of Cherokee Nation which are stated in the agreement to be the laws which shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. The agreement, in the case of foreign corporations, shall be adopted, approved, executed and acknowledged by each of the constituent foreign corporations in accordance with the laws under which each is formed.

C. The requirements of the provisions of 18 CNCA § 82(D) as to the appointment of the Office of the Principal Chief or his authorized representative to receive process and the manner of serving the same in the event the surviving or new corporation is to be governed by the laws of any other state shall also apply to mergers or consolidations effected pursuant to the provisions of this section. The provisions of 18 CNCA § 81(E) shall apply to mergers effected pursuant to the provisions of this section if the surviving corporation is a corporation of Cherokee Nation. The provisions of 18 CNCA § 81(D) of this act shall apply to any constituent stock corporation participating in a merger of consolidation pursuant to the provisions of this section. The provisions of 18 CNCA § 81(F) shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

D. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

§ 88. Status, rights, liabilities, etc. of constituent and surviving or resulting corporations following merger or consolidation

When any merger or consolidation shall have become effective pursuant to the provisions of the Cherokee Nation General Corporation Act, for all purposes of the laws of Cherokee Nation the

separate existence of all the constituent corporations, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, possessing all the rights, privileges, powers and franchises as well of public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated; and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise, under the laws of Cherokee Nation, in any of such constituent corporations, shall not revert or be in any way impaired by reason of the provisions of the Cherokee Nation General Corporation Act; but all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations, from that time forward, shall attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

§ 89. Powers of corporation surviving or resulting from merger or consolidation; issuance of stock, bonds or other indebtedness

When two or more corporations are merged or consolidated, the corporation surviving or resulting from the merger may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all payments it will be required to make, or obligations it will be required to assume, in order to effect the merger or consolidation. For the purpose of securing the payment of any such bonds and obligations, it shall be lawful for the surviving or resulting corporation to mortgage its corporate franchise, rights, privileges and property, real, personal or mixed. The surviving or resulting corporation may issue certificates of its capital stock or uncertificated stock if authorized to do so and other securities to the shareholders of the constituent corporations in exchange or payment for the original shares, in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement.

§ 90. Effect of merger upon pending actions

Any action or proceeding, whether civil or criminal or any other proceeding provided for in Cherokee Nation Code Annotated pending by or against any corporation which is a party to a merger or consolidation shall be prosecuted as if such merger or consolidation had not taken place, or the corporation surviving or resulting from such merger or consolidation may be substituted in such action or proceeding.

§ 90.1. Share acquisitions

A. One or more corporations may acquire all or part of the outstanding shares of one or more other corporations, if the board of directors of each corporation adopts and its shareholders approve, if required by subsection (C) of this section, the agreement of acquisition.

B. The agreement of acquisition shall set forth:

1. the name or names of the corporation or corporations whose shares will be acquired and the name or names of the acquiring corporation or corporations;
2. the terms and conditions of the acquisitions;
3. the manner and basis of exchanging the shares to be acquired for the consideration proffered;
4. any amendments or changes in the certificate of incorporation of a corporation which is a party to the agreement; and
5. such other provisions as the directors shall deem advisable.

C. After adopting an agreement of acquisition, the board of directors of each corporation whose shares are to be acquired, in whole or in part, or whose certificate of incorporation is to be amended, shall submit the agreement of acquisition for approval by the shareholders entitled to vote thereon. Due notice of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at his address as it appears on the records of the corporation, at least twenty (20) days prior to the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable. At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation. If the agreement shall be adopted and approved in accordance with the provisions of this section, it shall then be filed and shall become effective in accordance with the provisions of 18 CNCA § 7. In lieu of filing an agreement of acquisition required by this section, the acquiring corporation may file a certificate of acquisition, executed in accordance with the provisions of 18 CNCA § 7, which states:

1. the name and jurisdiction of incorporation of each corporation which is a party to the agreement;
2. that the agreement of acquisition has been adopted, approved, certified, executed, and acknowledged in accordance with the provisions of this section;
3. whether the corporation is an acquiring corporation or a corporation whose shares are to be acquired;
4. the amendments or changes, if any, in the certificate of incorporation that are to be effected by

the agreement of acquisition;

5. that the executed agreement of acquisition is on file at the principal place of business of each corporation, stating the address thereof, and

6. that a copy of the agreement of acquisition will be furnished by each corporation, on request and without cost, to any of its shareholders.

D. Any agreement of acquisition may contain a provision that at any time prior to the filing of the agreement with the Office of the Principal Chief or his authorized representative, the agreement may be terminated by the board of directors of any affected corporation notwithstanding approval of the agreement by the shareholders of one or more of the affected corporations. Any agreement of acquisition may contain a provision that the board of directors of the affected corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the Office of the Principal Chief or his authorized representative, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any affected corporation shall not:

1. alter or change the amount or kind of consideration to be received in exchange for or on conversion of all or part of the shares to be acquired;

2. alter or change any term of the certificate of incorporation of the affected corporations; or

3. alter or change any of the terms and consideration of the agreement if such alteration or change would adversely affect the holders of any class or series of a corporation whose shares are to be acquired.

E. The holders of the outstanding shares of a class shall be entitled to vote as a class upon an agreement of acquisition, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the agreement provides for the acquisition of all or part of the shares of the class.

F. This section shall not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

G. Any shareholder whose shares are to be acquired pursuant to an agreement of acquisition adopted and approved in accordance with this section and who has complied with the procedural steps specified in 18 CNCA § 91(D) for mergers and consolidations and who has neither voted in favor of the share acquisition nor consented thereto in writing shall be entitled to an appraisal by the District Court of the fair value of his shares in compliance with the same provisions and procedures and with the same rights and limitations as set out in 18 CNCA § 91(E) through (K).

H. If the entity acquiring shares pursuant to this section is governed by the laws of the District of Columbia or any state other than Cherokee Nation, the entity shall agree that it may be served with process in Cherokee Nation in any proceeding for enforcement of any obligation of the acquiring

corporation arising from the share acquisition, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of 18 CNCA § 91, and shall irrevocably appoint the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Office of the Principal Chief or his authorized representative. In the event of such service upon the Office of the Principal Chief or his authorized representative in accordance with this subsection, the Office of the Principal Chief or his authorized representative shall forthwith notify such acquiring corporation thereof by letter sent by certified mail, with return receipt requested, directed to such acquiring corporation at its address so specified, unless such acquiring corporation shall have designated in writing to the Office of the Principal Chief or his authorized representative a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Office of the Principal Chief or his authorized representative pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Office of the Principal Chief or his authorized representative that service is being effected pursuant to this subsection and to pay the Office of the Principal Chief or his authorized representative the fee provided for in 18 CNCA § 142(7), which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Office of the Principal Chief or his authorized representative shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Office of the Principal Chief or his authorized representative shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Office of the Principal Chief or his authorized representative.

§ 90.2. Merger or consolidation of domestic corporation and limited partnership

A. Any one or more corporations of Cherokee Nation may merge or consolidate with one or more limited partnerships, of Cherokee Nation or of any state of the United States, or of the District of Columbia, unless the laws of such states or the District of Columbia forbid such merger or consolidation. Such corporation or corporations and such one or more limited partnerships may merge with or into a corporation, which may be any one of such corporations, or they may merge with or into a limited partnership, which may be any one of such limited partnerships, or they may consolidate into a new corporation or limited partnership formed by the consolidation, which shall be a corporation or limited partnership of Cherokee Nation or any state of the United States, or the District of Columbia, which permits such merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

B. Each such corporation and limited partnership shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;
2. the mode of carrying the consolidation into effect;
3. the manner of converting the shares of stock of each such corporation and the partnership interests of each limited partnership into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation, and if any shares of any such corporation or any partnership interests of any such limited partnership are not to be converted solely into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other rights or securities of any other corporation or entity which the holders of such shares or partnership interests are to receive in exchange for, or upon conversion of, such shares or partnership interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation; and
4. such other details or provisions as are deemed desirable, including but not limited to, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or limited partnership. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement required by subsection (B) of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporation in the same manner as is provided in 18 CNCA § 81 and, in the case of the limited partnerships, in accordance with their limited partnership agreements and in accordance with the laws of Cherokee Nation under which they are formed, as the case may be. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of Cherokee Nation when and as provided in 18 CNCA § 81 with respect to the merger or consolidation of corporations of Cherokee Nation. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation or limited partnership may file a certificate of merger or consolidation, executed in accordance with 18 CNCA § 7 if the surviving or resulting entity is a corporation, or by a general partner, if the surviving or resulting entity is a limited partnership, which states:

1. the name and state of domicile of each of the constituent entities;
2. that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;
3. the name of the surviving or resulting corporation or limited partnership;
4. in the case of a merger in which a corporation is the surviving entity, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected

by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. in the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as set forth in an attachment to the certificate;

6. that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation or limited partnership and the address thereof,

7. that a copy of the agreement of consolidation or merger shall be furnished by the surviving or resulting entity, on request and without cost, to any shareholder of any constituent corporation or any partner of any constituent limited partnership; and

8. the agreement, if any, required by subsection (D) of this section.

D. If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state of the United States, other than Cherokee Nation, the entity shall agree that it may be served with process in this Nation in any proceeding for enforcement of any obligation of any constituent corporation or limited partnership of Cherokee Nation, as well as for enforcement of any obligation of the surviving or resulting corporation or limited partnership arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of 18 CNCA § 91, and shall irrevocably appoint the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Office of the Principal Chief or his authorized representative. In the event of service upon the Office of the Principal Chief or his authorized representative pursuant to this subsection, the Office of the Principal Chief or his authorized representative shall forthwith notify the surviving or resulting corporation or limited partnership thereof by a letter, sent by certified mail with return receipt requested, directed to such surviving or resulting corporation or limited partnership at its address so specified, unless such surviving or resulting corporation or limited partnership shall have designated in writing to the Office of the Principal Chief or his authorized representative a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Office of the Principal Chief or his authorized representative pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Office of the Principal Chief or his authorized representative that service is being effected pursuant to this subsection and to pay the Office of the Principal Chief or his authorized representative the fee provided for in 18 CNCA § 142(A)(7), which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Office of the Principal Chief or his authorized representative shall maintain an alphabetical record of any such service, setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been effected pursuant to this

subsection, the return date thereof, and the date service was made. The Office of the Principal Chief or his authorized representative shall not be required to retain such information longer than five (5) years from the date of receipt of the service of process by the Office of the Principal Chief or his authorized representative.

E. 18 CNCA § 81(D), (E) and (F) and 18 CNCA §§ 88 through 90 and 127, insofar as they are applicable, shall apply to mergers or consolidations between corporations and limited partnerships.

§ 90.3. Business combinations with interested shareholders

A. Notwithstanding any other provisions of this title, a corporation shall not engage in any business combination with any interested shareholder for a period of three (3) years following the date that such person became an interested shareholder, unless:

1. prior to such date, the board of directors of the corporation approved either the business combination or the transaction which resulted in the person becoming an interested shareholder;

2. upon consummation of the transaction which resulted in the person becoming an interested shareholder, the interested shareholder owned of record or beneficially capital stock having at least eighty-five percent (85%) of all voting power of the corporation at the time the transaction commenced, excluding for purposes of determining such voting power the votes attributable to those shares owned of record or beneficially by:

a. persons who are directors and also officers, and

b. employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

3. on or subsequent to such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of all voting power which is not attributable to shares owned of record or beneficially by the interested shareholder.

B. The restrictions contained in this section shall not apply if:

1. the corporation's original certificate of incorporation contains a provision expressly electing not to be governed by this section;

2. the corporation, by action of its board of directors, adopts an amendment to its bylaws within ninety (90) days of the effective date of this section, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors;

3. the corporation, by action of its shareholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by this section, provided that, in

addition to any other vote required by law, such amendment to the certificate of incorporation or bylaws must be approved by the affirmative vote of a majority of all voting power of a corporation. An amendment adopted pursuant to this paragraph shall not be effective until twelve (12) months after the adoption of such amendment and shall not apply to any business combination between such corporation and any person who became an interested shareholder of such corporation on or prior to such adoption. A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

4. the corporation does not have a class of voting stock that is:

a. listed on a national securities exchange,

b. authorized for quotation on an inter-dealer quotation system of a registered national securities association, or

c. held of record by one thousand or more shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder;

5. a person becomes an interested shareholder inadvertently and:

a. as soon as practicable divests sufficient shares so that the person ceases to be an interested shareholder, and

b. would not, at any time within the three-year period immediately prior to a business combination between the corporation and such person, have been an interested shareholder but for the inadvertent acquisition;

6. a. the business combination is proposed prior to the consummation or abandonment of, and subsequent to the earlier of the public announcement or the notice required hereunder of, a proposed transaction which:

i. constitutes one of the transactions described in subparagraph b of this paragraph,

ii. is with or by a person who either was not an interested shareholder during the previous three (3) years or who became an interested shareholder with the approval of the corporation's board of directors, and

iii. is approved or not opposed by a majority of the members of the board of directors then in office, but not less than one, who were directors prior to any person becoming an interested shareholder during the previous three (3) years or were recommended for election or elected to succeed such directors by a majority of such directors;

b. the proposed transactions referred to in subparagraph a of this paragraph are limited to:

i. a share acquisition pursuant to 18 CNCA § 90.1, or a merger or consolidation of the corporation, except for a merger in respect of which, pursuant to 18 CNCA § 81(F), no vote of the shareholders of the corporation is required,

ii. a sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to any direct or indirect wholly-owned subsidiary or to the corporation, having an aggregate market value equal to fifty percent (50%) or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation, or

iii. a proposed tender or exchange offer for outstanding stock of the corporation which represents fifty percent (50%) or more of all voting power of the corporation. The corporation shall give not less than twenty (20) days' notice to all interested shareholders prior to the consummation of any of the transactions described in divisions (i) or (ii) of this subparagraph.

C. Notwithstanding paragraphs (1), (2), (3) and (4) of subsection (B) of this section, a corporation may elect by a provision of its original certificate of incorporation or any amendment thereto to be governed by this section, provided that any such amendment to the certificate of incorporation shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became such prior to the effective date of the amendment.

D. As used in this section only:

1. "**Affiliate**" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person;

2. "**All voting power**" means the aggregate number of votes which the holders of all classes of capital stock of the corporation would be entitled to cast in an election of directors generally;

3. "**Associate**", when used to indicate a relationship with any person, means:

a. any corporation or organization of which such person is a director, officer or partner or is, of record or beneficially, the owner of outstanding stock of the corporation having twenty percent (20%) or more of all voting power of the corporation,

b. any trust or other estate in which such person has at least a twenty percent (20%) beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and

c. any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person;

4. "**Beneficial ownership**" shall have the meaning ascribed to such term by Rule 13d-3 under the

Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as amended, except that a person shall be deemed to be the owner or beneficial owner of securities of which he has the right to acquire ownership either immediately or only after the passage of any time or the giving of notice or both; provided, however, that a person shall not be deemed the owner or beneficial owner of any stock if:

a. the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to more than ten (10) persons, or

b. the stock is tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates, until such tendered stock is accepted for purchase or exchange;

5. "**Business combination**", when used in reference to any corporation and any interested shareholder of such corporation, means:

a. any merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with:

i. the interested shareholder, or

ii. any other corporation if the merger or consolidation is caused by the interested shareholder and as a result of such merger or consolidation subsection (A) of this section is not applicable to the surviving corporation,

b. any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of such corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation,

c. any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested shareholder, except:

i. pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of such corporation or any such subsidiary which securities were outstanding prior to the time that the interested shareholder became such,

ii. pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of such corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of such corporation subsequent to the time the interested shareholder became such, or

iii. pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of said stock; provided, however, that in no case under divisions ii and iii of this subparagraph shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of all voting power of the corporation,

d. any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, or all voting power, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder,

e. any receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of such corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs a through d of this paragraph, provided by or through the corporation or any direct or indirect majority-owned subsidiary, or

f. any share acquisition by the interested shareholder from the corporation or any direct or indirect majority-owned subsidiary of the corporation pursuant to 18 CNCA § 90.1;

6. **"Control"**, including the terms **"controlling"**, **"controlled by"** and **"under common control with"**, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who owns, of record or beneficially, outstanding stock of the corporation having twenty percent (20%) or more of all voting power of the corporation shall be presumed to have control of such corporation, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such corporation;

7. **"Group"** means two or more persons who agree to act together for the purpose of acquiring, holding, voting or disposing of securities of the corporation;

8.a. **"Interested shareholder"** means:

i. any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that:

(a) owns of record or beneficially outstanding stock of the corporation having fifteen percent (15%) or more of all voting power of the corporation, or

(b) is an affiliate or associate of the corporation and owned of record or beneficially outstanding stock of the corporation having fifteen percent (15%) or more of all voting power of the corporation at any time within the three- (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder, and

ii. the affiliates and associates of such person;

b. the term "**interested shareholder**" shall not include:

i. any person who:

(a) owned of record or beneficially shares in excess of the fifteen percent (15%) limitation set forth herein as of, or acquired such shares pursuant to a tender offer commenced prior to, September 1, 1991, or pursuant to an exchange offer announced prior to September 1, 1991, and commenced within ninety (90) days thereafter and continued to own shares in excess of such fifteen percent (15%) limitation or would have but for action by the corporation, or

(b) acquired such shares from a person described in subdivision (a) of this division by gift, inheritance or in a transaction in which no consideration was exchanged, or

ii. any person whose ownership of shares in excess of the fifteen percent (15%) limitation set forth herein is the result of action taken solely by the corporation provided that such person shall be an interested shareholder if thereafter he acquires additional shares of voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by such person;

c. for the purpose of determining whether a person is an interested shareholder, the stock of the corporation deemed to be outstanding shall include stock owned of record or beneficially by such person, but shall not include any other unissued stock of such corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise;

9. "**Person**" means any individual, corporation, partnership, unincorporated association, any other entity, any group and any member of a group.

E. No provisions of a certificate of incorporation or bylaw shall require, for any vote of shareholders required by this section, a greater vote of shareholders than that specified in this section.

§ 91. Appraisal rights

A. Any shareholder of a corporation of Cherokee Nation who holds shares of stock on the date of the making of a demand pursuant to the provisions of subsection (D) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with the provisions of subsection D of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing

pursuant to the provisions of 18 CNCA § 73 shall be entitled to an appraisal by the district court of the fair value of his shares of stock under the circumstances described in subsections B and C of this section. As used in this section, the word "**shareholder**" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "**stock**" and "**share**" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation. The provisions of this subsection shall be effective only with respect to mergers or consolidations consummated pursuant to an agreement of merger or consolidation entered into after the effective date of this title.

B. 1. Except as otherwise provided for in this subsection, appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation, or of the acquired corporation in a share acquisition, to be effected pursuant to the provisions of 18 CNCA § 81, 18 CNCA § 82, 18 CNCA § 86, 18 CNCA § 87, 18 CNCA § 90.2, or 18 CNCA § 91.1.

2. a. No appraisal rights under this section shall be available for the shares of any class or series of stock which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders to act upon the agreement of merger or consolidation, were either:

- i. listed on a national securities exchange; or
- ii. held of record by more than two thousand shareholders.

b. In addition, no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided for in 18 CNCA § 81(F).

3. Notwithstanding the provisions of paragraph (2) of this subsection, appraisal rights provided for in this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to the provisions of 18 CNCA § 81, 18 CNCA § 82, 18 CNCA § 86 or 18 CNCA § 87 to accept for such stock anything except:

- a. shares of stock of the corporation surviving or resulting from such merger or consolidation; or
- b. shares of stock of any other corporation which at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than two thousand (2,000) shareholders; or
- c. cash in lieu of fractional shares of the corporations described in subparagraphs a and b of this paragraph; or
- d. any combination of the shares of stock and cash in lieu of the fractional shares described in subparagraphs (a), (b) and (c) of this paragraph.

4. In the event all of the stock of a subsidiary Cherokee Nation corporation party to a merger effected pursuant to the provisions of 18 CNCA § 83 is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Cherokee Nation corporation.

C. Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (D) and (E) of this section, shall apply as nearly as is practicable.

D. Appraisal rights shall be perfected as follows:

1. If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of shareholders, the corporation, not less than twenty (20) days prior to the meeting, shall notify each of its shareholders entitled to such appraisal rights that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each shareholder electing to demand the appraisal of the shares of the shareholder shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of the shares of the shareholder. Such demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends thereby to demand the appraisal of the shares of the shareholder. A proxy or vote against the merger or consolidation shall not constitute such a demand. A shareholder electing to take such action must do so by a separate written demand as herein provided. Within ten (10) days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each shareholder of each constituent corporation who has complied with the provisions of this subsection and has not voted in favor of or consented to the merger or consolidation as of the date that the merger or consolidation has become effective; or

2. If the merger or consolidation was approved pursuant to the provisions of 18 CNCA § 73 or 18 CNCA § 83, the surviving or resulting corporation, either before the effective date of the merger or consolidation or within ten (10) days thereafter, shall notify each of the shareholders entitled to appraisal rights of the effective date of the merger or consolidation and that appraisal rights are available for any or all of the shares of the constituent corporation, and shall include in such notice a copy of this section. The notice shall be sent by certified or registered mail, return receipt requested, addressed to the shareholder at the address of the shareholder as it appears on the records of the corporation. Any shareholder entitled to appraisal rights may, within twenty (20) days after the date of mailing of the notice, demand in writing from the surviving or resulting corporation the appraisal of the shares of the shareholder. Such demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends to demand the appraisal of the shares of the shareholder.

E. Within one hundred twenty (120) days after the effective date of the merger or consolidation, the surviving or resulting corporation or any shareholder who has complied with the provisions of subsections (A) and (D) of this section and who is otherwise entitled to appraisal rights, may file a petition in District Court demanding a determination of the value of the stock of all such shareholders. Provided, however, at any time within sixty (60) days after the effective date of the merger or consolidation, any shareholder shall have the right to withdraw the demand of the shareholder for appraisal and to accept the terms offered upon the merger or consolidation. Within one hundred twenty (120) days after the effective date of the merger or consolidation, any shareholder who has complied with the requirements of subsections (A) and (D) of this section, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the shareholder within ten (10) days after the shareholder's written request for such a statement is received by the surviving or resulting corporation or within ten (10) days after expiration of the period for delivery of demands for appraisal pursuant to the provisions of subsection (D) of this section, whichever is later.

F. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which, within twenty (20) days after such service, shall file in the office of the Court Clerk of the District Court in which the petition was filed a duly verified list containing the names and addresses of all shareholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Court Clerk, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the shareholders shown on the list at the addresses therein stated. Such notice shall also be given by one or more publications at least one (1) week before the day of the hearing, in the newspaper *Cherokee Phoenix* or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

G. At the hearing on such petition, the Court shall determine the shareholders who have complied with the provisions of this section and who have become entitled to appraisal rights. The Court may require the shareholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Court Clerk for notation thereon of the pendency of the appraisal proceedings; and if any shareholder fails to comply with such direction, the Court may dismiss the proceedings as to such shareholder.

H. After determining the shareholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may

consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any shareholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the shareholder entitled to an appraisal. Any shareholder whose name appears on the list filed by the surviving or resulting corporation pursuant to the provisions of subsection (F) of this section and who has submitted the certificates of stock of the shareholder to the Court Clerk, if such is required, may participate fully in all proceedings until it is finally determined that the shareholder is not entitled to appraisal rights pursuant to the provisions of this section.

I. The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the shareholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be so made to each such shareholder, in the case of holders of uncertificated stock immediately, and in the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the District Court may be enforced, whether such surviving or resulting corporation be a corporation of Cherokee Nation or of any state.

J. The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a shareholder, the Court may order all or a portion of the expenses incurred by any shareholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney fees and the fees and expenses of experts, to be charged pro rata against the value of all of the shares entitled to an appraisal.

K. From and after the effective date of the merger or consolidation, no shareholder who has demanded the appraisal rights of the shareholder as provided for in subsection (D) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock, except dividends or other distributions payable to shareholders of record at a date which is prior to the effective date of the merger or consolidation; provided, however, that if no petition for an appraisal shall be filed within the time provided for in subsection (E) of this section, or if such shareholder shall deliver to the surviving or resulting corporation a written withdrawal of the shareholder's demand for an appraisal and an acceptance of the merger or consolidation, either within sixty (60) days after the effective date of the merger or consolidation as provided for in subsection (E) of this section or thereafter with the written approval of the corporation, then the right of such shareholder to an appraisal shall cease. Provided, however, no appraisal proceeding in the District Court shall be dismissed as to any shareholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

L. The shares of the surviving or resulting corporation into which the shares of such objecting shareholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

ARTICLE 11

SALE OF ASSETS, DISSOLUTION AND WINDING UP

§ 92. Sale, lease or exchange of assets—Consideration—Procedure

A. Every corporation, at any meeting of its board of directors or governing body, may sell, lease, or exchange all or substantially all of its property and assets, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors or governing body deems expedient and for the bent interests of the corporation, when and as authorized by a resolution adopted by the holders of a majority of the outstanding stock of the corporation entitled to vote thereon or, if the corporation is a nonstock corporation, by a majority of the members having the right to vote for the election of the members of the governing body, at a meeting duly called upon at least twenty (20) days' notice. The notice of the meeting shall state that such a resolution will be considered.

B. Notwithstanding authorization or consent to a proposed sale, lease or exchange of a corporation's property and assets by the shareholders or members, the board of directors or governing body may abandon such proposed sale, lease or exchange without further action by the shareholders or members, subject to the rights, if any, of third parties under any contract relating thereto.

§ 93. Mortgage or pledge of assets

The authorization or consent of shareholders to the mortgage or pledge of a corporation's property and assets shall not be necessary, except to the extent that the certificate of incorporation otherwise provides.

§ 94. Dissolution of joint venture corporation having two shareholders

A. If the shareholders of a corporation of Cherokee Nation, having only two shareholders each of which owns fifty percent (50%) of the stock therein, shall be engaged in the prosecution of a joint venture and if such shareholders shall be unable to agree upon the desirability of discontinuing such joint venture and disposing of the assets used in such venture, either shareholder may file with the District Court a petition stating that it desires to discontinue such joint venture and to dispose of the assets used in such venture in accordance with a plan to be agreed upon by both shareholders or that, if no such plan shall be agreed upon by both shareholders, the corporation be dissolved. Such petition shall have attached thereto a copy of the proposed plan of discontinuance and distribution and a certificate stating that copies of such petition and plan have been transmitted in writing to the other shareholder and to the directors and officers of such corporation. The petition and certificate shall be executed and acknowledged in accordance with the provisions of 18 CNCA § 7.

B. Unless both shareholders file with the District Court:

1. within three (3) months of the date of the filing of such petition, a certificate similarly executed

and acknowledged stating that they have agreed on such plan, or a modification thereof; and

2. within one (1) year from the date of the filing of such petition, a certificate similarly executed and acknowledged stating that the distribution provided by such plan has been completed, the District Court may dissolve such corporation and may by appointment of one or more trustees or receivers with all the powers and title of a trustee or receiver appointed pursuant to the provisions of 18 CNCA § 100, administer and wind up its affairs. Either or both of the periods provided for in paragraphs (1) and (2) of this subsection may be extended by agreement of the shareholders, evidenced by a certificate similarly executed, acknowledged and filed with the District Court prior to the expiration of such period.

§ 95. Dissolution before the issuance of shares or beginning business—Procedure

If a corporation has not issued shares or has not commenced the business for which the corporation was organized, a majority of the incorporators, or, if directors were named in the certificate of incorporation or have been elected, a majority of the directors, may surrender all of the corporation's rights and franchises by filing in the Office of the Principal Chief or his authorized representative a certificate, executed and acknowledged by a majority of the incorporators or directors, stating that no shares of stock have been issued or that the business of activity for which the corporation was organized has not begun; that no part of the capital of the corporation has been paid, or, if some capital has been paid, that the amount actually paid in for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto; that if the corporation has begun business but it has not issued shares, all debts of the corporation have been paid; that if the corporation has not begun business but has issued stock certificates all issued stock certificates, if any, have been surrendered and canceled; and that all rights and franchises of the corporation are surrendered. Upon such certificate becoming effective in accordance with the provisions of 18 CNCA § 7, the corporation shall be dissolved.

§ 96. Dissolution—Procedure

A. If it should be deemed advisable in the judgment of the board of directors of any corporation that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each shareholder entitled to vote thereon of the adoption of the resolution and of a meeting of shareholders to take action upon the resolution.

B. At the meeting a vote shall be taken upon the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon shall vote for the proposed dissolution, a certificate of dissolution shall be filed with the Office of the Principal Chief or his authorized representative pursuant to subsection (D) of this section.

C. Dissolution of a corporation may also be authorized without action of the directors if all the shareholders entitled to vote thereon shall consent in writing and a certificate of dissolution shall be filed with the Office of the Principal Chief or his authorized representative pursuant to subsection (D) of this section.

D. If dissolution is authorized in accordance with this section, a certificate of dissolution shall be executed, acknowledged and filed, and shall become effective, in accordance with 18 CNCA § 7. Such certificate of dissolution shall set forth:

1. the name of the corporation;
2. the date dissolution was authorized;
3. that the dissolution has been authorized by the board of directors and shareholders of the corporation, in accordance with subsections (A) and (B) of this section, or that the dissolution has been authorized by all of the shareholders of the corporation entitled to vote on a dissolution, in accordance with subsection (C) of this section; and
4. the names and addresses of the directors and officers of the corporation.

E. The resolution authorizing a proposed dissolution may provide that notwithstanding authorization or consent to the proposed dissolution by the shareholders, or the members of a nonstock corporation pursuant to 18 O.S. § 1097, the board of directors or governing body may abandon such proposed dissolution without further action by the shareholders or members.

F. Upon a certificate of dissolution becoming effective in accordance with 18 CNCA § 7, the corporation shall be dissolved.

§ 97. Reserved

§ 98. Payment of franchise taxes before dissolution

No corporation shall be dissolved pursuant to the provisions of the Cherokee Nation General Corporation Act until all franchise taxes due to or assessable by Cherokee Nation have been paid by the corporation.

§ 99. Continuation of corporation after dissolution for purposes of suit and winding up affairs

All corporations, whether they expire by their own limitation or are otherwise dissolved, nevertheless shall be continued, for the term of three (3) years from such expiration or dissolution or for such longer period as the District Court shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or any other proceeding provided for by Cherokee Nation Code Annotated, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to their shareholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, the action shall not abate by reason of the expiration or

dissolution of the corporation. The corporation, solely for the purpose of such action, suit or proceeding, shall be continued as a body corporate beyond the three-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the District Court.

§ 100. Trustees or receivers for dissolved corporations—Appointment—Powers—Duties

When any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act shall be dissolved in any manner whatever, the District Court, on application of any creditor, shareholder or director of the corporation, or any other person who shows good cause therefor, at any time, may either appoint one or more of the directors of the corporation to be trustees, or appoint one or more persons to be receivers, of and for the corporation, to take charge of the corporation's property, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers may be continued as long as the District Court shall think necessary for the purposes provided for in this section.

§ 100.1. Notice to claimants—Filing of claims

A. 1. After a corporation has been dissolved in accordance with the procedures set forth in the Cherokee Nation General Corporation Act, the corporation or any successor entity may give notice of the dissolution requesting all persons having a claim against the corporation to present their claims against the corporation in accordance with such notice. Such notice shall state:

- a. that all claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim;
- b. the mailing address to which a claim must be sent;
- c. the date by which a claim must be received by the corporation or successor entity, which date shall be no earlier than sixty (60) days from the date thereof; and
- d. that the corporation or a successor entity may make distributions to other claimants and the corporation's shareholders or persons interested as having been such without further notice to the claimant.

2. Such notice shall also be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the office of the corporation's last registered agent in Cherokee Nation is located and in the corporation's principal place of business and, in the case of a corporation having Ten Million Dollars (\$10,000,000.00) or more in total assets at the time of its dissolution, at least once in the newspaper *Cherokee Phoenix*. On or before

the date of the first publication of such notice, the corporation or successor entity shall mail a copy of such notice by certified or registered mail, return receipt requested, to each known claimant of the corporation.

3. A corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing notice of such rejection by certified mail return receipt requested to the claimant within ninety (90) days after receipt of such claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in 18 CNCA § 99. A notice sent by a corporation or successor entity pursuant to this subsection shall be accompanied by a copy of 18 CNCA §§ 99 through 100.3.

B. 1. A corporation or successor entity electing to follow the procedures described in subsection (A) of this section shall also give notice of the dissolution of the corporation to persons with claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that such persons present such claims in accordance with the terms of such notice. Such notice shall be in substantially the form, and sent and published in the same manner, as described in paragraph (1) of subsection (A) of this section.

2. The corporation or successor entity shall offer any claimant whose claim is contingent, conditional or unmatured, such security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall mail such offer to the claimant by certified mail, return receipt requested, within ninety (90) days of receipt of such claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in 18 CNCA § 99. If the claimant offered such security does not deliver in writing to the corporation or successor entity a notice rejecting the offer within one hundred twenty (120) days after receipt of such offer for security, the claimant shall be deemed to have accepted such security as the sole source from which to satisfy his claim against the corporation.

C. 1. A corporation or successor entity which has given notice in accordance with subsections (A) and (B) of this section shall petition the District Court to determine the amount and form of security that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to paragraph (2) of subsection (B) of this section.

2. A corporation or successor entity which has given notice in accordance with subsection (A) of this section shall petition the district court to determine the amount and form of security which will be sufficient to provide compensation to claimants whose claims are known to the corporation or successor entity but whose identities are unknown. The District Court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

D. The giving of any notice or making of any offer pursuant to the provisions of this section shall not revive any claim then barred or constitute acknowledgment by the corporation or successor entity that any person to whom such notice is sent is a proper claimant and shall not operate as a

waiver of any defense or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

E. As used in this section, the term "**successor entity**" shall include any trust, receivership or other legal entity governed by the laws of Cherokee Nation to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits, by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

§ 100.2. Payment and distribution to claimants and shareholders

A. A dissolved corporation or successor entity which has followed the procedures described in 18 CNCA § 100.1 shall:

1. pay the claims made and not rejected in accordance with 18 CNCA § 100.1(A);
2. post the security offered and not rejected pursuant to 18 CNCA § 100.1(B)(2);
3. post any security ordered by the District Court in any proceeding under 18 CNCA § 100.1(C); and
4. pay or make provision for all other obligations of the corporation or such successor entity.

Such claims or obligations shall be paid in full and any such provision for payment shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority, and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved corporation; provided, however, that such distribution shall not be made before the expiration of one hundred fifty (150) days from the date of the last notice of rejections given pursuant to 18 CNCA § 100.1(A)(3). In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of such successor entity as to the provision made for the payment of all obligations under paragraph (4) of this subsection shall be conclusive.

B. A dissolved corporation or successor entity which has not followed the procedures described in 18 CNCA § 100.1 shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims known to the corporation or such successor entity and all claims which are known to the dissolved corporation or such successor entity but for which the identity of the claimant is unknown. Such claims shall be paid in full and any such provision for payment made shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available

therefore. Any remaining funds shall be distributed to the shareholders of the dissolved corporation.

C. Directors of a dissolved corporation or governing persons of a successor entity which has complied with subsection (A) or (B) of this section shall not be personally liable to the claimants of the dissolved corporation.

D. As used in this section, the term "**successor entity**" has the meaning set forth in 18 CNCA § 100.1(E).

§ 100.3. Liability of shareholders of dissolved corporations

A. A shareholder of a dissolved corporation the assets of which were distributed pursuant to 18 CNCA § 100.2(A) or (B) shall not be liable for any claim against the corporation in an amount in excess of such shareholder's pro rata share of the claim or the amount so distributed to him, whichever is less.

B. A shareholder of a dissolved corporation the assets of which were distributed pursuant to 18 CNCA § 100.2(A) shall not be liable for any claim against the corporation on which an action, suit or proceeding is not begun prior to the expiration of the period described in 18 CNCA § 99.

C. The aggregate liability of any shareholder of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed to him in dissolution.

§ 101. Jurisdiction of Court

The District Court shall have jurisdiction of the application prescribed in 18 CNCA § 100 and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

§§ 102, 103. Reserved

§ 104. Revocation or forfeiture of charter—Proceedings

A. The District Court shall have jurisdiction to revoke or forfeit the charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises. The Attorney General of Cherokee Nation, upon his own motion or upon the relation of a proper party, shall proceed for this purpose by complaint in Cherokee Nation District Court.

B. The District Court shall have power, by appointment of receivers or otherwise, to administer and wind up the affairs of any corporation whose charter shall be revoked or forfeited by any Court pursuant to the provisions of the Cherokee Nation General Corporation Act or otherwise, and to make such orders and decrees with respect thereto as shall be just and equitable respecting its affairs and assets and the rights of its shareholders and creditors.

C. No proceeding shall be instituted pursuant to the provisions of this section for nonuse of any corporation's powers, privileges or franchises during the first two (2) years after its incorporation.

§ 105. Dissolution or forfeiture of charter by decree of Court—Filing

Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the District Court, the decree or judgment shall be immediately filed by the Clerk in the District Court, in the Office of the Principal Chief or his authorized representative, and a note thereof shall be made by the Office of the Principal Chief or his authorized representative on the corporation's charter or certificate of incorporation and on the index thereof.

ARTICLE 12

INSOLVENCY; RECEIVERS AND TRUSTEES

§ 106. Receivers for insolvent corporations—Appointment and powers

Whenever a corporation shall be insolvent, the District Court of Cherokee Nation may at any time upon the application of a shareholder or shareholders, severally or jointly, who have been registered owners for a period of not less than six (6) months, of not less than ten percent (10%) of the entire outstanding stock of the corporation or a creditor whose claim has been reduced to judgment and execution thereon has been issued, appoint one or more persons to be receivers of and for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper. The powers of the receivers shall be such and shall continue so long as the Court shall deem necessary.

§ 107. Title to property—Filing order of appointment—Exception

A. Trustees of or receivers for any corporation, appointed by the District Court, and their respective survivors and successors, upon their appointment and qualification or upon the death, resignation or discharge of any co-trustee or co-receiver, shall be vested by operation of law and without any act or deed, with the title of the corporation to all of its property, real, personal, or mixed of whatsoever nature, kind, class or description, and wheresoever situated, except real estate situated outside Cherokee Nation.

B. Trustees or receivers appointed by the District Court, within twenty (20) days from the date of their qualification, shall file in the office of the Clerk of the District Court a certified copy of the order of their appointment and evidence of their qualification.

C. This section shall not apply to receivers appointed pendente lite.

§ 108. Notices to shareholders and creditors

All notices required to be given to shareholders and creditors in any action in which a receiver or trustee for a corporation was appointed shall be given by the District Court, unless otherwise ordered by the Court.

§ 109. Receivers or trustees—Inventory—List of debts and reports

Trustees or receivers, as soon as convenient, shall file in the District Court a full and complete itemized inventory of all the assets of the corporation which shall show their nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained. Trustees or receivers shall make a report to the District Court whenever and as often as the Court shall direct.

§ 110. Creditors' proof of claims—When barred—Notice

All creditors shall make proof under oath of their respective claims against the corporation, and cause the same to be filed in the District Court within the time fixed by the order of the District Court. All creditors and claimants failing to do so, within the time limited by the provisions of this section, or the time prescribed by the order of the District Court, by direction of the District Court, may be barred from participating in the distribution of the assets of the corporation. The District Court may also prescribe what notice, by publication or otherwise, shall be given to the creditors of the time fixed for the filing and making proof of claims.

§ 111. Adjudication of claims—Appeal

A. The District Court immediately upon the expiration of the time fixed for the filing of claims, in compliance with the provisions of 18 CNCA § 110, shall notify the trustee or receiver of the filing of the claims, and the trustee or receiver, within thirty (30) days after receiving the notice, shall inspect the claims, and if the trustee or receiver or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, the trustee or receiver shall immediately notify the creditors whose claims are disputed of his decision. The trustee or receiver shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the trustee or receiver shall direct, and the creditors shall produce such books and papers relating to their claims as shall be required. The trustee or receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

B. Every creditor or claimant who shall have received notice from the receiver or trustee that his claim has been disallowed in whole or in part may appeal to the District Court within thirty (30) days thereafter. The District Court, after hearing, shall determine the rights of the parties.

§ 112. Sale of perishable or deteriorating property

Whenever the property of a corporation is at the time of the appointment of a receiver or trustee

encumbered with liens of any character, and the validity, extent or legality of any lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting the lien, the District Court may order the receiver or trustee to sell the property of the corporation, clear of all encumbrances, at public or private sale, for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of the sale into the District Court, there to remain subject to the order of the District Court, and to be disposed of as the District Court shall direct.

§ 113. Compensation, costs and expenses of receiver or trustee

The District Court, before making distribution of the assets of a corporation among the creditors or shareholders thereof, shall allow a reasonable compensation to the receiver or trustee for his services, and the costs and expenses incurred in and about the execution of his trust, and the costs of the proceedings in the District Court, to be first paid out of the assets.

§ 114. Substitution of trustee or receiver as party—Abatement of actions

A trustee or receiver, upon application by him in the District Court, shall be substituted as party plaintiff in the place of the corporation in any suit or proceeding which was so pending at the time of his appointment. No action against a trustee or receiver of a corporation shall state by reason of his death, but, upon suggestion of the facts of the record, shall be continued against his successor or against the corporation in case no new trustee or receiver is appointed.

§ 115. Liens for wages or products when corporation is insolvent

A. Whenever any corporation of Cherokee Nation, or any foreign corporation doing business in Cherokee Nation, shall become insolvent, the employees performing labor or services of whatever character in the regular employ of the corporation shall have a lien upon the personal property of such corporation for the amount of the wages or payments due to them, not exceeding four months wages or payments which shall have accrued prior to the adjudication of the insolvency of such corporation, which lien shall be paid prior to any other debts, charges or claims against said corporation, except taxes or fees due the United States government or Cherokee Nation. The word "**employee**" shall not be construed to include any of the officers of the corporation.

B. The lien provided for in this section shall be enforced in the manner provided for by law for the enforcement of other liens for labor.

§ 116. Discontinuance of liquidation

The liquidation of the assets and business of an insolvent corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the District Court in its discretion, and subject to such condition as it may deem appropriate, may dismiss the proceedings and direct the receiver or trustee to redeliver to the corporation all of its remaining property and assets.

§ 117. Compromise or arrangement between corporation and creditors or shareholders

A. Whenever the provision provided for in 18 CNCA § 6(B)(2) is included in the original certificate of incorporation of any corporation, all persons who become creditors or shareholders thereof shall be deemed to have become such creditors or shareholders subject in all respects to that provision and the same shall be absolutely binding upon them. Whenever that provision is inserted in the certificate of incorporation of any such corporation by an amendment of its certificate all persons who become creditors or shareholders of such corporation after such amendment shall be deemed to have become such creditors or shareholders subject in all respects to that provision and the same shall be absolutely binding upon them.

B. The District Court may administer and enforce any compromise or arrangement made pursuant to the provision provided for in 18 CNCA § 6(B)(2) and may restrain, *pendente lite*, all actions and proceedings against any corporation with respect to which the District Court shall have begun the administration and enforcement of that provision and may appoint a temporary receiver for such corporation and may grant the receiver such powers as it deems proper, and may make and enforce such rules as it deems necessary for the exercise of such jurisdiction.

§ 118. Bankruptcy proceedings under a statute of the United States—Effectuation

A. Any corporation of Cherokee Nation, a plan of reorganization of which, pursuant to the provisions of any applicable statute of the United States relating to the bankruptcy of corporations, has been or shall be confirmed by the decree or order of a court of competent jurisdiction, may put into effect and carry out the plan and the decrees and orders of the court or judge relative thereto and may take any proceedings and do any act provided in the plan or directed by such decrees and orders, without further action by its directors or shareholders. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the trustee or trustees of such corporation appointed in the bankruptcy proceedings, or a majority thereof, or if none be appointed and acting, by designated officers of the corporation, or by a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation.

B. Such corporation, in the manner provided for in subsection (A) of this section, but without limiting the generality or effect of the foregoing, may alter, amend, or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its certificate of incorporation, and make any change in its capital or capital stock, or any other amendment, change, or alteration, or provision, authorized by the provisions of the Cherokee Nation General Corporation Act; be dissolved, transfer all or part of its assets, merge or consolidate as permitted by the provisions of the Cherokee Nation General Corporation Act, in which case, however, no shareholder shall have any statutory right of appraisal of his stock; change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process; authorize and fix the terms, manner and conditions of, the issuance of bonds, debentures or other obligations, whether or not convertible into stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for stock of any

class; or lease its property and franchises to any corporation, as permitted by law.

C. A certificate of any amendment, change or alteration, or of dissolution, or any agreement of merger or consolidation, made by such corporation pursuant to the provisions of this section, shall be filed with the Office of the Principal Chief or his authorized representative in accordance with the provisions of 18 CNCA § 7, and, subject to the provisions of 18 CNCA § 7(D), shall thereupon become effective in accordance with its terms and the provisions of this section. Such certificate, agreement of merger or other instrument shall be made, executed and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees appointed in the reorganization or debtor in possession in the bankruptcy proceedings, or a majority thereof, or, if none be appointed and acting, by the officers of the corporation, or by a master or other representative appointed by the court or judge, and shall certify that provision for the making of such certificate, agreement or instrument is contained in a decree or order of a court or judge having jurisdiction of a proceeding under such applicable statute of the United States for the reorganization of such corporation.

D. The provisions of this section shall cease to apply to such corporation upon consummation of a plan of reorganization or the entry of a final decree in the bankruptcy proceedings closing the case and discharging the trustee, if any, or the debtor in possession.

E. On filing any certificate, agreement, report or other paper made or executed pursuant to the provisions of this section, there shall be paid to the Office of the Principal Chief or his authorized representative, for the use of Cherokee Nation, the same fees as are payable by corporations not in bankruptcy proceedings upon the filing of like certificates, agreements, reports or other papers.

ARTICLE 13

RENEWAL, REVIVAL, EXTENSION AND RESTORATION OF CERTIFICATE OF INCORPORATION OR CHARTER

§ 119. Revocation of voluntary dissolution

A. At any time prior to the expiration of three (3) years following the dissolution of a corporation pursuant to the provisions of 18 CNCA § 96, or, at any time prior to the expiration of such longer period as the District Court may have directed pursuant to the provisions of 18 CNCA § 99, a corporation may revoke the dissolution up to that time effected by it in the following manner:

1. The board of directors shall adopt a resolution recommending that the dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of shareholders.
2. Notice of the special meeting of shareholders shall be given in accordance with the provisions of 18 CNCA § 67 to each shareholder whose shares were entitled to vote upon a proposed dissolution before the corporation was dissolved.
3. At the meeting a vote of the shareholders shall be taken on a resolution to revoke the dissolution.

If a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution shall be voted for the resolution, a certificate of revocation of dissolution shall be executed and acknowledged in accordance with the provisions of 18 CNCA § 7 which shall state:

a. the name of the corporation;

b. the names and respective addresses of its officers;

c. the names and respective addresses of its directors; and

d. that a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to revoke the dissolution; or, if it be the fact, that, in lieu of a meeting and vote of shareholders, the shareholders have given their written consent to the revocation in accordance with the provisions of 18 CNCA § 73.

B. Upon the filing in the Office of the Principal Chief or his authorized representative of the certificate of revocation of dissolution, the Office of the Principal Chief or his authorized representative, upon being satisfied that the requirements of this section have been complied with, shall issue his certificate that the dissolution has been revoked. Upon the issuance of such certificate by the Office of the Principal Chief or his authorized representative, the revocation of the dissolution shall become effective and the corporation may again carry on its business.

C. If, after three (3) years from the date upon which the dissolution became effective, the name of the corporation is unavailable upon the records of the Office of the Principal Chief or his authorized representative, then, in such case, the corporation shall not be reinstated under the same name which it bore when its dissolution became effective, but shall adopt and be reinstated under some other name, and in such case the certificate to be filed pursuant to the provisions of this section shall set forth the name borne by the corporation at the time its dissolution became effective and the new name under which the corporation is to be reinstated.

D. Nothing in this section shall be construed to affect the jurisdiction or power of the District Court pursuant to the provisions of 18 CNCA § 100 or 18 CNCA § 101.

§ 120. Renewal, revival, extension and restoration of certificate of incorporation

A. As used in this section, the term "**certificate of incorporation**" includes the charter of a corporation organized pursuant to the provisions of any law of Cherokee Nation.

B. Any corporation, at any time before the expiration of the time limited for its existence and any corporation whose certificate of incorporation has become forfeited by law for nonpayment of taxes and any corporation whose certificate of incorporation has expired by reason of failure to renew it or whose certificate of incorporation has been renewed, but, through failure to comply strictly with the provisions of the Cherokee Nation General Corporation Act, the validity of whose

renewal has been brought into question, may at any time procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto.

C. The extension, restoration, renewal or revival of the certificate of incorporation may be procured by executing, acknowledging and filing a certificate in accordance with the provisions of 18 CNCA § 7.

D. The certificate required by the provisions of subsection (C) of this section shall state:

1. The name of the corporation, which shall be the existing name of the corporation or the name it bore when its certificate of incorporation expired, except as provided for in subsection (F) of this section;

2. The address, including the street, city and county, of the corporation's registered office in Cherokee Nation and the name of its registered agent at such address;

3. Whether or not the renewal, restoration or revival is to be perpetual and if not perpetual the time for which the renewal, restoration or revival is to continue and, in case of renewal before the expiration of the time limited for its existence, the date when the renewal is to commence, which shall be prior to the date of the expiration of the old certificate of incorporation which it is desired to renew;

4. That the corporation desiring to be renewed or revived and so renewing or reviving its certificate of incorporation was organized pursuant to the laws of Cherokee Nation;

5. The date when the certificate of incorporation would expire, if such is the case, or such other facts as may show that the certificate of incorporation has become forfeited or that the validity of any renewal has been brought into question; and

6. That the certificate for renewal or revival is filed by authority of those who were directors or members of the governing body of the corporation at the time its certificate of incorporation expired or who were elected directors or members of the governing body of the corporation as provided for in subsection (H) of this section.

E. Upon the filing of the certificate in accordance with the provisions of 18 CNCA § 7, the corporation shall be renewed and revived with the same force and affect as if its certificate of incorporation had not become forfeited, or had not expired by limitation. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its certificate of incorporation by the corporation, its officers and agents during the time when its certificate of incorporation was forfeited or after its expiration by limitation, with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect. All real and personal property, rights and credits, which belonged to the corporation at the time its certificate of incorporation became forfeited, or expired by

limitation and which were not disposed of prior to the time of its revival or renewal shall be vested in the corporation after the renewal or revival, as fully and amply as they were held by the corporation at and before the time its certificate of incorporation became forfeited, or expired by limitation, and the corporation after its renewal and revival shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its officers and agents prior to its reinstatement, as if its certificate of incorporation had at all times remained in full force and effect.

F. If, after three (3) years from the date upon which the certificate of incorporation became forfeited for nonpayment of taxes, or expired by limitation, the name of the corporation is unavailable upon the records of the Office of the Principal Chief or his authorized representative, then in such case the corporation to be renewed or revived shall not be renewed under the same name which it bore when its certificate of incorporation became forfeited, or expired but shall adopt or be renewed under some other name and in such case the certificate to be filed under the provisions of this section shall set forth the name borne by the corporation at the time its certificate of incorporation became forfeited, or expired and the new name under which the corporation is to be renewed or revived.

G. Any corporation that renews or revives its certificate of incorporation pursuant to the provisions of this section shall pay to Cherokee Nation the amounts provided in 68 CNCA §§ 1201 through 1214. No payment made pursuant to this subsection shall reduce the amount of franchise tax due pursuant to the provisions of 68 CNCA §§ 1201 through 1214 for the year in which the renewal or revival is effected.

H. If a sufficient number of the last acting officers of any corporation desiring to renew or revive its certificate of incorporation are not available by reason of death, unknown address or refusal or neglect to act, the directors of the corporation or those remaining on the board, even if only one, may elect successors to such officers. In any case where there shall be no directors of the corporation available to renew or revive the certificate of incorporation of the corporation, the shareholders may elect a full board of directors, as provided by the bylaws of the corporation, and the board shall then elect such officers as are provided by law, by the certificate of incorporation or by the bylaws to carry on the business and affairs of the corporation. A special meeting of the shareholders for the purposes of electing directors may be called by any officer, director or shareholder upon notice given in accordance with the provisions of 18 CNCA § 67.

I. After a renewal or revival of the certificate of incorporation of the corporation shall have been effected, except where a special meeting of shareholders has been called in accordance with the provisions of subsection (H) of this section, the officers who signed the certificate of renewal or revival shall, jointly, immediately call a special meeting of the shareholders of the corporation upon notice given in accordance with the provisions of 18 CNCA § 67, and at the special meeting the shareholders shall elect a full board of directors, which board shall then elect such officers as are provided by law, by the certificate of incorporation or the bylaws to carry on the business and affairs of the corporation.

§ 121. Status of corporation

Any corporation desiring to renew, extend and continue its corporate existence, upon complying with the provisions of 18 CNCA § 120, shall be and continue for the time stated in its certificate of renewal, a corporation and, in addition to the rights, privileges and immunities conferred by its charter, shall possess and enjoy all the benefits of the provisions of the Cherokee Nation General Corporation Act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities prescribed by the provisions of the Cherokee Nation General Corporation Act imposed on such corporations.

ARTICLE 14

SUITS AGAINST CORPORATIONS, DIRECTORS, OFFICERS OR SHAREHOLDERS

§ 122. Failure of corporation to obey order of Court—Appointment of receiver

Whenever any corporation shall refuse, fail or neglect to obey any order or decree of any Court of Cherokee Nation within the time fixed by the Court for its observance, such refusal, failure or neglect shall be a sufficient ground for the appointment of a receiver of the corporation by a court of Cherokee Nation. If the corporation is a foreign corporation, such refusal, failure, or neglect shall be a sufficient ground for the appointment of a receiver of the assets of the corporation within Cherokee Nation.

§ 123. Failure of corporation to obey writ of mandamus—Quo warranto proceedings for forfeiture of charter

If any corporation fails to obey the mandate of any peremptory writ of mandamus issued by a court of competent jurisdiction of Cherokee Nation for a period of thirty (30) days after the serving of the writ upon the corporation in any manner as provided by the laws of Cherokee Nation for the service of writs, any party in interest in the proceeding in which the writ of mandamus issued, either himself or through his or its attorney, may file a statement of such fact with the Attorney General of Cherokee Nation, and it shall thereupon be the duty of the Attorney General to immediately commence proceedings in the nature of quo warranto against the corporation in the District Court, and the Court, upon competent proof of such state of facts and proper proceedings had in such proceeding in the nature of quo warranto, shall decree the charter of the corporation forfeited.

§ 124. Actions against officers, directors or shareholders to enforce liability of corporation—Unsatisfied judgment against corporation

A. When the officers, directors or shareholders of any corporation shall be liable by the provisions of the Cherokee Nation General Corporation Act to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action, at law or in equity, against any one or more of them, and the petition shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally.

B. No suit shall be brought against any officer, director or shareholder for any debt of a corporation of which he is an officer, director or shareholder, until judgment is obtained therefor against the corporation and execution thereon returned unsatisfied.

§ 125. Action by officer, director or shareholder against corporations for corporate debt paid

When any officer, director or shareholder shall pay any debt of a corporation for which he is made liable by the provisions of the Cherokee Nation General Corporation Act, he may recover the amount so paid in an action against the corporation for money paid for its use, and in such action only the property of a corporation shall be liable to be taken, and not the property of any shareholder.

§ 126. Shareholder's derivative action—Allegation of stock ownership

In any derivative suit instituted by a shareholder of a corporation, it shall be averred in the petition that the plaintiff was a shareholder of the corporation at the time of the transaction of which he complains or that his stock thereafter devolved upon him by operation of law.

§ 127. Liability of corporation, etc.—Impairment by certain transactions

The liability of a corporation of Cherokee Nation, or of the shareholders, directors or officers thereof, or the rights or remedies of the creditors thereof, or persons doing or transacting business with the corporation, shall not in any way be lessened or impaired by the sale of its assets, or by the increase or decrease in the capital stock of the corporation, or by its merger or consolidation with one or more corporations or by any change or amendment in its certificates of incorporation.

§ 128. Defective organization of corporation as defense

A. No corporation of Cherokee Nation and no person sued by any such organization shall be permitted to assert the want of legal organization as a defense to any claim.

B. This section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of a corporation, or its lawful possession of any corporate power it may assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain the challenge shall be admissible in any such suit or proceeding.

§ 129. Usury—Pleading by corporation

No corporation shall plead any statute against usury in any court of law or equity in any suit instituted to enforce the payment of any bond, note or other evidence of indebtedness issued or assumed by it.

ARTICLE 15

FOREIGN CORPORATIONS

§ 130. Foreign corporations—Definition—Qualification to do business in Cherokee Nation—Procedure

A. As used in the Cherokee Nation General Corporation Act, the words "**foreign corporation**" mean a corporation organized pursuant to the laws of any jurisdiction other than Cherokee Nation.

B. No foreign corporation shall do any business in Cherokee Nation, through or by branch offices, agents or representatives located in Cherokee Nation, until it shall have paid to the Office of the Principal Chief or his authorized representative of Cherokee Nation the fees prescribed in 18 CNCA § 142 and shall have filed with the Office of the Principal Chief or his authorized representative:

1. A certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto;

2. A statement executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of 18 CNCA § 7, setting forth:

a. the mailing address of the corporation's principal place of business, wherever located;

b. the name and address of its additional registered agent in Cherokee Nation, if any, which agent shall be either an individual resident in Cherokee Nation when appointed or another corporation authorized to transact business in Cherokee Nation;

c. the aggregate number of its authorized shares itemized by classes, par value of shares, shares without par value, and series, if any, within any classes authorized, unless it has no authorized capital;

d. a statement, as of a date not earlier than six (6) months prior to the filing date, of the assets and liabilities of the corporation;

e. the business it proposes to do in Cherokee Nation and a statement that it is authorized to do that business in Cherokee Nation; and

f. a statement of the maximum amount of capital such corporation intends and expects to invest in Cherokee Nation at any time during the current fiscal year. "**Invested capital**" is defined as the value of the maximum amount of funds, credits, securities and property of whatever kind existing at any time during the fiscal year in Cherokee Nation and used or employed by such corporation in its business carried on in Cherokee Nation.

C. The Office of the Principal Chief or his authorized representative, upon payment to the Office of the Principal Chief or his authorized representative of the fees prescribed in 18 CNCA § 142, shall

issue a sufficient number of certificates under the hand and official seal of the Office of the Principal Chief or his authorized representative, evidencing the filing of the statement required by the provisions of subsection (B) of this section. The certificate of the Office of the Principal Chief or his authorized representative shall be prima facie evidence of the right of the corporation to do business in the Cherokee Nation; provided that the Office of the Principal Chief or his authorized representative shall not issue such certificate unless the name of the corporation is such as to distinguish it upon the records of the Office of the Principal Chief or his authorized representative in accordance with the provisions of 18 CNCA § 141.

D. A foreign corporation, upon receiving a certificate from the Office of the Principal Chief or his authorized representative, shall enjoy the same rights and privileges as, but not greater than, a corporation organized under the laws of Cherokee Nation for the purposes set forth in the statement filed by the corporation with the Office of the Principal Chief or his authorized representative pursuant to which such certificate is issued and, except as otherwise provided in the Cherokee Nation General Corporation Act, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a corporation organized under the laws of Cherokee Nation with like purpose and of like character.

§ 131. Additional requirements in case of change of name, mailing address, authorized capital or business purpose, or merger or consolidation

A. Every foreign corporation admitted to do business in Cherokee Nation which shall change its corporate name, the mailing address of its principal office, or its authorized capital, or shall enlarge, limit or otherwise change the business which it proposes to do in Cherokee Nation, within thirty (30) days after the time the change becomes effective, shall file with the Office of the Principal Chief or his authorized representative a statement executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of 18 CNCA § 7, setting forth:

1. The name of the foreign corporation as it appears on the records of the Office of the Principal Chief or his authorized representative of Cherokee Nation;
2. The jurisdiction of its incorporation;
3. The date it was authorized to do business in Cherokee Nation;
4. If the name of the foreign corporation has been changed, a statement of the name relinquished, a statement of the new name and a statement that the change of name has been effected pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected;
5. If the mailing address of its principal office has been changed, a statement of the mailing address relinquished and a statement of the mailing address assumed;
6. If the authorized capital of the corporation has been changed, a restatement of the corporate article which states its amended capitalization, a statement that the change has been effected

pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected;
and

7. If the business it proposes to do in Cherokee Nation is to be enlarged, limited or otherwise changed, a statement reflecting such change and a statement that it is authorized to do such business in Cherokee Nation.

B. Whenever a foreign corporation authorized to transact business in Cherokee Nation shall be the survivor of a merger permitted by the laws of Cherokee Nation, state or country in which it is incorporated, within thirty (30) days after the merger becomes effective, it shall file a certificate, issued by the Office of the Principal Chief or his authorized representative, attesting to the occurrence of such event. If the merger has changed the corporate name, mailing address, or authorized capital of such foreign corporation or has enlarged, limited or otherwise changed the business it proposes to do in Cherokee Nation, it shall also comply with the provisions of subsection (A) of this section.

C. Whenever a foreign corporation authorized to transact business in Cherokee Nation ceases to exist because of a statutory merger or consolidation with a foreign corporation not qualified to transact business in Cherokee Nation, it shall comply with the provisions of 18 CNCA § 135.

D. The Office of the Principal Chief or his authorized representative shall be paid the fee prescribed in 18 CNCA § 142 for filing and indexing each statement or certificate required by the provisions of subsection (A) or (B) of this section.

§ 132. Exceptions to requirements

A. No foreign corporation shall be required to comply with the provisions of 18 CNCA § 130 and 18 CNCA § 131, if:

1. it is the mail order or a similar business, merely receiving orders by mail or otherwise in pursuance of letters, circulars, catalogs, or other forms of advertising, or solicitation, accepting the orders outside Cherokee Nation, and filing them with goods shipped into Cherokee Nation; or

2. it employs salesmen, either resident or traveling, to solicit orders in Cherokee Nation, either by display of samples or otherwise, whether or not maintaining sales offices in Cherokee Nation, all orders being subject to approval at the offices of the corporation without Cherokee Nation, and all goods applicable to the orders being shipped in pursuance thereof from without Cherokee Nation to the vendee or to the seller or his agent for delivery to the vendee, and if any samples kept within Cherokee Nation are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in Cherokee Nation; or

3. it sells, by contract consummated outside Cherokee Nation, and agrees by the contract, to deliver into Cherokee Nation, machinery, plants or equipment, the construction, erection or installation of which within Cherokee Nation requires the supervision of technical engineers or skilled employees performing services not generally available, and as a part of the contract of sale agrees to furnish

such services, and such services only, to the vendee at the time of construction, erection or installation; or

4. its business operations within Cherokee Nation are wholly interstate in character; or

5. it is an insurance company doing business in Cherokee Nation; or

6. it creates, as borrower or lender, or acquires, evidences of debt, mortgages or liens on real or personal property; or

7. it secures or collects debts or enforces any rights in property securing the same.

B. The provisions of this section shall have no application to the question of whether any foreign corporation is:

1. subject to service of process and suit in Cherokee Nation pursuant to the provisions of 18 CNCA § 136 or any other law of Cherokee Nation; or

2. subject to the taxation laws of Cherokee Nation.

§ 133. Change of registered agent upon whom process may be served

A. Any foreign corporation which has qualified to do business in Cherokee Nation may change its registered agent and substitute therefor another registered agent by filing a certificate with the Office of the Principal Chief or his authorized representative, acknowledged in accordance with the provisions of 18 CNCA § 7, setting forth:

1. the name and address of its registered agent designated in Cherokee Nation upon whom process directed to the corporation may be served; and

2. a revocation of all previous appointments of agent for such purposes.

Such registered agent shall be either an individual residing in Cherokee Nation when appointed or a corporation authorized to transact business in Cherokee Nation.

B. Any individual or corporation designated by a foreign corporation as its registered agent for service of process may resign by filing with the Office of the Principal Chief or his authorized representative a signed statement that he or it is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post office address of the main or headquarters office of the foreign corporation. Upon the expiration of thirty (30) days after the filing of the statement with the Office of the Principal Chief or his authorized representative, the capacity of the individual or corporation, as registered agent, shall terminate. Upon the filing of the statement, the Office of the Principal Chief or his authorized representative immediately shall give written notice to the corporation by mail of the filing of the statement, which notice shall be addressed to the corporation at the post office address given in the statement and also, if different,

to the corporation at its post office address, if any, given in the corporation's certificate filed pursuant to the provisions of 18 CNCA § 130.

C. If any agent designated and certified as required by the provisions of 18 CNCA § 130 shall die, remove himself from Cherokee Nation or resign, then the foreign corporation for which the agent had been so designated and certified, within ten (10) days after the death, removal or resignation of its agent, shall substitute, designate and certify to the Office of the Principal Chief or his authorized representative, the name of another registered agent for the purposes of the Cherokee Nation General Corporation Act, and all process, orders, rules and notices may be served on or given to the substituted agent with like effect.

§ 134. Violations and penalties

A. Any foreign corporation doing business of any kind in Cherokee Nation without first having complied with any provision of the Cherokee Nation General Corporation Act applicable to it, shall be fined not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) for each such offense. Any agent of any foreign corporation that shall do any business in Cherokee Nation for any foreign corporation before the foreign corporation has complied with any provision of the Cherokee Nation General Corporation Act applicable to it, shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each such offense.

B. If any foreign corporation fails to file or cause to be filed a certificate as provided for in 18 CNCA § 142(A)(11) and (13) or fails to pay to the Office of the Principal Chief or his authorized representative any additional fees shown to be due by the certificate provided for in 18 CNCA § 142(A)(13), the corporation:

1. may be ousted from Cherokee Nation by the Office of the Principal Chief or his authorized representative and its certificate of authority to do business in Cherokee Nation revoked and canceled. Before such revocation the Office of the Principal Chief or his authorized representative shall give not less than thirty (30) days' notice sent by mail duly addressed to such corporation at its principal place of business or last address shown on the records of the Office of the Principal Chief or his authorized representative of the Office of the Principal Chief or his authorized representative's intent to revoke the corporation's authority to transact business in Cherokee Nation; and

2. after notice required in paragraph 1 above, shall be subject to a penalty and shall forfeit to Cherokee Nation for each day it fails to comply with the provisions of this subsection, the sum of Twenty-five Dollars (\$25.00) per day but not more than Five Hundred Dollars (\$500.00) for each such offense.

C. All fines and penalties provided for by this section may be recovered in a suit brought therefor by the Attorney General, in the name of Cherokee Nation, against the corporation, in any District Court of Cherokee Nation. Fines and penalties received or collected pursuant to this section by the Clerk of the District Court as a result result of an action brought in the name of Cherokee Nation

by the Attorney General, shall be paid into an account established by the Office of the Principal Chief or his authorized representative.

§ 135. Withdrawal of foreign corporation from Cherokee Nation—Service of process on Office of the Principal Chief or his authorized representative

A. Any foreign corporation which shall have qualified to do business in Cherokee Nation pursuant to the provisions of 18 CNCA § 130, may surrender its authority to do business in Cherokee Nation and may withdraw therefrom by filing with the Office of the Principal Chief or his authorized representative:

1. A certificate signed by its president or a vice-president and attested by its secretary or an assistant secretary, stating that it surrenders its authority to transact business in Cherokee Nation and withdraws therefrom; and stating the address to which the Office of the Principal Chief or his authorized representative may mail any process against the corporation that may be served upon the Office of the Principal Chief or his authorized representative; or

2. A copy of a certificate of dissolution issued by the Office of the Principal Chief or his authorized representative, certified to be a true copy under the official seal of Cherokee Nation, together with a certificate, which shall be executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to which the Office of the Principal Chief or his authorized representative may mail any process against the corporation that may be served upon the Office of the Principal Chief or his authorized representative; or

3. A copy of an order or decree of dissolution made by any court of competent jurisdiction of Cherokee Nation or other jurisdiction of its incorporation, certified to be a true copy under the hand of the Clerk of the Court or other official body, and the official seal of the Court or official body or Clerk thereof, together with a certificate executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to which the Office of the Principal Chief or his authorized representative may mail any process against the corporation that may be served upon the Office of the Principal Chief or his authorized representative.

B. The Office of the Principal Chief or his authorized representative, upon payment to the Office of the Principal Chief or his authorized representative of the fees prescribed in 18 CNCA § 142, shall issue a sufficient number of certificates, under the hand and official seal of the Office of the Principal Chief or his authorized representative, evidencing the surrender of the authority of the corporation to do business in Cherokee Nation and its withdrawal therefrom. One of the certificates shall be delivered to the agent of the corporation designated as such immediately prior to the withdrawal.

C. Upon the issuance of the certificates by the Office of the Principal Chief or his authorized representative, the appointment of the registered agent of the corporation in Cherokee Nation, upon whom process against the corporation may be served, shall be revoked, and service on the corporation may be made by serving the Office of the Principal Chief or his authorized representative as its agent as provided in Federal Rules of Civil Procedure, Rule 4, 28 U.S.C. and

in 12 CNCA.

§ 136. Service of process on nonqualifying foreign corporations

A. If any foreign corporation shall transact business in Cherokee Nation without having qualified to do business in accordance with the provisions of 18 CNCA § 130, service on the corporation may be made by serving the Office of the Principal Chief or his authorized representative as its agent as provided in Federal Rules of Civil Procedure, Rule 4, 28 U.S.C. and in 12 CNCA.

B. The provision of 18 CNCA § 132 shall not apply in determining whether any foreign corporation is transacting business in Cherokee Nation within the meaning of this section; and "**the transaction of business**" or "**business transacted in Cherokee Nation**", by any such foreign corporation, whenever those words are used in this section, shall mean the course or practice of carrying on any business activities in the Cherokee Nation, including, without limiting the generality of the foregoing, the solicitation of business or orders in Cherokee Nation. The provisions of this section shall not apply to any insurance company doing business in Cherokee Nation.

§ 137. Actions by and against unqualified foreign corporations

A. A foreign corporation which is required to comply with the provisions of 18 CNCA § 130 and 18 CNCA § 131 and which has done business in Cherokee Nation without authority shall not maintain any action or special proceeding in Cherokee Nation unless and until such corporation has been authorized to do business in Cherokee Nation and has paid to Cherokee Nation all fees, penalties and franchise taxes for the years or parts thereof during which it did business in Cherokee Nation without authority. This prohibition shall not apply to any successor in interest of such foreign corporation.

B. The failure of a foreign corporation to obtain authority to do business in Cherokee Nation shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in Cherokee Nation.

§ 138. Foreign corporations doing business without having qualified—Injunctions

The District Court shall have jurisdiction to enjoin any foreign corporation, or any agent thereof, from transacting any business in Cherokee Nation if such corporation has failed to comply with any provision of the Cherokee Nation General Corporation Act applicable to it or if such corporation has secured a certificate of the Office of the Principal Chief or his authorized representative pursuant to the provisions of 18 CNCA § 130 or on the basis of false or misleading representations. The Attorney General, upon his own motion or upon the relation of proper parties, shall proceed by filing a petition in the District Court of Cherokee Nation.

ARTICLE 16

MISCELLANEOUS PROVISIONS

§ 139. Reservation of corporate name

A. The exclusive right to the use of a corporate name, in good faith, may be reserved by:

1. Any person intending to form a corporation under this title; or
2. Any corporation organized under the laws of Cherokee Nation intending to change its name; or
3. Any foreign corporation intending to qualify to transact business in Cherokee Nation under this title; or
4. Any foreign corporation qualified to transact business in Cherokee Nation intending to change its name; or
5. Any person intending to organize a foreign corporation and intending to have such corporation qualified to transact business in Cherokee Nation under the laws of Cherokee Nation; or
6. Any corporation whose charter has expired or has been forfeited intending to renew or revive the corporation under this title.

B. Such reservation shall be made by filing in the Office of the Principal Chief or his authorized representative an application to reserve a specified corporate name. If the Office of the Principal Chief or his authorized representative finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of sixty (60) days.

C. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person by filing in the Office of the Principal Chief or his authorized representative a notice of such transfer, executed by the person for whom such name was reserved and specifying the name and address of the transferee.

§ 140. Trade names

A. A corporation or other business entity doing business in Cherokee Nation under any name other than its legal name shall file a report with the Office of the Principal Chief or his authorized representative setting forth the trade name under which the business is carried on, a brief description of the kind of business transacted under the name, the address wherein the business is to be carried on, the legal name and the name and address of its registered agent in Cherokee Nation. The report shall be executed, acknowledged, and filed in accordance with 18 CNCA § 7. The trade name adopted shall be such as to be distinguishable upon the records in the Office of the Principal Chief or his authorized representative from:

1. Names of other business entities organized under the laws of Cherokee Nation then existing or which existed at any time during the preceding three (3) years; or

2. Names of foreign business entities qualified to do business in Cherokee Nation then existing or which existed at any time during the preceding three (3) years; or
3. Trade names or fictitious names filed with the Office of the Principal Chief or his authorized representative; or
4. Names reserved with the Office of the Principal Chief or his authorized representative.

B. As used in this section, "**business entity**" means a corporation, a business trust, a common law trust, a limited liability company, or any unincorporated business, including any form of partnership.

§ 141. Prohibition on use of name or indistinguishable names—Exceptions

The Office of the Principal Chief or his authorized representative shall not accept for reservation or filing a statement or certificate containing a name which is the same as or indistinguishable from the name of any business entity, as defined in 18 CNCA § 15, trade name, fictitious name, or reserved name filed with the Office of the Principal Chief or his authorized representative unless one of the following is filed with the Office of the Principal Chief or his authorized representative:

1. The written consent of the business entity or holder of the trade name, fictitious name, or reserved name to use the same or indistinguishable name with the addition of one or more words to make that name distinguishable upon the records of the Office of the Principal Chief or his authorized representative, except that the addition of words to make the name distinguishable shall not be required where the written consent states that the consenting entity is about to change its name, cease to do business, withdraw from Cherokee Nation, or be wound up;
2. A certified copy of a final decree of a court of competent jurisdiction of Cherokee Nation establishing the prior right of the business entity or holder of a reserved name, trade name, or fictitious name to the use of the name in Cherokee Nation;
3. In the case of any foreign business entity having a name prohibited by this section which intends to qualify to transact business within Cherokee Nation, a resolution adopting a fictitious name not prohibited by this section, which shall be used to the exclusion of its true name when transacting business within Cherokee Nation.

§ 142. Filing and other service fees

A. The Office of the Principal Chief or his authorized representative, for services performed in the Office of the Principal Chief or his authorized representative and for expense of mailing, shall charge and collect the following fees:

1. For any report, document, or other paper required to be filed in the Office of the Principal Chief or his authorized representative, a fee of Twenty-five Dollars (\$25.00);

2. For reservation of corporate name, a fee of Ten Dollars (\$10.00);
3. For issuing extra copies of any certificate not requiring any extra filing of papers or documents of any kind, a fee of Ten Dollars (\$10.00);
4. For issuing any other certificate, a fee of Ten Dollars (\$10.00);
5. For receiving a filing or indexing the annual certificate of a foreign corporation doing business in Cherokee Nation, or both when filed together, a fee of Ten Dollars (\$10.00);
6. For preclearance of any document for filing, a fee of Fifty Dollars (\$50.00);
7. For each service of process made upon and accepted by the Office of the Principal Chief or his authorized representative, a fee of Twenty-five Dollars (\$25.00);
8. For preparing and providing a written report of a record search, a fee of Five Dollars (\$5.00);
9. For filing and issuing certificates of incorporation, the fee shall be one-tenth of one percent (1/10 of 1%) of the authorized capital stock of such corporation; provided, that the minimum fee for any such service shall be Fifty Dollars (\$50.00); provided further, that not for profit corporations shall only be required to pay a fee of Twenty-five Dollars (\$25.00);
10. For filing and issuing amended certificates of incorporation or certificates of consolidation, if the resulting corporation is a domestic corporation, merger, if the surviving corporation is a domestic corporation, restatement, reorganization, revival, extension or dissolution, the fee shall be Fifty Dollars (\$50.00). If an amendment shall provide for an increase in authorized capital in excess of Fifty Thousand Dollars (\$50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase;
11. For issuing a certificate to a foreign corporation to do business in Cherokee Nation, and filing a certificate and statement of such corporation required pursuant to the provisions of 18 CNCA § 130, the fee shall be one-tenth of one percent (1/10 of 1%) of the maximum amount of capital invested by such corporation in Cherokee Nation at any time during the fiscal year such certificate is issued to any such foreign corporation; provided, that the minimum fee for any such service shall be Three Hundred Dollars (\$300.00); provided further, that no such corporation shall be required to pay a fee on an amount in excess of its authorized capital;
12. For amended certificate of qualification of a foreign corporation, or certificate of consolidation, if the resulting corporation is a foreign corporation, merger, if the surviving corporation is a foreign corporation, or withdrawal to a foreign corporation doing business in Cherokee Nation, a fee of Two Hundred Dollars (\$200.00); provided, however, for a certificate solely reflecting a change of mailing address, a fee of Ten Dollars (\$10.00);
13. Every foreign corporation on the anniversary of its qualification in Cherokee Nation each year,

shall cause to be filed with the Office of the Principal Chief or his authorized representative a certificate of its president, vice-president or other managing officers, in which shall be stated and shown the maximum amount of capital the corporation had invested in Cherokee Nation at any time subsequent to the issuance to it of a certificate to do business in Cherokee Nation and the amount of capital previously paid upon. If the amount of capital so invested as shown by said certificate exceeds the amount formerly paid upon, the corporation, at the time of filing said certificate, shall pay to the Office of the Principal Chief or his authorized representative an additional fee equal to one-tenth of one percent (1/10 of 1%) of the amount of such excess capital so invested by the corporation in Cherokee Nation; provided, that no such corporation shall be required to pay a filing fee on an amount in excess of its authorized capital, or to file the certificate provided for in this paragraph after it shall have paid a filing fee on its total authorized capitalization;

14. For acting as the registered agent, a fee of One Hundred Dollars (\$100.00) payable on the first day of July each year, and if not paid before the next ensuing September 1st, the Cherokee Nation Tax Commission shall suspend and forfeit the charter of the delinquent corporation pursuant to the procedures prescribed in 68 CNCA § 1212. The Cherokee Nation Tax Commission shall collect and audit the registered agent fee authorized pursuant to this paragraph in conjunction with the collection and audit of franchise taxes as provided for in 68 CNCA §§ 1201 through 1214. All monies received by the Office of the Principal Chief or his authorized representative pursuant to the provisions of this paragraph shall be paid to an account established by the Office of the Principal Chief or his authorized representative; and

15. For any response by means of telecommunications to inquiries regarding information required to be maintained by the Office of the Principal Chief or his authorized representative, a fee of Five Dollars (\$5.00), unless otherwise provided. Fees collected pursuant to this paragraph shall be deposited in an account established by the Office of the Principal Chief or his authorized representative.

B. Except as otherwise provided by law, fees paid to the Office of the Principal Chief or his authorized representative in accordance with the provisions of the Cherokee Nation General Corporation Act shall be properly accounted for and shall be deposited in an account established by the Office of the Principal Chief or his authorized representative.

C. For any certificate supplied by the Court Clerk, such Clerk shall receive a fee of One Dollar (\$1.00). Such fees shall be properly accounted for and shall be paid into an account established by the Office of the Principal Chief or his authorized representative.

D. In any court proceeding pursuant to the provisions of the Cherokee Nation General Corporation Act requiring the filing of any decree, order, report or other document the Office of the Principal Chief or his authorized representative, in addition to the usual court costs and the costs for filing in the office of the Clerk of the Court, fees equal to the amounts provided for in this section for such required filing shall be collected as costs in such proceedings and such amount shall be forwarded to the Office of the Principal Chief or his authorized representative.

E. The provisions contained in this section relating to the payment of incorporation fees by foreign corporations are not intended and shall not be construed to relieve such corporations, where applicable, of the payment of the annual corporate franchise tax to the Cherokee Nation Tax Commission.

F. For the purposes of computing the fees to be collected by the Office of the Principal Chief or his authorized representative pursuant to the provisions of this section, each share without par value shall be treated the same as a share with a par value of Fifty Dollars (\$50.00), and the fees thereon shall be collected accordingly.

G. Payments for any required fees except as otherwise provided by law may be made as follows:

1. By the applicant's personal or company check, cash, or money order;
2. By a nationally-recognized credit card issued to the applicant. The Office of the Principal Chief or his authorized representative may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card. For purposes of this paragraph, "**nationally-recognized credit card**" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit. The Office of the Principal Chief or his authorized representative shall determine which nationally recognized credit cards will be in the same manner as other fees collected by the clerk for the filing and recording of mortgages accepted; provided, however, the Office of the Principal Chief or his authorized representative must ensure that no loss of Cherokee Nation revenue will occur by the use of such card.

§ 142.1. Fees for telephone assistance

The Office of the Principal Chief or his authorized representative is authorized to charge fees as provided by law for a telephone assistance service to provide information concerning records retained by the Office of the Principal Chief or his authorized representative.

§ 143. Duplication of Cherokee Nation General Corporation Act by the Office of the Principal Chief or his authorized representative—Distribution

The Office of the Principal Chief or his authorized representative may have printed, from time to time as he deems necessary, pamphlet copies of the Cherokee Nation General Corporation Act for distribution to persons and corporations desiring the same for a sum not exceeding the cost of printing. The money received from the sale of the copies shall be disposed of as are other fees of the Office of the Principal Chief or his authorized representative. Nothing in this section shall be construed to prevent the free distribution of single pamphlet copies of the Cherokee Nation General Corporation Act by the Office of the Principal Chief or his authorized representative.

§ 144. Required filing with the Office of the Principal Chief or his authorized representative following a merger or consolidation, or a change of corporate name

A. A certified copy of the following documents, as applicable, shall be filed with the Office of the Principal Chief or his authorized representative the surviving or resulting corporation to a merger or consolidation, or a corporation whose name was changed, has a recorded interest in real property:

1. a certificate or agreement of merger or consolidation filed with the Office of the Principal Chief or his authorized representative in accordance with the provisions of 18 CNCA § 81, 18 CNCA § 82, 18 CNCA § 84, 18 CNCA § 85, 18 CNCA § 86 or 18 CNCA § 87;

2. a certificate of ownership and merger filed with the Office of the Principal Chief or his authorized representative as provided in 18 CNCA § 83;

3. an amendment to the certificate of incorporation effecting a change of name pursuant to 18 CNCA § 76, 18 CNCA § 77 or 18 CNCA § 131.

B. The provisions of this section shall have prospective application only.

§ 145. Inspection and auditing of books, records, and reports

A. The accounts, books, and papers of corporations which the majority of the shares are owned by Cherokee Nation shall be opened to inspection by the Principal Chief or his authorized representative during regular business hours. The account and records of such corporations shall be audited at the close of each fiscal year, and copies of the audit shall be furnished to the Principal Chief, the Council, and to such other persons as the Principal Chief directs.

§ 146. Forms

Recommended forms for the documents required to be filed with the Office of the Principal Chief or his authorized representative to comply with this title may be obtained from the Office of the Principal Chief or his authorized representative.

CHAPTER 2

CHEROKEE NATION LIMITED LIABILITY COMPANY ACT

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. ORGANIZATION

ARTICLE 3. RELATIONS OF MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

ARTICLE 4. RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

ARTICLE 5. ASSIGNEES AND CREDITORS OF MEMBER

ARTICLE 6. MEMBER'S DISSOCIATION

ARTICLE 7. WINDING UP LIMITED LIABILITY COMPANY'S BUSINESS

ARTICLE 8. CONVERSIONS AND MERGERS

ARTICLE 9. FOREIGN LIMITED LIABILITY COMPANIES

ARTICLE 10. DERIVATIVE ACTIONS

ARTICLE 11. GOVERNMENT-OWNED LIMITED LIABILITY COMPANIES

ARTICLE 1

GENERAL PROVISIONS

§ 201. Short title

This act shall be known and may be cited as the "Cherokee Nation Limited Liability Company Act". Section captions are part of the Cherokee Nation Limited Liability Company Act.

§ 202. Scope of act

A. The provisions of the Cherokee Nation Limited Liability Company Act shall be applicable to every limited liability company existing as of the effective date of this act or thereafter formed or qualified to transact business within Cherokee Nation, and to all securities thereof, except to the extent that:

1. Any such limited liability company is expressly excluded from the operation of the Cherokee Nation Limited Liability Company Act or portions thereof; or

2. Special provisions concerning any such limited liability company conflict with the provisions of the Cherokee Nation Limited Liability Company Act, in which case such special provisions shall govern.

B. Any conflicts with the provisions of the Cherokee Nation Limited Liability Company Act and any tax or unclaimed property laws of Cherokee Nation shall be governed by the tax or unclaimed property provisions, including those provisions relating to personal liability of corporate officers and directors.

C. The provisions of the Cherokee Nation Limited Liability Company Act concerning qualifications of foreign limited liability companies and providing requirements and duties relating

to such limited liability companies shall apply to insurance companies until such time as an Insurance Commission or similar agency to govern insurance is formed.

D. The provisions of the Cherokee Nation Limited Liability Company Act concerning qualifications of foreign limited liability companies and providing requirements and duties relating to such limited liability companies shall apply to foreign transportation companies until such time as a Corporation Commission or similar agency to govern transportation is formed.

§ 203. Rights, liabilities and duties under prior statutes

All rights, privileges and immunities vested or accrued by and pursuant to any laws enacted prior to the adoption or subsequent amendment of the Cherokee Nation Limited Liability Company Act, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities and penalties imposed or required by and pursuant to laws enacted prior to the adoption or amendment of the Cherokee Nation Limited Liability Company Act, shall not be impaired, diminished or affected.

§ 204. Reserved power of Cherokee Nation to amend or repeal; Cherokee Nation Limited Liability Company Act part of limited liability company's certificate of limited liability

The Cherokee Nation Limited Liability Company Act may be amended or repealed at the pleasure of the Council of Cherokee Nation, but any amendment or repeal shall not take away or impair any remedy available pursuant to the provisions of the Cherokee Nation Limited Liability Company Act against any limited liability company or its members for any liability which shall have been previously incurred. The Cherokee Nation Limited Liability Company Act and any amendment thereto shall be a part of the charter or certificate of limited liability of every limited liability company except so far as the same are inapplicable and inappropriate to the objects of the limited liability company. The provisions of this section shall not affect or impair as to any limited liability company any rights protected or guaranteed by the Constitution of Cherokee Nation or of the United States.

§ 205. Definitions

As used in this chapter unless the context otherwise requires:

1. **"Act"** means the Cherokee Nation Limited Liability Company Act.
2. **"Articles of organization"** means documents filed under 18 CNCA § 213 for the purpose of forming a limited liability company.
3. **"Business"** means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood.
4. **"Debtor in bankruptcy"** means a person who is the subject of an order for relief under Title 11 of the United State Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency.

5. **"Distribution"** means a transfer of money, property, or other benefit from a limited liability company to a member in the member's capacity as a member or to a transferee of the member's membership interest.
6. **"Entity"** means a person other than an individual.
7. **"Foreign limited liability company"** means an unincorporated entity organized under laws other than the laws of Cherokee Nation which afford limited liability to its owners comparable to the liability under 18 CNCA § 223 and is not required to obtain a certificate of authority to transact business under any law of Cherokee Nation other than this chapter.
8. **"Government-owned limited liability company"** means an entity wholly-owned by Cherokee Nation or any agency or subdivision thereof.
9. **"Limited liability company"** means an entity that is an unincorporated association or proprietorship having one or more members that is organized and existing under this act.
10. **"Manager"** or **"managers"** means a person or person designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement.
11. **"Member"** means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act.
12. **"Membership interest"** means a member's rights in the limited liability company, collectively, including the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management.
13. **"Operating agreement"** means any agreement of the members as to the affairs of a limited liability company and the conduct of its business.
14. **"Person"** means an individual, a corporation, an estate, a trust, a general partnership, a limited partnership, a limited liability company, an association, or any other legal, commercial or government entity.
15. **"Principal office"** means the office, whether or not in Cherokee Nation, where the principal executive office of a domestic or foreign limited liability company is located.
16. **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
17. **"Sign"** means to identify a record by means of a signature, mark, or other symbol, with intent to authenticate it.

18. **"State"** means a state, territory, or possession of the United States, a federally-recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico; or any territory or insular possession subject to the jurisdiction of the United States.

19. **"Transfer"** includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift.

§ 206. Name of limited liability company

The name of each limited liability company as set forth in its articles of organization:

1. shall contain either the words "limited liability company" or "limited company" or the abbreviations "LLC", "LC", "L.L.C.", or "L.C." The word "limited" may be abbreviated as "LTD." and the word "Company" may be abbreviated as "CO."; and

2. may not be the same as or indistinguishable from:

a. names upon the records in the Office of the Principal Chief of then existing limited liability companies whether organized pursuant to the laws of Cherokee Nation or authorized as foreign limited liability companies, or

b. names upon the records in the Office of the Principal Chief of corporations organized under the laws of Cherokee Nation or of foreign corporations registered in accordance with the laws of Cherokee Nation then existing or which existed at any time during the preceding three (3) years, or

c. names upon the records in the Office of the Principal Chief of limited partnerships formed under the laws of Cherokee Nation or of foreign limited partnerships registered in accordance with the laws of Cherokee Nation, or

d. trade names, fictitious names, or other names reserved with the Office of the Principal Chief.

3. The provisions of subdivision 2 of this section shall not apply if one of the following is filed with the Office of the Principal Chief:

a. the written consent of the other limited liability company, corporation, limited partnership, or holder of the trade name, fictitious name or other reserved name to use the same or indistinguishable name with the addition of one or more words, numerals, numbers or letters to make that name distinguishable upon the records of the Office of the Principal Chief, except that the addition of words, numerals, numbers or letters to make the name distinguishable shall not be required where such written consent states that the consenting entity is about to change its name, cease to do business, withdraw from Cherokee Nation or be wound up, or

b. a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such limited liability company or holder of a limited liability company name to the use of such

name in Cherokee Nation.

4. A limited liability company may use the name, including a fictitious name, of another domestic or foreign company which is used in Cherokee Nation if the other company is organized or authorized to transact business in Cherokee Nation and the company proposing to use the name has:

- a. merged with the other company;
- b. been formed by reorganization with the other company; or
- c. acquired substantially all of the assets, including the name, of the other company.

§ 207. Reservation of limited liability company name

A. A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose name is not available, by delivering an application to the Office of the Principal Chief for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Office of the Principal Chief or his authorized representative finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a period of sixty (60) days.

B. The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Office of the Principal Chief a signed notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

§ 208. Designated office and agent for service of process

A. A limited liability company and a foreign limited liability company authorized to do business in Cherokee Nation shall designate and continuously maintain in Cherokee Nation:

1. a principal office, which need not be a place of its business; and
2. a resident agent for service of process on the limited liability company that is an individual resident of Cherokee Nation, or a domestic or qualified foreign corporation limited liability company, or limited partnership.

B. An agent must be an individual resident of Cherokee Nation, a domestic corporation, another limited liability company, or a foreign corporation or foreign company authorized to do business in Cherokee Nation.

C. For purposes of this section, "**in Cherokee Nation**" and "**of Cherokee Nation**" means the historic reservation boundaries defined in the 1838 fee patent signed by President Martin Van Buren, or any other lands which are, or become, subject to tribal jurisdiction.

§ 209. Change of designated office or agent for service of process

A. A limited liability company may change its designated principal office or resident agent for service of process by delivering to the Office of the Principal Chief for filing a statement of change which sets forth:

1. the name of the company;
2. the street address of its current designated office;
3. if the current designated principal office is to be changed, the street address of the designated office;
4. the name and address of its current resident agent for service of process; and
5. if the current resident agent for service of process or street address of that resident agent is to be changed, the new address or the name and street address of the new agent for service of process.

B. Unless otherwise provided in the statement, the change of address of the principal office or resident agent is effective when the Office of the Principal Chief files the statement.

§ 210. Resignation of agent for service of process

A. A resident agent for service of process of a limited liability company may resign by delivering to the Office of the Principal Chief for filing a record of the statement of resignation.

B. After filing a statement of resignation, the Office of the Principal Chief or an authorized representative shall mail a copy to the designated office and another copy to the limited liability company at its principal office.

C. Unless a later time is specified in the resignation, it is effective thirty (30) days after it is filed.

§ 211. Nature of business and powers

A. A limited liability company may be organized under this chapter and may conduct business in any state for any lawful purpose, subject to any law of Cherokee Nation governing or regulating business.

B. A limited liability company organized under this chapter has a consensual civil relationship to Cherokee Nation and is subject to the jurisdiction of Cherokee Nation courts.

C. Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry on its business or affairs, including the power to:

1. sue and be sued, and defend in its name, except as provided in Article 11 with respect to government-owned limited liability companies;
2. purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;
3. sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
4. purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
5. make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
6. lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
7. be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
8. conduct its business, locate offices, and exercise the powers granted by this chapter within or without Cherokee Nation;
9. elect managers and appoint officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;
10. pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former members, managers, officers, employees, and agents;
11. make donations for the public welfare or for charitable, scientific, or educational purposes;
12. make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company;
13. Indemnify and hold harmless any member, agent, or employee from and against any and all claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

14. Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of Cherokee Nation, for the administration and regulation of the affairs of the limited liability company;

15. Cease its activities and dissolve; and

16. Do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its articles of organization.

ARTICLE 2

ORGANIZATION

§ 212. Limited liability company as legal entity

A limited liability company is a legal entity distinct from its members.

§ 213. Articles of organization—Filing

A. One or more persons may form a limited liability company upon the filing of executed articles of organization with the Office of the Principal Chief.

B. When the Office of the Principal Chief files the articles of organization, the proposed organization becomes a limited liability company under the name and subject to the purposes, conditions, and provisions stated in the articles.

C. Filing of the articles by the Office of the Principal Chief is conclusive evidence of the formation of the limited liability company.

§ 214. Articles of organization—Content

A. Articles of organization shall set forth:

1. the name of the limited liability company;
2. the term of the existence of the limited liability company which may be perpetual;
3. the street address of its principal place of business in the Cherokee Nation; and
4. the name and street address of its resident agent in the Cherokee Nation.

B. It is not necessary to set out in the articles of organization any of the powers enumerated in this chapter.

§ 215. Articles of organization—Amendment

A. The articles of organization shall be amended when:

1. There is a change in the name of the limited liability company;
2. There is a change in the name or address of a manager;
3. There is a false or erroneous statement in the articles of organization;
4. There is a change in the time as stated in the articles of organization for the cancellation of the limited liability company; or
5. The members desire to restate the articles of organization in their entirety or to make a change in any other statement or to add a statement in the articles of organization in order to accurately represent their agreement.

B. An amendment to the articles of organization of a limited liability company shall set forth:

1. the name of the limited liability company;
2. the date of filing of the articles of organization; and
3. the amendment to the articles.

§ 216. Articles of organization—Execution

A. Articles required by this chapter to be filed with the Office of the Principal Chief shall be executed in the following manner:

1. Articles of organization must be signed by at least one (1) person who need not be a member of the limited liability company; and
2. Articles of amendment, merger, or dissolution must be signed by a manager.

B. Any person may sign any articles by an attorney in fact. Powers of attorney relating to the signing of articles by an attorney in fact need not be sworn to, verified or acknowledged, and need not be filed with the Office of the Principal Chief.

C. The execution of any articles under this chapter constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

D. Any signature on any instrument authorized to be filed with the Office of the Principal Chief under this act may be a facsimile.

E. A record accepted for filing by the Office of the Principal Chief is effective:

1. at the time of filing on the date it is filed, as evidenced by the Office of the Principal Chief's date and time endorsement on the original record; or

2. at the time specified in the record as its effective time on the date it is filed.

F. A record may specify a delayed effective time and date, and if it does so the record becomes effective at the time and date specified. If a delayed effective date but no time is specified, the record is effective at the close of business on that date. If a delayed effective date is later than the ninetieth (90th) day after the record is filed, the record is effective on the ninetieth (90th) day.

§ 217. Delivery of articles of organization and other documents to the Office of the Principal Chief

A. Two (2) signed copies of the articles of organization or any articles of amendment or dissolution or of any decree of judicial amendment or dissolution shall be delivered to the Office of the Principal Chief. A person who executes articles as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Office of the Principal Chief finds that any articles do not conform to law, upon receipt of all filing fees required by law he shall:

1. Endorse on each copy the word "filed" and the day, month and year of the filing thereof;

2. File one copy in his office; and

3. Return the other copy to the person who filed it or his representative.

B. Upon the filing of articles of amendment or a decree of judicial amendment in the Office of the Principal Chief, the articles of organization shall be amended as set forth therein and upon the effective date of articles of dissolution or a decree of judicial dissolution, the articles of organization are cancelled.

§ 218. Correcting filed record

A. A limited liability company or foreign limited liability company may correct a record filed with the Office of the Principal Chief if the record contains any typographical error, error of transcription, or other technical error or has been defectively executed.

B. Articles of correction shall set forth:

1. the title of the document being corrected;

2. that the document being corrected was filed; and

3. the provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

C. Articles of correction may not make any other change or amendment which would not have complied in all respects with the requirements of this act at the time the document being corrected was filed.

D. Articles of correction shall be executed in the same manner in which the document being corrected was required to be executed.

E. Articles of correction may not:

1. Change the effective date of the document being corrected; or
2. Affect any right or liability accrued or incurred before its filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right has not detrimentally relied on the original document.

F. Notwithstanding that any instrument authorized to be filed with the Office of the Principal Chief pursuant to the provisions of this chapter is, when filed inaccurately, defectively, or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Office of the Principal Chief shall not be liable to any person for the preclearance for filing, or the filing and indexing of the instrument by the Office of the Principal Chief.

§ 219. Certificate of existence or authorization

A. A person may request the Office of the Principal Chief to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

B. A certificate of existence for a limited liability company must set forth:

1. the company's name;
2. that it is duly organized under the laws of Cherokee Nation, the date of organization;
3. if payment is reflected in the records of the Office of the Principal Chief and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to Cherokee Nation have been paid;
4. whether its most recent annual certification required by 18 CNCA § 220 has been filed in the Office of the Principal Chief;
5. that articles of termination have not been filed; and
6. other facts of record in the Office of the Principal Chief which may be requested by the applicant.

C. A certificate of authorization for a foreign limited liability company must set forth:

1. the company's name used in Cherokee Nation;
2. that it is authorized to transact business in Cherokee Nation;
3. if payment is reflected in the records of the Office of the Principal Chief and if nonpayment affects the authorization of the company, that all fees, taxes, and penalties owed to Cherokee Nation have been paid;
4. whether its most recent annual certification required by 18 CNCA § 220 has been filed with the Office of the Principal Chief;
5. that a certificate of cancellation has not been filed; and
6. other facts of record in the Office of the Principal Chief which may be requested by the applicant.

D. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Office of the Principal Chief may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in Cherokee Nation.

§ 220. Annual certification for the Office of the Principal Chief

A. A domestic limited liability company, and a foreign limited liability company authorized to transact business in Cherokee Nation, shall deliver to the Office of the Principal Chief for filing an annual certification that sets forth:

1. the name of the company and the state or country under whose law it is organized;
2. the address of its designated office and the name and address of its agent for service of process in Cherokee Nation;
3. the address of its principal office; and
4. the names and business addresses of any managers.

Notwithstanding the foregoing, no limited liability company in which Cherokee Nation or any agency, subdivision or other entity thereof is a member shall be required to file an annual certification under this section.

B. Information in an annual certification must be current as of the date the annual certification is signed on behalf of the limited liability company.

C. The first annual certification must be delivered to the Office of the Principal Chief between January 1 and April 1 of the year following the calendar year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual certifications must be delivered to the Office of the Principal Chief between January 1 and April 1 of the ensuing calendar years.

D. If an annual certification does not contain the information required in subsection (A), the Office of the Principal Chief shall promptly notify the certifying limited liability company or foreign limited liability company and return the certification to it for correction. If the certification is corrected to contain the information required in subsection (A) and delivered to the Office of the Principal Chief within thirty (30) days after the effective date of the notice, it is timely filed.

ARTICLE 3

RELATIONS OF MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

§ 221. Manager as agent of limited liability company

A. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on the business of the limited liability company of which he is a manager, binds the limited liability company, unless the manager so acting lacks the authority to act for the limited liability company in the particular matter pursuant to the operating agreement or otherwise, and the person with whom he is dealing has knowledge of the fact that he has no such authority. The unauthorized acts of the manager shall bind the limited liability company as to persons acting in good faith who have no knowledge of the fact that the manager had no such authority.

B. Subject to the provisions of subsection (A) of this section and 18 CNCA § 229, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one (1) or more of its managers.

§ 222. Limited liability company liable for member's or manager's actionable conduct

A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a manager acting in the ordinary course of business of the company or with authority of the company or a member acting as a manager pursuant to 18 CNCA § 226(C) acting on the company's behalf in the ordinary course of business of the company or with authority of the company.

§ 223. Member or manager—Limitation or elimination of liability—Indemnification

A. Subject to subsection (B) of this section, the articles of organization or operating agreement

may:

1. Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in 18 CNCA § 233; and

2. Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in any proceeding because he is or was a member or manager.

B. No provision permitted under subsection (A) of this section shall limit or eliminate the liability of a manager for:

1. Any breach of the manager's duty of loyalty to the limited liability company or its members;

2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

3. Any transaction from which the manager derived an improper personal benefit.

C. The articles of organization or operating agreement may define the scope of any duties owed by the members or managers to the limited liability company, if not manifestly unreasonable. A definition shall not eliminate the duty of loyalty or the obligation of good faith and fair dealing.

ARTICLE 4

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

§ 224. Form of contribution of member

A contribution of a member to a limited liability company may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

§ 225. Member's liability for contributions

A. Except as otherwise provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any written promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or other reason. If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute money equal to the value of that portion of the stated contribution which has not been made.

B. 1. The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only upon compliance with the operating agreement, or, if the operating agreement does not so provide, with the unanimous

consent of the members.

2. A compromise shall not impair the right of any creditor to enforce the obligation or to require the obligation to be enforced if:

a. such creditor relied upon the obligation and the absence in the operating agreement of the limited liability company's authority to compromise the obligation, or

b. a duty to the creditor was breached in the making of the compromise.

C. An operating agreement may provide that the capital interest of a member who fails to make any contribution or other payment that the member is required to make shall be subject to specified remedies for, or specified consequences of, the failure. The remedy or consequence may take the form of reducing the defaulting member's capital interest in the limited liability company, subordinating the defaulting member's capital interest in the limited liability company to that of the nondefaulting members, a forced sale of the capital interest in the limited liability company, forfeiture of the capital interest in the limited liability company, the lending by the nondefaulting members of the amount necessary to meet the commitment, a fixing of the value of the member's capital interest in the limited liability company by appraisal or by formula and redemption and sale of the member's capital interest in the limited liability company at that value, or other remedy or consequences.

§ 226. Management of limited liability company

A. Management of company with managers:

1. Except as otherwise provided in the articles of organization, operating agreement, or this act, a limited liability company shall be managed by or under the authority of one or more managers who may but need not be members.

2. The articles of organization or operating agreement may prescribe qualifications for managers.

3. The number of managers shall be specified in or fixed in accordance with the articles of organization or operating agreement.

B. Election and removal of managers:

1. Unless otherwise provided in the articles of organization or operating agreement:

a. The election of managers shall be by majority vote of the members;

b. Any or all managers may be removed, with or without cause, by the written consent of the members.

c. A manager may resign in accordance with the operating agreement or, if the operating

agreement does not provide for the manager's resignation, upon notice to the limited liability company.

C. Management of company without designated managers:

1. The articles of organization or operating agreement may provide that the business of the limited liability company shall be managed without designated managers. So long as such provision continues in effect:

a. The members shall be deemed to be managers for purposes of applying provisions of the Cherokee Nation Limited Liability Company Act unless the context clearly requires otherwise;

b. The members shall have and be subject to all duties and liabilities of managers; and

c. A member signing on behalf of the limited liability company shall sign as a manager.

2. A member of a member-managed limited liability company may resign as a member in accordance with the operating agreement or, if the operating agreement does not provide for or prohibit the members' resignation, upon notice to the limited liability company. When a member of a member-managed limited liability company resigns, the member shall cease to have the rights and duties of a member and shall become an assignee, as set forth in Article 5 of this act; provided that the profits and losses of the limited liability company shall continue to be allocated to the member and any binding commitments for contributions shall continue as if the member had not resigned. If the resignation violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning member. The member's resignation shall not constitute a withdrawal from the limited liability company.

§ 227. Managers—Majority vote required

Except as otherwise provided in the articles of organization or operating agreement, if the limited liability company has more than one (1) manager, all decisions of the managers shall be made by majority vote of the managers.

§ 228. Allocation of profits and losses—Distributions

Except as otherwise provided in the operating agreement:

1. The profits and losses of a limited liability company shall be allocated among the members in proportion to their respective capital interests.

2. Distributions of the limited liability company shall be made to the members in proportion to their right to share in the profits of the limited liability company.

§ 229. Allocation of profits and losses—Distributions

A. A distribution may not be made if, after giving effect to the distribution:

1. the limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or
2. the company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to those receiving the distribution.

B. A limited liability company may base a determination that a distribution is not prohibited under subsection (A) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

C. Except as otherwise provided in subsection (E), the effect of a distribution under subsection (A) is measured as of:

1. the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or
2. the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

D. A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

E. If the terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section indebtedness of a limited liability company, including indebtedness issued as distribution, is not a liability for purposes of determinations under subsection (B) of this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

§ 230. Liability for unlawful distributions

If a member has received a distribution in violation of the operating agreement or 18 CNCA § 229, the member shall be liable to the limited liability company for the amount of the distribution wrongfully made. An action for the recovery of any wrongful distribution to a member must be brought within three (3) years from the date of the distribution.

§ 231. Member's right to information

A. Unless otherwise provided in a written operating agreement, a limited liability company shall keep at its principal place of business the following:

1. A current and a past list of the full name and last-known mailing address of each member and manager;
2. Copies of records that would enable a member to determine the relative voting rights of the members;
3. A copy of the articles of organization, together with any amendments thereto;
4. Copies of the limited liability company's federal, state and local income tax returns and financial statements, if any, for the three (3) most recent years or, if such returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state and local tax returns for such period;
5. Copies of any effective written operating agreements and all amendments thereto and copies of any written operating agreements no longer in effect; and
6. Unless provided in writing in an operating agreement, a writing setting out:
 - a. the amount of cash and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made, and
 - b. the events upon the happening of which the limited liability company is to be consolidated and its affairs wound up, and
 - c. any other information prepared pursuant to a requirement in an operating agreement.

B. A member, for any purpose reasonably related to the member's interest, may:

1. At the member's own expense, inspect and copy any limited liability company record upon reasonable request during ordinary business hours;
2. Obtain from time to time upon reasonable demand:
 - a. true and complete information regarding the state of the business and financial condition of the limited liability company,
 - b. promptly after becoming available, a copy of the limited liability company's state, local and tribal, if applicable, income tax returns for each year, and

c. other information regarding the affairs of the limited liability company as is just and reasonable; and

3. Have a formal accounting of the limited liability company's affairs whenever circumstances render it just and reasonable.

C. A manager, for any purpose reasonably related to his position, may inspect and copy any limited liability company records upon reasonable request during ordinary business hours.

D. Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

§ 232. Members—Voting rights

A. Unless otherwise provided in the articles of organization or operating agreement, the members of a limited liability company shall vote in proportion to their respective capital interests. Except as otherwise provided in subsection (D) of this section or unless the context otherwise requires, references in this act to a vote or the consent of the members shall mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

B. Except as otherwise provided in subsection (D) of this section or in the articles of organization or operating agreement, a majority vote of the members shall be required to approve the following matters:

1. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company;

2. Merger of the limited liability company with another limited liability company or other business entity; and

3. An amendment to the articles of organization or operating agreement.

C. The articles of organization or operating agreement may alter the above voting rights and provide for any other voting rights of members.

D. Unless otherwise provided in the articles of organization or a written operating agreement, the unanimous vote or consent of the members shall be required to approve the following matters:

1. The dissolution of the limited liability company pursuant to 18 CNCA § 243(A); or

2. An amendment to the articles of organization or an amendment to a written operating agreement:

- a. which reduces the term of the existence of the limited liability company,
- b. which reduces the required vote of members to approve a dissolution, merger or sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company,
- c. which permits a member to voluntarily withdraw from the limited liability company, or
- d. which reduces the required vote of members to approve an amendment to the articles of organization or written operating agreement reducing the vote previously required on the matters described in this section.

§ 233. Managers—Duties—Good faith—Liability

Subject to the provisions of 18 CNCA § 227 and except as otherwise provided in the operating agreement:

1. A manager shall discharge his duties as a manager in good faith, with the care an ordinary prudent person in a like position could exercise under similar circumstances, and in the manner he reasonably believes to be in the best interests of the limited liability company;
2. In discharging his duties, a manager may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:
 - a. one or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented,
 - b. legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence, or
 - c. a committee of managers of which he is not a member if the manager reasonably believes the committee merits confidence;

A manager is not acting in good faith if the manager has knowledge concerning the matter in question that makes reliance otherwise permitted by this section unwarranted;

3. Unless otherwise provided in the operating agreement, a manager has the power and authority to delegate to one or more other persons the manager's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to the agents, officers and employees of a manager to the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. The delegation by a manager shall not cause the manager to cease to be a manager of the limited liability company;
4. A manager is not liable for any action taken as a manager, or any failure to take any action, if the manager performed the duties of the office in compliance with the business judgment rule as

applied to directors and officers of a corporation; and

5. Except as otherwise provided in the articles of organization or operating agreement, every manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager without the informed consent of the members from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by the manager of its property.

§ 234. Liability solely as manager or member

A person who is a member or manager, or both, of a limited liability company is not liable for the obligations of a limited liability company solely by reason of being such member or manager or both.

ARTICLE 5

ASSIGNEES AND CREDITORS OF MEMBER

§ 235. Membership interest

A membership interest is personal property. A member has no interest in specific limited liability company property.

§ 236. Assignment of membership interest

A. Unless otherwise provided in an operating agreement:

1. A membership interest is not transferable, except as provided in 18 CNCA § 237; provided, however, that a member may assign a membership interest in whole or in part as set forth in this section;
2. An assignment of a membership interest does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights or powers of a member;
3. An assignment entitles the assignee to receive any distribution or distributions to which the assignor was entitled to the extent assigned;
4. Unless the assignee of an interest in a limited liability company becomes a member by virtue of that interest, the assignor continues to be a member and to have the power to exercise any rights of a member, unless the assignor is removed as a member either in accordance with the operating agreement or, after having assigned all of the membership interest, by an affirmative vote of the members who have not assigned their interests. The removal of an assignor shall not, by itself, cause the assignee to become a member;

5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

6. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

B. The operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a certificate and may make other provisions with respect to such certificates.

C. Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.

§ 237. Rights of assignees

A. An assignee of a membership interest may become a member of a limited liability company if and to the extent that the operating agreement provides or the members representing a majority of the capital interests which are not the subject of the assignment consent in writing.

B. An assignee who has become a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and this chapter. However, unless otherwise provided in writing in the operating agreement or other written agreement, an assignee who becomes a member also is liable for any obligations of the assignor to make contributions, but the assignee is not obligated for liabilities of which the assignee had no knowledge unknown to the transferee at the time the assignee became a member and which could not be ascertained from a written operating agreement.

C. Whether or not an assignee of a membership interest becomes a member, the assignor is not released from liability to the limited liability company under the operating agreement or this chapter, unless otherwise provided in the operating agreement.

D. Except as otherwise provided in writing in the operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of the interest becomes a member with respect to the assigned interest.

E. Subject to subsection (F) of this section, a person acquiring a limited liability company interest directly from the limited liability company may become a member in a limited liability company upon compliance with the operating agreement or, if the operating agreement does not so provide in writing, upon the written consent of the members.

F. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or
2. The time provided in the operating agreement, or if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

§ 238. Rights of creditors

- A. On application by a judgment creditor of a member of a limited liability company or of a member's assignee, a Court having jurisdiction may charge the membership interest of the judgment debtor to satisfy the judgment, with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest.
- B. This chapter does not deprive any member of the benefit of any exemption laws applicable to his membership interest.
- C. This section provides the exclusive remedy by which a judgment creditor may satisfy a judgment out of the judgment debtor's membership interest.

§ 239. Distributions to members before withdrawal and dissolution

Except as otherwise provided in this act, a member is entitled to receive distributions from a limited liability company before the dissolution and winding up of the limited liability company to the extent and at the times upon which the members agree or as provided in the operating agreement.

§ 240. Form of distribution—Asset in kind

Except as otherwise provided in the operating agreement:

1. A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash; and
2. No member may be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage which the member's interest in the limited liability company is of all of the interests in the limited liability company.

§ 241. Status of member and distribution

At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

ARTICLE 6

MEMBER'S DISSOCIATION

§ 242. Member's power to dissociate—Wrongful dissociation

A. Unless the operating agreement specifically permits in writing the power to withdraw voluntarily, a member may not withdraw at any time. If the operating agreement specifically provides in writing the power to withdraw voluntarily, but the withdrawal occurs as a result of wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising the power to withdraw if such power is permitted in the operating agreement.

B. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative shall have all of the rights of an assignee of the member's interest.

C. The operating agreement may provide for the expulsion of a member, with or without cause, which shall include reasonable provision for the distributable interest.

ARTICLE 7

WINDING UP LIMITED LIABILITY COMPANY'S BUSINESS

§ 243. Events causing dissolution and winding up of limited liability company's business

A. A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

1. the occurrence of the latest date on which the limited liability company is to dissolve set forth in the articles of organization;
2. the occurrence of events specified in writing in the operating agreement;
3. the written consent of all of the members; or
4. entry of a decree of judicial dissolution under subsection (B).

B. On application by or for a member, the District Court of Cherokee Nation may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

§ 244. Winding up limited liability company

Except as otherwise provided in the articles of organization or operating agreement, the business or affairs of the limited liability company may be wound up in one of the following ways:

1. by the managers, or
2. if one or more of the members or managers have engaged in conduct that casts reasonable doubt on their ability to wind up the business or affairs of the limited liability company, or upon other cause shown, by the District Court on application of any member, his legal representative, or assignee.

§ 245. Right to wind up limited liability company's business

A. After dissolution, a member who has not wrongfully dissociated may participate in winding up a limited liability company's business, but on application of any member, member's legal representative, or transferee, the District Court of Cherokee Nation, for good cause shown, may order judicial supervision of the winding up.

B. A legal representative of the last surviving member may wind up a limited liability business.

C. A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to 18 CNCA § 248, settle disputes by mediation or arbitration, and perform other necessary acts.

§ 246. Member's or manager's power and liability as agent after dissolution

A. A limited liability company is bound by a member's or manager's act after dissolution that:

1. is appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution;
2. would have bound the limited liability company had it not been dissolved, if the other party to the transaction did not have notice of the dissolution.

B. A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for winding up the company's business is liable to the company for any damage caused to the company arising from the liability.

§ 247. Article of dissolution

A. At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Office of the Principal Chief articles of dissolution stating:

1. the name of the limited liability company;
2. the date of filing of its articles of organization;
3. the reason for filing the articles of dissolution;
4. the effective date of the articles of dissolution, if they are not to be effective upon the filing; and
5. any other information the members or managers filing the certificate determine.

B. The existence of a limited liability company is terminated upon the filing of the articles of dissolution, or upon a later effective date, if specified in the articles of dissolution.

§ 248. Article of dissolution

Upon the winding up of a limited liability company, the assets shall be distributed as follows:

1. Payment, or adequate provision for payment, shall be made to creditors, including to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company;
2. Except as provided in writing in the articles of organization or operating agreement, to members or former members in satisfaction of liabilities for distributions under 18 CNCA § 239; and
3. Except as provided in writing in the articles of organization or operating agreement, to members and former members first for the return of their contributions and second respecting their membership interests, in proportions in which the members share in distributions.

ARTICLE 8

CONVERSION AND MERGERS

§ 249. Merger or consolidation

A. Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic or foreign limited liability companies or other business entities. As used in this section, "business entity" means a domestic or foreign corporation, a business trust, a common law trust, or an unincorporated business including a partnership, whether general or limited.

B. Unless otherwise provided in the articles of organization or the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or

consolidate by a majority of the members or, if there is more than one class or group of members, then by a majority of each class or group. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited liability company is merging or consolidating pursuant to this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Office of the Principal Chief. The articles of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the limited liability companies or other business entities which are to merge or consolidate;
2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;
3. The name of the surviving or resulting domestic limited liability company or other business entity;
4. The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;
5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;
6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;
7. In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;
8. In the case of a consolidation, that the articles of organization of the resulting domestic limited liability company shall be as set forth in an attachment to the articles of consolidation; and
9. If the surviving or resulting entity is not a domestic limited liability company or business entity formed or organized pursuant to the laws of Cherokee Nation, a statement that the surviving or resulting other business entity agrees to be served with process in Cherokee Nation in any action, suit, or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; irrevocably appoints the Office of the Principal Chief as its agent to accept service of process in any action, suit, or proceeding; and specifies the address to which process shall be mailed to the entity by the Office of the Principal Chief.

D. A merger or consolidation shall be effective upon the filing with the Office of the Principal Chief of articles of merger or consolidation, unless a future effective date or time is provided in the articles of merger or consolidation.

E. Articles of merger or consolidation shall act as articles of dissolution for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

Once any merger or consolidation is effective pursuant to this section, for all purposes of the laws of Cherokee Nation, all of the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated and all property, real, personal and mixed, and all debts due to each domestic limited liability company or other business entity, as well as all other things and causes of action belonging to each domestic limited liability company or other business entity shall be vested in the surviving or resulting domestic limited liability company or other business entity. and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each domestic limited liability company or other business entity that has merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of Cherokee Nation, in any domestic limited liability company or other business entity shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of each domestic limited liability company or other business entity shall be preserved unimpaired. All debts, liabilities and duties of each domestic limited liability company or other business entity that has merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs pursuant to 18 CNCA § 243 or pay its liabilities and distribute its assets pursuant to 18 CNCA § 248.

§ 250. Conversion of certain entities to a limited liability company

A. As used in this section, the term "**business entity**" means a domestic corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association.

B. Any business entity may convert to a domestic limited liability company by complying with subsection (H) of this section and filing with the Office of the Principal Chief in accordance with 18 CNCA § 206 articles of conversion to a limited liability company that have been executed in accordance with 18 CNCA § 216, to which shall be attached articles of organization that comply with 18 CNCA §§ 206 and 214 and have been executed by one or more authorized persons in accordance with 18 CNCA § 216.

C. The articles of conversion to a limited liability company shall state:

1. The date on which the business entity was first formed;
2. The name of the business entity immediately prior to the filing of the articles of conversion to a limited liability company; and
3. The name of the limited liability company as set forth in its articles of organization filed in accordance with subsection (B) of this section.

D. Upon the filing in the Office of the Principal Chief of the articles of conversion to a limited liability company and the articles of organization, the business entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this act, except that notwithstanding 18 CNCA § 213, the existence of the limited liability company shall be deemed to have commenced on the date the business entity was formed.

E. The conversion of any business entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

F. When any conversion shall have become effective under this section, for all purposes of the laws of Cherokee Nation, all of the rights, privileges and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to such business entity, as well as all other things and causes of action belonging to such business entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the business entity that has converted, and the title to any real property vested by deed or otherwise in such business entity shall not revert or be in any way impaired by reason of this act, but all rights of creditors and all liens upon any property of such business entity shall be preserved unimpaired, and all debts, liabilities and duties of the business entity that has converted shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

G. Unless otherwise agreed or otherwise provided by any laws of Cherokee Nation applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited liability company. When a business entity has been converted to a limited liability company pursuant to this section, the limited liability company shall, for all purposes of the laws of Cherokee Nation, be deemed to be the same entity as the converting business entity.

H. Prior to filing the articles of conversion of a business entity to a limited liability company with the Office of the Principal Chief, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal

affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and an operating agreement shall be approved by the same authorization required to approve the conversion.

§ 251. Approval of conversion of a limited liability company

A domestic limited liability company may convert to a corporation, partnership, whether general or limited, business trust, common law trust or other unincorporated association organized, formed or created under the laws of Cherokee Nation. upon the authorization of such conversion in accordance with this section. If the operating agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the operating agreement. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the operating agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to a merger or consolidation. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by the members or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. Notwithstanding the foregoing, in addition to any other authorization required by this section, if the entity into which the limited liability company is to convert does not afford all of its interest holders protection against personal liability for the debts of the entity, the conversion must be authorized by any and all members who would be exposed to personal liability.

ARTICLE 9

FOREIGN LIMITED LIABILITY COMPANIES

§ 252. Law governing foreign limited liability companies

A. The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members.

B. A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of Cherokee Nation.

C. A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in Cherokee Nation.

§ 253. Application for certificate of authority

A. Before transacting business in Cherokee Nation, a foreign limited liability company shall apply for a certificate of authority to transact business in Cherokee Nation by delivering an application to the Office of the Principal Chief for filing. The application must set forth:

1. the name of the foreign limited liability company or, if its name is unavailable for use in Cherokee Nation, a name that satisfies the requirements of 18 CNCA § 206;
2. the name of the state or country under whose law it is organized;
3. the street address of its principal office;
4. the address of its initial principal office in Cherokee Nation;
5. the name and street address of its initial resident agent for service of process in Cherokee Nation; and
6. such additional information as may be necessary or appropriate in order to enable the Office of the Principal Chief to determine whether such limited liability company is entitled to transact business in Cherokee Nation.

B. A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of company records in the state, Indian tribe, country or other jurisdiction under whose law it is organized.

§ 254. Activities that do not constitute transacting business in Cherokee Nation

A. Activities of a foreign limited liability company that do not constitute transacting business in Cherokee Nation within the meaning of this article include:

1. maintaining, defending, or settling an action or proceeding;
2. holding meetings of its members or managers or carrying on any other activities concerning its internal affairs;
3. maintaining bank accounts;
4. maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;
5. selling through independent contractors;

6. soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside Cherokee Nation before they become contracts;
7. creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
8. securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
9. holding, protecting, renting, maintaining and operating real or personal property in Cherokee Nation so acquired;
10. selling or transferring title to property in Cherokee Nation to any person;
11. conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of repeated transactions of a like manner; and
12. transacting business with Cherokee Nation.

B. For purposes of this article, the ownership in Cherokee Nation of income-producing real property or tangible personal property, other than property excluded under subsection (A), constitutes transacting business in Cherokee Nation.

C. This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under any other law of Cherokee Nation or under federal law.

§ 255. Issuance of certificate of authority

Unless the Office of the Principal Chief determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this chapter, the Office of the Principal Chief, upon payment of all filing fees, shall file the application and send a receipt for it and the fees to the limited liability company or its representative.

§ 256. Name of foreign limited liability company

If the name of a foreign limited liability company does not satisfy the requirements of 18 CNCA § 206, the company, to obtain or maintain a certificate of authority to transact business in Cherokee Nation, must use a fictitious name to transact business in Cherokee Nation if its real name is unavailable and it delivers to the Office of the Principal Chief for filing a copy of the resolution of its managers, in the case of a manager-managed company, or of its members, in the case of a member-managed company, adopting the fictitious name.

§ 257. Revocation of certificate of authority

A. A certificate of authority of a foreign limited liability company to transact business in Cherokee Nation may be revoked by the Office of the Principal Chief in the manner provided in subsection (B) if:

1. the company fails to:

a. pay any fees, taxes, and penalties owed to Cherokee Nation;

b. deliver its annual certification required under 18 CNCA § 220 to the Office of the Principal Chief within sixty (60) days after it is due;

c. appoint and maintain an agent for service of process as required by this article; or

d. file a statement of a change in the name or business address of the agent as required by this article; or

2. a misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this article.

B. The Office of the Principal Chief may not revoke a certificate of authority of a foreign limited liability company unless the Office of the Principal Chief sends the company notice of the revocation, at least sixty (60) days before its effective date, by a record addressed to its agent for service of process in Cherokee Nation, or if the company fails to appoint and maintain a proper agent in Cherokee Nation, addressed to the office required to be maintained by 18 CNCA § 209. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in Cherokee Nation ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

§ 258. Cancellation of authority

A foreign limited liability company may cancel its authority to transact business in Cherokee Nation by filing in the Office of the Principal Chief a certificate of cancellation. Cancellation does not terminate the authority of the Office of the Principal Chief to accept service of process in the company for claims for relief arising out of the transaction of business in Cherokee Nation.

§ 259. Effect of failure to obtain certificate of authority

A. A foreign limited liability company transacting business in Cherokee Nation may not maintain an action or proceeding in the courts of Cherokee Nation unless it has a certificate of authority to transact business in Cherokee Nation.

B. The failure of a foreign limited liability company to have a certificate of authority to transact business in Cherokee Nation does not impair the validity of a contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending an action or proceeding in the courts of Cherokee Nation.

C. Limitations on personal liability of managers, members, and their assignees are not waived solely by transacting business in Cherokee Nation without a certificate of authority.

D. If a foreign limited liability company transacts business in Cherokee Nation without a certificate of authority, it appoints the Office of the Principal Chief as its agent for service of process for claims for relief arising out of the transaction of business in Cherokee Nation.

§ 260. Action by the Office of the Principal Chief

The Office of the Principal Chief may maintain an action to restrain a foreign limited liability company from transacting business in Cherokee Nation in violation of this article.

ARTICLE 10

DERIVATIVE ACTIONS

§ 261. Right of action

A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

§ 262. Proper plaintiff

In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced; and

1. must have been a member at the time of the transaction of which the plaintiff complains; or
2. the plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

§ 263. Pleading

In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager who would otherwise have the authority to cause the limited liability company to sue in its own right.

§ 264. Expenses

If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the Court may award the plaintiff reasonable expenses, including reasonable

attorney fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

ARTICLE 11

GOVERNMENT-OWNED LIMITED LIABILITY COMPANIES

§ 265. Limited liability companies formed by Cherokee Nation

Cherokee Nation or any agency, subdivision or other entity thereof are authorized to form limited liability companies under this act for the conduct of business on behalf of Cherokee Nation or any such agency, subdivision or entity.

§ 266. Sovereign immunity of Cherokee Nation wholly-owned limited liability companies

A. All limited liability companies which are wholly-owned by Cherokee Nation, or any agency or subdivision thereof, or any entity which is wholly-owned by Cherokee Nation or any agency or subdivision thereof, formed pursuant to this act are hereby expressly cloaked with the mantle of sovereign immunity of Cherokee Nation to the fullest extent allowed under applicable law.

B. Except as prohibited in the operating agreement, any waiver of sovereign immunity by a limited liability company wholly-owned by Cherokee Nation, or any agency or subdivision thereof, or any entity which is wholly-owned by Cherokee Nation or any agency or subdivision thereof, must be effected by resolution of the Council and approved by the Principal Chief. Said resolution shall state the time the waiver is to be in effect, and such effective time shall rule past any change in the elected Council.

CHAPTER 3

CHEROKEE NATION NONPROFIT CORPORATIONS ACT

§ 301. Short title

This act shall be known as the Cherokee Nation Nonprofit Corporations Act.

§ 302. Purpose

The purpose of this act is to enable Cherokee Nation to form a nonprofit corporation and/or non profit corporations for the purpose of performing certain exclusive functions for the benefit of Cherokee citizens, and enabling such nonprofit corporations to achieve tax-exempt status pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

§ 303. Definitions

For the purpose of this chapter, unless the context otherwise requires, the terms defined in this

section shall have the meanings ascribed to them as follows:

1. **"Articles"** means the original articles of incorporation as amended, articles of merger, or articles of consolidation and incorporation, as the case may be.
2. **"Bylaws"** means the code adopted for the regulation or management of the internal affairs of the nonprofit corporation, regardless of how designated.
3. **"Cherokee Nation nonprofit corporation"** or **"nonprofit corporation"** means a nonprofit corporation formed by those elected officials of Cherokee Nation specified in 18 CNCA § 306 for a tribal purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such, and having no capital stock.
4. **"Directors"** means the persons vested with the general management of the affairs of the nonprofit corporation, regardless of how they are designated.
5. **"Member"** means an entity, either corporate or natural, having any membership or shareholder rights in a nonprofit corporation in accordance with its articles, bylaws, or both.
6. **"Notice"** means written notice stating the place, day and hour of the meeting and in case of a special meeting, the purpose for which the meeting is called, which shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary; provided that regular and special meetings of the board of directors may be held with or without notice as prescribed in the by-laws. **"Waiver of notice"** means (1) a written waiver signed by the person or persons entitled to such notice, whether before or after the time stated therein, which shall be equivalent to the giving of such notice; or (2) attendance of a director at a meeting, except where the director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

§ 304. Purposes of a nonprofit corporation

A nonprofit corporation may be formed under this chapter for exclusive operations for one or more of the following purposes: charitable, educational, scientific, literary, or any other purpose allowed for organizations subject to federal income tax exemptions under 26 U.S.C. § 501(c)(3).

§ 305. Incorporators

The Cherokee Nation Principal Chief, Cherokee Nation Deputy Chief and Chairman or Co-Chairman of the Executive and Finance Committee of the Council of Cherokee Nation shall serve as the three incorporators of each Cherokee Nation nonprofit corporation established under this chapter.

§ 306. Articles of incorporation

A. Execution and approval. The articles shall be signed by each of the incorporators and acknowledged by each of them, and shall be approved by resolution of the Council of Cherokee Nation.

B. Contents. The articles of the nonprofit corporation organized under this chapter shall state:

1. The name of the nonprofit corporation;
2. The purpose of the nonprofit corporation;
3. That the nonprofit corporation does not afford pecuniary gain, incidentally or otherwise, to its members;
4. The period of duration of corporate existence which may be perpetual;
5. The location, by city, town, or other community, and the name of its registered agent and registered office in the Nation's jurisdiction;
6. The name and address of each incorporator;
7. The number of directors constituting the first board of directors, the name and address of each such director, and the tenure in office of the first directors, provided that the board shall consist of not less than five (5) or not more than eleven (11) members as may be provided by the by-laws of the corporation, and provided further that said directors shall be appointed by the Principal Chief and confirmed by the Council of Cherokee Nation; and
8. Any other provision, consistent with the law of Cherokee Nation for regulating the business of the nonprofit corporation or the conduct of the corporate affairs.

§ 307. Corporate name

A nonprofit corporation organized pursuant to this chapter may use any corporate name authorized by the Principal Chief, provided, that it shall not be necessary for a nonprofit corporation to use the word "corporation," "company," "incorporated," or "limited" or an abbreviation of one of those words in its corporate name.

§ 308. Corporate capacity and powers

A nonprofit corporation incorporated under this chapter shall have general corporate capacity, and shall have and possess all of the general powers of a domestic corporation incorporated under this title.

§ 309. Filing of articles

The articles of incorporation shall be filed in the Office of the Principal Chief. If the articles conform to law, the Office of the Principal Chief shall record the articles and issue and record a certificate of incorporation. The certificate shall state the name of the nonprofit corporation and the fact and date of incorporation. Corporate existence shall begin upon the issuance by the Principal Chief of the certificate of incorporation.

§ 310. Amendment of articles

A. A corporation established under this chapter may amend its articles of incorporation from time to time, in any and as many respects as may be desired including without limitation change of name, change in period of duration and change to enlarge or diminish its corporate purposes; provided that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendments.

B. Amendments to the articles of incorporation shall be adopted by the affirmative vote of a majority vote of the Board after notice in accordance with 18 CNCA § 303(6) herein, and shall be approved by Cherokee Nation Council. The articles of amendment shall be executed in duplicate by the corporation by its president and its secretary, and verified by one of the officers signing such articles and shall set forth the name of the corporation, the amendments so adopted the date of the adoption of the amendments by the board of directors, and the number of directors voting for and against such amendment respectively. A copy of the Council resolution approving the articles of amendment shall be attached to each duplicate original.

C. Duplicate originals of the articles of amendment shall be filed in the Office of the Principal Chief. If the Principal Chief finds the articles of amendment conform to law, he shall record the articles of amendment and issue and record a certificate of amendment. The certificate of amendment together with the duplicate original of the articles of amendment affixed thereto, shall be returned to the corporation or its representative.

D. The articles of incorporation shall be deemed amended upon issuance of the certificate of amendment by the Principal Chief or on such later date, not more than thirty (30) days subsequent to the filing thereof with the Principal Chief, as shall be provided for in the articles of incorporation. No amendment shall affect any existing causes of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons; and in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

§ 311. Organizational meeting

After commencement of corporate existence, the first meeting of the board of directors shall be held at the call of the incorporators or the directors, after notice, for the purpose of adopting the initial bylaws, electing officers, performing other acts in the internal organization of the nonprofit corporation, and for such other purposes as shall be stated in the notice of the meeting. Such meeting shall be held within thirty (30) days after the issuance of a certificate of incorporation by the Principal Chief. The first meeting of the members shall be held at the call of an officer or of the

initial board of directors, after notice. The initial bylaws adopted by the board of directors shall remain effective until legally amended or repealed at a membership meeting duly called for the specific purpose of amending or repealing the bylaws.

§ 312. Disposition of assets

Notwithstanding any provision of the Nation's law or in the articles of incorporation to the contrary, the articles of incorporation of each nonprofit corporation which is an exempt charitable, literary, educational, or scientific organization as described in 26 U.S.C. § 501(c)(3), as amended, shall be conclusively deemed to contain the following provisions: Upon the dissolution of the nonprofit corporation, the board of directors shall, after paying or making provision for the payment of all of the liabilities of the nonprofit corporation, dispose of all of the assets of the nonprofit corporation exclusively for the purposes of the nonprofit corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, literary or scientific purposes as shall at the time qualify as an exempt organization or organizations under 26 U.S.C. § 501(c)(3), as amended, or the corresponding provision of any future United States Internal Revenue law, as the board of trustees shall determine. Any such assets not to disposed of shall be disposed of by the courts of Cherokee Nation, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

§ 313. General corporate laws applicable

The provisions of this title shall generally apply to nonprofit corporations organized pursuant to this chapter except where a different rule is provided in this chapter. Provided, that nonprofit corporations formed exclusively for charitable, literary, educational, or scientific purposes which qualify as a nonprofit corporation exempt from federal taxation pursuant to 26 U.S.C. § 501(c)(3), as amended, or any successor provision to this section, shall be exempt from payment of any filing fees, franchise fees or license fees. Each nonprofit corporation shall file an annual report with the Office of the Principal Chief, which shall be subject to review by the Council of Cherokee Nation.

CHAPTER 4

JOBS GROWTH

§ 401. Short title

This act shall be known and may be cited as the Jobs Growth Act of 2005.

§ 402. Purpose

The purpose of this act is to implement a more effective business structure and efficient process for:

1. Maintaining and improving supervision and control over the Nation's business operations;

2. Improving accountability and consolidated financial reporting to the Nation by the entities conducting business operations;
3. Streamlining the business infrastructure and decision-making processes;
4. Preserving and enhancing profits and cash flow available for redistribution and investment according to the Nation's priorities;
5. Providing strategic planning, support for direction setting and coordination of business activities between the Nation and the businesses it owns, as well as among the business entities themselves;
6. Serving as the primary point for guiding overall implementation of economic development and business development strategy for the Nation;
7. Enhancing leveraging of resources and debt, and providing a disciplined process for funding expansion and diversification of the Nation's business interests;
8. Providing a more transparent view of allocation of resources for business development;
9. Increasing accountability to Cherokee Nation, the shareholder of the business entities.

This act constitutes a thoughtful, deliberate investment for the future of Cherokee citizens by providing for sustainable jobs, and making future business investment in a comprehensive manner to economic development, health, community services, education, language and culture and infrastructure. In so doing, the Nation advances its long-term vision of responsible economic development, self-sufficiency for the government and its citizens, and a strong, tribal government.

§ 403. Definitions

For the purposes of this act:

1. **"Parent company"** means a company that owns a majority of the shares in another company or companies.
2. **"Subsidiary"** means a company owned by another company. If a subsidiary is wholly owned, all its stock is held by the parent company.

§ 404. Ownership of certain Cherokee Nation business entities

A. Jobs growth.

1. Assignment of ownership. The Principal Chief, or designee, shall be authorized to execute the necessary documents to transfer ownership of Cherokee Nation Enterprises, Inc. (CNE), Cherokee Nation Industries, Inc. (CNI), Cherokee Nation Distributors (CND), and any subsidiaries of the

listed entities to Cherokee Nation Businesses, Inc. (CNB), a corporation wholly-owned by Cherokee Nation, as the parent company of the listed entities.

2. Parent company ownership. The Nation shall be the sole owner of the parent company for all purposes, including all assets and goodwill, and no interest in CNB shall be held at any time by any other party.

For the purposes of this act, any business corporation, or entity wholly-owned by Cherokee Nation, or in which Cherokee Nation owns a majority interest, the entity which shall represent the shareholder and vote any and all shares of stock or interest shall be the Principal Chief and the Cherokee Nation Council. It will take two-thirds (2/3) majority of the Council to take any action pursuant to this section. The Council and the Principal Chief shall adopt procedures to effectuate the provisions of this section.

3. CNB purpose. The purpose of CNB shall be to:

i. engage in all lawful activities, and to facilitate and promote the Nation's economic development through strategic planning, self-sufficiency, and a strong tribal government;

ii. preserve and enhance profits and cash flow available for redistribution and investment, consistent with the policy direction of Cherokee Nation;

iii. establish procedures to evaluate and approve allocation of capital to new business ventures and opportunities, and expansion of existing businesses;

iv. provide the necessary debt, subject to Council approval, or equity capital to pursue such business ventures and opportunities, and meet the long term capital requirements of new, as well as existing, businesses.

4. CNB Board of Directors. The CNB Board of Directors shall be comprised of no more than seventeen (17) members and shall, upon the dissolution of the CNE and CNI boards, be comprised of the then-current CNB directors and the former members of the dissolved CNE and CNI boards. Other subsidiaries may have directors as allowed by Cherokee law. Provided that, effective upon enactment of this act, the seats shall be assigned as follows:

Seat 1, a term expiring 9/30/14, currently held by Mike Watkins

Seat 2, a term expiring 9/30/14, currently held by Tommy Sue Wright

Seat 3, a term expiring 9/30/14, currently held by Rex Earl Starr

Seat 4, a term expiring 9/30/14, currently held by Bob Berry

Seat 5, a term expiring 9/30/14, currently held by Brent Taylor

Seat 6, a term expiring 9/30/14, currently held by Sam Hart

Seat 7, a term expiring 9/30/14, currently held by Gary Cooper

Seat 8, a term expiring 9/30/14, currently held by Jerry Holderby

Seat 9, a term expiring 9/30/14, currently held by Rick Doherty

Seat 10, a term expiring 9/30/14, currently held by Deacon Turner

Seat 11, a term expiring 9/30/11, currently held by David Ballew

Seat 12, currently an open seat

Seat 13, currently an open seat

Seat 14, currently an open seat

Seat 15, currently an open seat

Seat 16, currently an open seat

Seat 17, currently an open seat

5. Capital investments. The CNB Board of Directors shall establish appropriate policies for capital maintenance and investments based upon individual subsidiary business needs. Provided, that Cherokee Nation Enterprises shall retain minimum capital for expansions from net income in the amounts equal to forty percent (40%) of net income for fiscal years 2006 through 2008.

6. Business operations. All business operations shall be conducted directly by each subsidiary in its own name.

7. Advisory Board Members. Legislative Act 35–02 establishing Advisory Board Members for each business entity in which the Nation is a majority shareholder is referenced and hereby reaffirmed. Advisory Board members provide oversight of the Council for ongoing advice and notice of business activities.

8. Dividends not affected. Dividends required or otherwise authorized by LA 16–96, as amended, remain unchanged by this act.

9. Authority. CNB shall have all powers of corporations as provided by LA 16–96, as amended.

B. Acquisitions.

1. Real estate acquisitions. CNB shall be subject to Legislative Act 4–04, as amended, which

requires that all real estate acquisitions by corporations in which the Nation is a majority shareholder, greater than Six Million Dollars (\$6,000,000.00) in the aggregate annually be approved by the Council of Cherokee Nation.

2. Notice to Council. Notice for business acquisitions shall be provided to the Council of Cherokee Nation, prior to notification to the public or to members of the press. Such notification will include, but not be limited to, notice in writing or presentation to special and regular committee meetings.

TITLE 19

COUNCIL

CHAPTER 1

GENERAL PROVISIONS

§ 1. Voting upon appointment to public office of persons related to Members of Council

No Member of the Council shall vote for the appointment of any person to any office in the Nation who is related to such Member by affinity or consanguinity within the first degree.

§ 2. Removal of Members of Council

Any Member of the Council may be removed by a majority vote of the other Members of the Council for willful neglect of duty, habitual drunkenness or conviction of any crime involving moral turpitude while in office.

§ 3. Filling of vacancies

A. When a vacancy occurs in any office of elected councilors, the Tribal Council shall appoint, by a majority vote of the remaining councilors, a person to fill the vacancy until the next General Election. Provided that if there are twenty-four (24) months or more remaining of the term of office that has been vacated then the vacancy shall be filled by Special Election by the electorate of that District.

B. A vacancy occurs upon the effective date of the resignation of the Councilor, the death of a Councilor, the disability of the Councilor or the judicial determination of the inability to serve as Councilor.

C. If more than twenty-four (24) months remain of the Councilor's term whose office is vacated, then a Special Election shall be called to elect an individual to fill the remaining term. This election shall be held as soon as practicable after the vacancy occurs. The election shall be conducted in accordance with the Cherokee Nation Election Code, 26 CNCA.

D. The person appointed by the Tribal Council to fill the vacancy shall be a registered voter and

tribal citizen in and of the District for which the deceased or disabled Councilor served.

E. To be eligible for appointment to fill a vacancy in an elected Councilor's office, a person must meet the same qualifications required for filing a declaration for candidacy for that office, as prescribed by law.

F. Applications by person(s) applying to fill the vacancy shall not be in any particular form, however, the application must include the person's name(s), address (both physical and mailing), phone number(s), and length of residence in the vacant District.

G. All applicants shall appear before the Rules Committee for interviews. The Chairperson of the Rules Committee shall notify all applicants of the specific date, time and place of said interview by regular mail. Further, public notice of said interviews shall be posted at least ten (10) days in advance. This notice shall be posted outside Cherokee Nation Tribal Council Chambers. Every effort should be made to publish the information concerning the procedures on how the vacancy will be filled throughout the appropriate District.

H. Cherokee Nation shall cause to be published the vacancy of office and said publication shall specify the District in which the vacancy exists, and a deadline by which the Cherokee Council shall receive applications for the position. This information shall be published in at least one (1) newspaper, which is circulated in the District in which the vacancy exists.

I. Nothing herein shall prevent Councilors from obtaining and submitting resumes of qualified candidates for consideration.

J. The Rules Committee shall forward one or more names to the next regular Council meeting for consideration. If more than one name is submitted to full Council, the Council shall vote for the candidate of their choice. If no candidate receives a majority of votes of those Councilpersons present and voting, then the last placed candidate shall be excluded and voting shall commence. This process shall continue until one (1) candidate receives a majority of votes cast.

K. All voting shall be done by public roll call.

L. Immediately after the candidate has received a majority of votes he or she shall be sworn in as Councilperson and assume office for the remainder of the unexpired term of the vacated office.

§ 4. Repealed by LA 34-07, eff. September 13, 2007

§ 5. Publication of Council minutes

The approved minutes of each Council meeting, Executive Sessions excepted, will be published in the *Cherokee Phoenix* in their entirety on a regular monthly basis.

CHAPTER 2

COMMITTEES

§ 11. Standing Committees—Establishment

The following Standing Committees of the Council are hereby established:

1. Community Services
2. Rules Committee
3. Resources Committee
4. Executive and Finance Committee
5. Education and Culture Committee
6. Health Committee

§ 12. Standing Committees—Membership

Membership on all Standing Committees shall be by appointment of the Deputy Principal Chief with nominations for the appointments coming from the Council of Cherokee Nation. Without good cause shown, no appointment of a nominee shall be denied. All nominations shall be brought before the Council for approval and confirmation. The Principal Chief and Deputy Principal Chief shall serve as non-voting ex-officio members of any Standing Committee. The Council shall set the number of members to serve on each Standing Committee.

§ 13. Standing Committees—Jurisdiction and duties

The Council shall define the jurisdiction and duties of the Standing Committees in the Rules of Procedure governing the Tribal Council.

§ 14. Code Subcommittee—Establishment—Composition—Compensation of Members—Meetings

A Code Subcommittee is hereby established within the Rules Committee of the Council of Cherokee Nation to be composed of such members of the Rules Committee as the Chairman of that Committee shall appoint. The Code Subcommittee shall serve without additional compensation. The Subcommittee shall meet upon the call of the Chairman.

§ 15. Repeal of prior legislation

Any and all resolutions, bills, or laws pertaining to establishing committees and the duties and procedures thereof are hereby repealed.

CHAPTER 3

SALARIES AND EXPENSES

§ 21. Compensation of Council Members—Generally

A. Tribal Council Member. Salaries of Council Members of Cherokee Nation shall be the average of the salaries paid to the Council Members or comparable office of the members of the five Civilized Tribes and the Eastern Band of Cherokees based on a survey conducted of available information. Provided that this amount shall not exceed Fifty Thousand Dollars (\$50,000.00) or fall below Twenty-Eight Thousand Six Hundred Dollars (\$28,600.00).

B. Salaries for future terms of elected officials. For all duly elected officials serving in August 2011, and thereafter, the annual salaries for the Principal Chief, Deputy Principal Chief, and Council Members of Cherokee Nation shall be based on the report submitted from a Citizens' Committee.

1. The Citizens' Committee shall be comprised of two (2) appointees by the Principal Chief, two (2) appointees by the Council of Cherokee Nation, and a fifth member selected by the four (4) appointees.

2. The Citizens' Committee shall convene prior to the filing period for the elected offices in the election year of the Principal Chief to make its finding and report and meet every four (4) years thereafter.

3. The Citizens' Committee shall consider relevant comparative salary levels such as, but not limited to, salary information from other tribal governments, state and local governments, and the private sector. The Citizens' Committee may use Cherokee Nation's Human Resources and the Council of Cherokee Nation's Financial Officer as sources of information.

4. The report of the Citizens' Committee shall set the salaries for all elected officials of Cherokee Nation unless rejected by Legislative Act within sixty (60) days of the Committee's report.

§§ 22, 23. Repealed by LA 17-09, eff. June 21, 2009

CHAPTER 4

OFFICERS AND MEETINGS

COUNCIL ATTENDANCE

§ 31. President of the Council

The Deputy Principal Chief shall preside over meetings of the Council, as President of the Council, and in his absence this function shall be performed by any Member whom the Council shall

designate.

§ 32. Secretary of the Council

The Council shall select from its membership a Secretary of the Council. The Secretary or his delegated deputy shall attend all meetings of the Council and be responsible for maintaining the journal and providing any clerical assistance requested by the Council.

§ 33. Time and place of sessions

The Council of Cherokee Nation shall meet in regular session once a month on the second Saturday at the seat of government of Cherokee Nation, three miles south of Tahlequah, Oklahoma, commencing at 9 a.m.

§ 33.5. Attendance by means of electronic interactive device

A. At-Large Members of the Cherokee Nation Tribal Council may attend Tribal Council Committee meetings through the aid of a device which provides two-way transmission of both visual and audio communication, provided that there is otherwise a quorum physically present at the location of the meeting without counting the Members attending via electronic devices, and also provided that the physically absent Members are able to fully participate and vote through the aid of the interactive devices.

B. Any Member of the Tribal Council who is unable to attend a meeting or session because he or she is conducting official Cherokee Nation business may attend Tribal Council Committee meetings through the aid of a device which provides two-way transmission of both visual and audio communication, provided that there is otherwise a quorum physically present at the location of the meeting without counting the Members attending via electronic devices, and also provided that the physically absent Members are able to fully participate and vote through the aid of the interactive devices. Further this privilege may be extended to any Member of the Cherokee Nation Tribal Council who is unable to attend committee meetings provided that two-thirds (2/3) of the committee approves the circumstances or reason for the Council person being unable to be physically present.

C. The provisions of the act do not apply to a Chairperson of a Committee.

§ 34. Adjournment of sessions

Sessions of the Council shall be adjourned to a day certain or the next Regular Session.

§ 35. Rules and procedure generally

All proceedings, meetings, and sessions of the Council shall be conducted in accordance with recognized rules and procedures, and, where the same do not conflict with rules adopted by the Council, this chapter or the Constitution, said recognized rules and procedures shall be consistent

with Robert's Rules of Order, revised edition.

§ 36. Order of business

The order of business of each regular meeting of the Council of Cherokee Nation shall be as follows:

- A. Call to order
- B. Invocation
- C. Roll call
- D. Approval of minutes of previous meeting
- E. State of the Nation address
- F. Action of unfinished business
- G. Committee reports
- H. New business
- I. Adjournment

§ 37. Roll call votes

A roll call vote shall be called, the vote recorded on every law and, when requested by any Member of the Council, on individual resolutions and said vote shall be recorded in the permanent journal of the Council.

§ 37.5. Executive Session

A. The Tribal Council and its Committees shall be able to go into Executive Session for the following reasons:

1. When discussion shall concern employment, retention or discharge of personnel;
2. When the question or the moral turpitude of any citizen of Cherokee Nation is discussed; or
3. When the decorum of the audience shall prejudice orderly administration of business.

B. Prior to going into Executive Session the specific reason and justification must be stated and made a part of the minutes of the meeting.

C. No subject other than the items specifically stated may be discussed in Executive Session.

D. Upon entering into Executive Session, no vote shall be taken nor any course of action be agreed upon by the Council.

E. All Executive Sessions shall be recorded. Upon leaving Executive Session, the tape shall be sealed and kept in a secure location by the Council staff. The recording shall not be made available to any party unless ordered by the Court of law with appropriate jurisdiction.

F. Nothing in this act shall prevent Councilors from privately meeting to obtain proprietary or sensitive information, provided that a quorum is not established at such meetings.

COUNCIL ATTENDANCE

§ 38. Short title

This act shall be known and may be cited as "The Council Attendance Act of 1998."

§ 38.1. Purpose

The purpose of this act is to allow the Council to ensure attendance of a quorum as defined in the Constitution of Cherokee Nation whereby they may conduct the necessary affairs of Cherokee Nation.

§ 38.2. Legislative intent

The intent of the Council in enacting this act is to ensure legislative matters to be addressed by the Council are resolved in a timely manner without unreasonable or unwarranted delay.

§ 38.3. Quorum

A quorum shall consist of at least two-thirds (2/3) of the Members of the Council thereof regularly elected and qualified.

§ 38.4. Absence

No Member of the Cherokee Nation Tribal Council shall absent himself or herself from attendance at regular or special meetings, as defined in Article V, Sections 4 and 5 of the Cherokee Constitution of 1975 [now Article VI, Sections 4 and 5], without leave.

§ 38.5. Establishment of quorum

If, at any regular or special council meeting, as defined in Article V, Sections 4 and 5 of the Cherokee Constitution of 1975 [now Article VI, Sections 4 and 5], a question shall be raised by any Councilor as to the presence of a quorum, the President of the Council shall forthwith direct

the Secretary to call the roll and shall announce the result, and these proceedings shall be without debate.

§ 38.6. Compelling attendance

Whenever upon such roll call it shall be ascertained that a quorum is not present, a majority of the Council present may direct the Chief of the Marshal Service to request and, when necessary, to compel the attendance of the absent Councilor(s), which order shall be determined without debate, and pending its execution, and until a quorum shall be present, no debate nor motion, except to adjourn or to recess pursuant to a previous order entered by unanimous consent, shall be in order.

§ 39. Legislative Aide

A. The Legislative Aide shall be the custodian of all official recordings of Committee or Council meetings regardless of whether or not the Legislative Aide performed the actual recording. The Legislative Aide shall not release original records and shall maintain those records in a secure place.

B. The Legislative Aide shall maintain and not relinquish custody of the recordings except as provided herein.

C. The Legislative Aide shall make a public copy of the records for copying and inspection. Any citizen of Cherokee Nation, upon written request, may inspect and listen to a copy of the records in the offices of the Clerk.

D. The Legislative Aide shall make provisions upon written request for a copy of the records and tender of cost of copying by any citizen of Cherokee Nation to copy the records within forty-eight (48) hours.

E. After the expiration of three (3) years, the Legislative Aide shall transfer custody of the original records for archiving in the Cherokee National Historical Society.

CHAPTER 5

GOVERNMENTAL RECORDS

§ 41. Short title

This act shall be known and may be cited as the "Cherokee Nation Governmental Records Act".

§ 42. Purpose

The purpose of this act is to provide for open access to each Member of the Council of Cherokee Nation ("Council") to all "records" as defined below prepared in the discharge of governmental duties of the "Cherokee Government" as defined below, and to provide procedures under which the

Council and its Members shall obtain such records.

§ 43. Findings

The Council of Cherokee Nation finds as follows:

1. Pursuant to Article V, Section 7 of the Cherokee Constitution of 1975 [now Article VI, Section 7], the Council, as the Legislative Department of the Government, has "the power to establish laws which it shall deem necessary and proper for the good of the Nation."
2. Among the constitutional duties of the Council are the responsibilities to oversee the implementation of the laws enacted by the Council and oversee the disbursement of funds appropriated by the Council. In order to carry out these duties, the Council must have access to all records of the Cherokee Government.

§ 44. Definitions

A. "**Cherokee Government**" means collectively, Cherokee Nation, its elected officials, officers, employees, agents and contractors, or any of the Nation's agencies, commissions, boards, corporations and their subsidiaries, or other entities, and their elected officials, officers, directors, employees, members, agents and contractors.

B. "**Records**" means all documents, including but not limited to any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of the Cherokee Government. "**Records**" does not mean computer software or nongovernmental personal effects.

§ 45. Requests for records

A. Requests for records shall be in writing and addressed to the Principal Chief or his designated officer. The request shall identify with particularity the agency(ies) or other entity(ies) and/or the matter(s) which are the subject of the request. Said requests shall be delivered to the Legislative Aide of the Council, who shall enter said request in the records of the Council and shall deliver it to the Principal Chief or his designee on the same or the following working day.

B. The Principal Chief shall cause the records requested to be produced within six (6) working days of the receipt of such request at no cost to the Council Member(s). If it is not possible to produce the requested record during the prescribed time limit, the Principal Chief shall, within the prescribed time limit, provide a written explanation to the Council Member(s) as to why the requested record cannot be made available. If the record cannot be made available at a later date, the Chief will include a statement as to when the record will be provided to the Council Member(s). In no event shall the total time to produce be extended beyond sixteen (16) working days from the date of the receipt of the initial request.

C. No confidentiality agreements affecting records covered by this act or claim of privilege or confidentiality shall prevent the Council Members from having access to any records.

D. In the event that the record submitted to the Council Member(s) is "**privileged or confidential**" as defined under the federal Freedom of Information Act, 5 U.S.C. § 552(b)(4) and the federal case law thereunder, that record shall, nevertheless, be produced or otherwise made available to the requesting Council Member(s); provided, however, that the producing Cherokee Government officer shall give notice to the Council Member(s) of such status and shall clearly mark each such record with the words "Privileged and Confidential." The Council Member(s) shall make no disclosures of such privileged or confidential records to third parties. Without limiting the generality of the foregoing, personal financial information, credit reports or other financial data obtained by or submitted to the Cherokee Government for the purpose of evaluating credit worthiness, obtaining a license, permit or for the purpose of becoming qualified to contract with the Cherokee Government shall be "**privileged or confidential**" under this act.

E. Individual health, adoption, and medical records, records deemed classified by the U.S. government, records constituting attorney-client privilege and any records prohibited by federal law from delivery to the Tribal Council shall not be disclosable to the Council under this act.

F. A violation of this act shall be a misdemeanor.

CHAPTER 6

SUBPOENA AND INVESTIGATIONS

§ 51. Short title

This legislative act shall be known and may be cited as the "Cherokee Nation Subpoena and Investigation Act of 2000."

§ 52. Purpose

The purpose of this act is to enable the Tribal Council to conduct necessary investigations and compel attendance of witnesses and production of documents at properly called hearings before Cherokee Nation Tribal Council.

§ 53. Definitions

A. "**Contempt**" means a willful disregard or disobedience of a public authority, namely, the Cherokee Nation Tribal Council.

B. "**Hearing**" means a relatively formal proceeding where evidence is taken to determine issues of fact and to render decisions based on that evidence.

C. "**Subpoena**" means a command to appear at a certain time and place to give testimony upon a certain matter.

D. "**Subpoena duces tecum**" means a subpoena requiring the production of books, papers and other things, which are in the control or custody of the person served with process.

§ 54. Authority to conduct hearings—Procedures

A. The Cherokee Nation Tribal Council shall have the authority to hold hearings and conduct investigation concerning matters in which the Council has oversight authority.

B. A hearing shall be called upon a majority vote of the Tribal Council at Regular Session. The agenda item calling for the hearing shall state the time and place at which the hearing is to be conducted. Further, the agenda shall state in detail the subject matter of the hearing.

C. The Tribal Council shall have authority to require the furnishing of such information, attendance of such witnesses and the production of such books, records, papers or other objects as may be necessary and proper for the purpose of the proceeding.

D. The Tribal Council or its designated representative may take the deposition of witnesses, within or without Cherokee Nation, in the same manner as is provided by law for the taking of depositions in civil actions of courts of record.

§ 55. Subpoena authority

In furtherance of the powers granted in 19 CNCA § 54, the Tribal Council upon its own motion may, at any hearing:

1. issue subpoenas for witnesses;
2. issue subpoenas duces tecum to compel the production of books, records, papers or other objects, which may be served by any person in any manner prescribed for the service of a subpoena in a civil action; or
3. quash a subpoena or subpoenas duces tecum so issued; provided, prior to quashing a subpoena or subpoenas duces tecum the Tribal Council shall give notice to the necessary parties.

§ 56. Mandatory compliance

A. In case of disobedience to any subpoena issued and served under this section or to Cherokee Nation Tribal Council requirement for information, or of the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before the Tribal Council, the Tribal Council or its designated representative may apply to the District Court or to any Judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith the Court or the Judge shall cite the respondent to appear and

shall hear the matter as expeditiously as possible.

B. If the disobedience or refusal is found to be unlawful, the Court, or the Judge, shall enter an order requiring compliance. Disobedience of such an order shall be punished as contempt of court in the some manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.

C. The Tribal Council shall have the authority to freeze the funding authorities of any department or agency within Cherokee Nation whose directors, employees, appointed or elected officials fail to comply with any subpoena issued and served under this section or fall to furnish information or refuse to testify to Cherokee Nation Tribal Council as required herein.

TITLE 20

COURTS

CHAPTER 1

GENERAL PROVISIONS

§ 1. Courts may appoint Interpreter

The several Courts of this Nation shall, whenever the Presiding Judge may deem necessary, appoint and compensate an Interpreter. The Interpreter shall be sworn to accurately interpret to the best of his ability.

§ 2. Witness qualifications—Oath

Any person, of whatever religious belief, and of sufficient age and intelligence to comprehend the obligation of an oath, not excluded upon the ground of interest, and not otherwise disqualified by law, may be called as a witness in any suit brought before a Cherokee Nation Court. The following oath shall be administered to each witness when called for examination in any cause or proceeding, before making his statement:

"You do solemnly swear (or affirm) that the statement you will make, and the answers you will give, in the matter whereof you are about to be examined, shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge. So help you God."

§ 3. Cross-examination

All matters, properly affecting the credibility of any witness who has been examined by one party, shall be allowed to be proven by the opposite party by means of cross-examination or by other witnesses, under the rules established by law or the Supreme Court and found applicable by the Presiding Judge. If no such rule be found applicable, the Presiding Judge shall determine it as justice shall appear to him to require, and shall cause his ruling on each point to be recorded with

the reasons, in brief, thereof.

§ 4. Non-attendance of witnesses

No excuse for non-attendance on the part of a witness, duly summoned to testify before any Court, shall be deemed lawful and valid, unless satisfactory showing be made to the Court that obedience to the summons was impossible, or would have been attended with serious and unavoidable loss, or with probable and serious danger to his own health, or to the health of his family.

§ 5. Costs and attorneys fees

Necessary costs and reasonable fees may be awarded to a prevailing party in any lawsuit, action, claim, appeal, grievance, or controversy of any kind initiated within or brought before any department, agency, commission or board of Cherokee Nation or the District Court or Supreme Court of Cherokee Nation, if it is determined by the Judge, Justice, Administrative Law Judge or ultimate decision maker that the above described action or defense is frivolous or without merit.

CHAPTER 2

DISTRICT COURT—JURISDICTION AND PROCEDURE

§ 11. Application and purpose

The purpose of this chapter is to provide for the establishment of a Cherokee Nation District Court of general jurisdiction to hear cases and controversies arising under the Constitution, treaties and laws of Cherokee Nation. Decisions of the Cherokee Nation District Court will be subject to review by the Cherokee Nation Supreme Court as the court of final review.

§ 12. Composition

The District Court of Cherokee Nation shall be composed of one (1) or more District Judges and Associate District Judges to be appointed by the Principal Chief and confirmed by the Council as needed for the orderly administration of justice.

Any citizen of Cherokee Nation who is a member in good standing of a state bar association who has never been convicted of a felony shall be eligible for appointment as District Judge.

§ 13. Terms of District Judges

District Judges and Associate District Judges shall be appointed for a term of four (4) years. Previous appointment and service by a District Judge shall not disqualify the Judge for continued appointment and service.

§ 14. Oath of District Judge

Any District Judge or Associate District Judge shall, before entering upon the duties of office, take and subscribe to the following oath or affirmation:

"I, _____, do solemnly swear, or affirm, that I will faithfully execute the duties of District Judge of Cherokee Nation and will, to the best of my ability, preserve, protect and defend the Constitutions of Cherokee Nation and the United States of America. I swear or affirm further that I will do everything within my power to promote the culture, heritage and traditions of Cherokee Nation."

§ 15. Disability or vacancy in office of District Judge

Whenever a District Judge or Associate District Judge is unable to perform his duties of office or the office is vacant, his powers and duties shall devolve upon the Associate District Judge next in seniority who is able to act, until such disability is removed or another District Judge is appointed and duly qualified.

§ 16. Salaries—Travel expenses—Disciplinary action

Salary for District Judges and Associate District Judges shall be fixed by the Office of the Principal Chief with approval by the Council. District Court Judges and Associate District Court Judges shall be considered a special class of employees for travel purposes. District Court Judges and Associate District Court Judges are exempt from any disciplinary action through the Human Resource Department Policy and Procedures. Such Judges may only be disciplined or removed under the provision of the Constitution of Cherokee Nation or applicable statute.

§ 17. Removal from office

A. Any District Judge of Cherokee Nation or the Council of Cherokee Nation may recommend the removal of any District Judge from office if, in the opinion of the District Judge or the Council, there is reasonable cause to believe a Judge to be guilty of malfeasance or misfeasance of office, neglect of duty, mental or physical incompetence to perform his duties of office, or the Judge has been convicted of a felony in state or federal court since entering upon duty or a crime under Cherokee law which if committed under the laws of Oklahoma would be a felony.

B. Such recommendation shall be presented promptly to the Council, and the Judge whom it has sought to remove from office shall be accorded an opportunity to appear before the Council and present evidence in his own defense. Thereafter, such Judge may be removed from office by a two-thirds (2/3) vote of the Council.

§ 18. Clerk

The Office of the Principal Chief shall select a Clerk of the District Court to manage and otherwise maintain the business office of the District Court, and such clerkship may be combined with that of the Supreme Court.

§ 19. Reserved

§ 20. District Court Office

The District Court of Cherokee Nation shall maintain an office at the seat of government. The purpose of said office is to conduct the regular business affairs of the District Court.

§ 21. Place and terms of District Court proceedings

The District Court shall hold Court at the seat of government or at such other place as deemed necessary for the orderly administration of justice. Terms of Court shall be set by the District Judges.

§ 22. District Court deemed always open—Effect of sessions

A. The District Court shall be deemed always open for the purpose of filing papers, issuing and returning process and making motion and orders.

B. Continued existence or expiration of a session of the District Court in no way affects the power of the District Court to do any act or take any proceeding.

§ 23. Judicial Conference

District Judges and Associate District Judges shall attend and participate in the annual Judicial Conference called by the Chief Justice of the Supreme Court.

§ 24. Jurisdiction—Generally

The District Court of Cherokee Nation shall have general jurisdiction and is vested with original jurisdiction, not otherwise reserved to the Supreme Court, to hear and resolve disputes arising under the laws or Constitution of Cherokee Nation in both law and equity, whether criminal or civil in nature. Such actions shall include, but are not limited to, the following:

1. Crimes. All violations of the Criminal Code of Cherokee Nation committed within its territorial jurisdiction within the following categories:

a. Offenses committed by Indians, as defined by federal law, against all others, Indian and non-Indian; and

b. Offenses committed by Indians, as defined by federal law, which are victimless.

2. Civil causes of action. All causes of action which arise within the territorial jurisdiction of Cherokee Nation within the following categories:

a. Between all parties, Indian and non-Indian, who by their actions have submitted themselves to the jurisdiction of said Court; and

b. Where the defendant is Indian, as defined by federal law.

3. Domestic relations. All cases involving the domestic relations of Indians including child custody and adoption matters.

4. Child support enforcement.

a. All child support cases arising in Cherokee Nation Indian country regardless of whether the parties are Indian or non-Indian.

b. All child support cases arising on fee land within the jurisdictional boundaries of Cherokee Nation if the child in question is an enrolled citizen of Cherokee Nation or is eligible for enrollment as a citizen of Cherokee Nation except that the petitioning party may request that the matter be heard in state district court.

c. At the request of the custodial parent or entity, all child support cases arising on fee land outside the jurisdictional boundaries of Cherokee Nation where the noncustodial parent is a citizen of Cherokee Nation.

d. All child support cases presented to Cherokee Nation by the IV–D agencies of states or other tribes if Cherokee Nation District Court has personal jurisdiction over the noncustodial parent or the employer of the noncustodial parent.

5. Miscellaneous. All other matters over which jurisdiction has heretofore vested in Cherokee Nation District Court or which may hereafter be placed within the jurisdiction of said Court by enactment of the Council.

§ 25. Jurisdiction—Territorial

The territorial jurisdiction of Cherokee Nation District Court shall extend to include all "**Indian country**" also known as "**Cherokee country**" within the fourteen- (14) county area of northeastern Oklahoma as defined by the Treaties of 1828, 1833 and 1835 and the Patent of 1838 between the United States of America and Cherokee Nation, and at such other locations within the United States which qualify as "Cherokee country."

§ 26. Writs or orders

The District Court shall have the power to issue any writs or orders necessary and proper to complete the exercise of its jurisdiction.

§ 27. Rules

The District Court shall have the power to adopt all such rules as are necessary for the proper and complete exercise of its jurisdiction and for orderly conduct of proceedings in the court.

CHAPTER 3

SUPREME COURT—ORGANIZATION AND ADMINISTRATION

§§ 31 to 43. Repealed by LA 29–07, eff. October 1, 2007

§ 44. Reimbursement of expenses incurred by members of Supreme Court—Annual disclosure

The Justices of the Supreme Court shall be reimbursed for actual and necessary expenses incurred for secretarial assistance, law clerk assistance and/or research, travel, training, postage, telephone, photocopies, facsimiles, judicial conferences, lodging and meals. Such expenses shall be paid from the Supreme Court budget, and must be documented and submitted to the Accounting Department of Cherokee Nation. The nature and amount of all reimbursable expenses shall be reported annually to the citizens of Cherokee Nation, and such report shall be available for publication in any newspaper or newspapers requesting such information.

§ 45. Establishment of a law library—Maintenance and expenditures—Use by Cherokee citizens—Annual disclosure

The Supreme Court shall establish, maintain, oversee and control a law library in the Cherokee Nation Courthouse. The law library shall contain such books, publications and research aids as deemed necessary by the Justices of the Supreme Court, the District Court Judges and Associate District Judges, including but not limited to electronic research aids. The cost of such law library shall be paid from the budget of the Supreme Court and District Court. When such books and publications are not being used by the Justices of the Supreme Court, District Court Judges, Associate District Judges and other officials of Cherokee Nation, and their assistants, such items may be used by the citizens of Cherokee Nation, on such conditions and rules are adopted by the Supreme Court.

The expenses incurred in maintaining such library shall be reported annually to the citizens of Cherokee Nation, and such report shall be made available for publication in any newspaper or newspapers requesting such information.

§ 46. Supplies, material, postage, office equipment, telephone and facsimile expense—Annual disclosure

The Justices of the Supreme Court shall purchase and pay for such supplies, material, postage, office equipment, telephone and facsimile expense from the budget of the Supreme Court as is reasonable and necessary. The amount of such purchases and expenditures shall be reported annually to the citizens of Cherokee Nation, and such report shall be available for publication in any newspaper or newspapers requesting such information.

§ 47. Filing fees and court costs

The Supreme Court shall have the authority to establish filing fees and court costs for actions or proceedings filed in the Supreme Court and Courts over which it exercises general superintendence and Courts of inferior jurisdiction. Provided that the Court upon the filing of a verified Pauper's Affidavit may waive these fees and costs. The Supreme Court shall establish rules to carry out the provisions of this section.

CHAPTER 4

SUPREME COURT—POWERS AND DUTIES GENERALLY

§ 51. Jurisdiction of Supreme Court generally

A. The Supreme Court shall have original jurisdiction over all matters set forth in Article VIII, Section 4 of the Cherokee Constitution and:

1. Any dispute between the branches of the Government of Cherokee Nation.
2. Any case or controversy involving Cherokee Nation elections that has first been addressed by the Cherokee Nation Election Commission, and/or which is specifically provided for by statute.

B. The Supreme Court shall have appellate jurisdiction over all other cases.

§ 51.1. Codification of term "Supreme Court"

All statutes and official documents of Cherokee Nation which contain the term "**Judicial Appeals Tribunal**" shall be changed to "**Cherokee Nation Supreme Court**" or "**Supreme Court**" where applicable.

§ 52. Superintendence over courts of inferior jurisdiction

The Supreme Court shall have authority within the limits of its judicial action as prescribed by law, to exercise a general superintendence over courts of inferior jurisdiction, through and by means of decisions made and declared by the Supreme Court upon questions of law, evidence, and practice, submitted to them in the course of the trial or examination of all causes of which they shall be allowed cognizance by law.

§ 53. Supreme Court may prescribe rules of procedure for courts of inferior jurisdiction

The Supreme Court shall also have power to prescribe from time to time, such rules of practice for regulating the procedure in the trial of cases in the lower courts, as they may deem necessary, expedient or serviceable, and which shall not conflict with the rules prescribed by law. The object of the Court in prescribing such rules shall be the more speedy and accurate presentation of the issue or point of difference between the parties, the exclusions of unnecessary and irrelevant testimony, and the more certain administration of justice.

§ 54. Supreme Court decisions to have the force of law

All decisions made by the Supreme Court shall have the force of law, as to the construction and application thereof, in all the Courts of this Nation, until such construction or application shall be limited, altered, or in any manner amended, by the subsequent decision of a subsequent case by the Supreme Court.

§ 55. Publication of decisions of Supreme Court

All decisions of the Supreme Court shall be preserved and open to inspection. The court shall forward copies of each decision to the Secretary–Treasurer of Cherokee Nation.

§ 56. Decisions to be rendered for the true interpretation of the law

All decisions of the Supreme Court (intermediate and final) shall be made and rendered, as well for the government and guidance of the lower Courts and the citizens of this Nation in general, as for the just and true interpretation of the law, and the settlement of the dispute and administration of justice between the parties. Accordingly, each decision shall be accompanied with a statement, as far and as full as may be practicable, or necessary for the purpose, of the grounds in law or evidence upon and by reason of which, such decision has been made. Each decision shall be attended or preceded by a distinct statement of the issue between the parties, the situation of the case as set forth by the evidence before the Court, the law or laws governing the case, and the interpretation and application of the same by the Court, with the reasons therefor, and the principles of law or evidence involved in the suit and affecting the decision thereof; and of such other matters and considerations, having relation to the decision, which the Court may deem essential to give value and force to a law precedent for the government and guidance of the Courts and citizens of the Nation in similar cases arising thereafter.

§ 57. Adoption of rules governing pleading, practice and procedure

A. The Justices shall have authority to adopt rules of pleading, practice and procedure applicable to any or all proceedings in the Supreme Court of Cherokee Nation. In addition, they may adopt uniform rules for the admission of evidence and may require the use of standard forms for pleadings, motions and other papers filed in the Supreme Court by litigants, as well as for judgments, writs, and court orders.

B. Any rule adopted by the Justices shall be transmitted to the Council, directing the codification of such rule.

C. No rule adopted by the Justices shall be effective until approved under procedures adopted by the Justices and transmitted to the Council.

§ 58. Administration of oaths and affirmations—Taking of acknowledgments

Each Justice of Cherokee Nation may administer oaths and affirmations and take acknowledgements.

§ 59. Disqualification of Justices

Any Justice of Cherokee Nation shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit during any proceeding therein.

§ 60. Temporary appointment on disqualification or recusal of Justice

Upon the disqualification or recusal of a Justice of the Supreme Court, the remaining members shall appoint a Judge of the District Court of Cherokee Nation to temporarily serve as a Justice of the Supreme Court for the specific case only.

APPENDIX I TO TITLE 20

SUPREME COURT RULES AND PROCEDURES

I. IN GENERAL

II. PETITION

III. NOTICE

IV. SERVICE AND FILING OF PAPERS

V. ANSWER

VI. MOTIONS

VII. APPELLATE PROCEDURE

VIII. BRIEFS

IX. EX-PARTE COMMUNICATIONS

X. WITNESSES

XI. PRETRIAL PROCESS

XII. HEARINGS

XIII. JUDGMENTS

XIV. ELECTION RECOUNT PROCEDURE

XV. ATTORNEYS

XVI. LAY ADVOCATES

XVII. ARBITRATORS

XVIII. MISCELLANEOUS JUDICIAL RULES

I. IN GENERAL

Rule 1. Rules to be liberally construed

The rules and procedures in this Appendix shall be liberally construed to effectuate the purposes and provisions of the Appendix.

Rule 2. Amendment or rescission of rules

Any rule or procedure may be amended or rescinded by the Supreme Court at anytime; provided, however, any amendment or rescission of rules by the Supreme Court must meet the requirements of 20 CNCA § 57(B) and (C). All prior Court Rules are hereby rescinded or incorporated herein.

II. PETITION

Rule 3. Withdrawal and dismissal

Prior to the time an answer is filed, any petition may be withdrawn and dismissed without Court approval. After an answer has been filed, a petition may be dismissed only with the consent of the Court.

Rule 4. Assignment and disposition of cases, effectiveness of orders, appeal—Motions for reconsideration—Cases retained for en banc determination

The Chief Justice shall have the power to retain any case, or assign any case to one of the Justices for all such preliminary proceedings as ordered. Any final adjudication or dismissal in a case shall be made by a majority of the Justices and shall be effective immediately when filed with the Court Clerk.

The Chief Justice shall retain the power to assign any case to the entire court for decision. In that case, the words "the Justice," used herein, shall apply to a majority of the Supreme Court.

Rule 5. Filing

Any petition requesting judicial review shall meet the requirements of 20 CNCA § 51(A), (B), (C), or (D). The petition shall be filed in the Office of the Cherokee Nation Supreme Court, P.O. Box 1097, Tahlequah, Oklahoma 74465. The offices of the Supreme Court are at the Cherokee Nation Courthouse, Cherokee Capitol Square, 101 S. Muskogee Ave., Tahlequah, Oklahoma.

Rule 6. Requirement of filing fees

All petitions must be filed in person. The petitioner must pay the required filing fee of Seventy-Five Dollars (\$75.00), or Fifty Dollars (\$50.00) for an appeal. Payments can be made in the form of cash, check, or money order payable to the Court. An application for waiver of fee pauper's affidavit can be completed and submitted to the Court Administrator for approval.

Rule 7. Use of fax/e-mail

A. Fax

1. Parties may file affidavits, pleadings, motions and other documents by use of fax transmission for documents of ten (10) pages or less;
2. The fax must include a transmittal/cover sheet reflecting the sending party's name, address, bar number, phone number, fax number, case name and case number. The fax number for the Cherokee Nation Supreme Court is (918) 458-9572.
3. The faxed document, which must bear a facsimile of the required signature, will be accepted as an "original" document.

B. E-mail

1. A document permitted to be filed by e-mail pursuant to these rules shall be sent to the Court Clerk of the Supreme Court using the following e-mail address: kendall-bird@cherokee.org. Documents sent to any other e-mail address of the Supreme Court shall not be considered for filing under any circumstances.
2. The e-mail must reflect the sending party's name, address, bar number, phone number, e-mail address, case name and case number.
3. A document permitted to be filed by e-mail shall be submitted as a PDF file (Portable Document Format).
4. A document that may be filed by e-mail pursuant to these rules shall include a scanned version of the person's original signature or a signature line with a backslash followed by an "s" followed by the person's name in print (e.g., /s/ "John T. Smith").

C. Documents transmitted by fax or e-mail pursuant to these rules and received on a Saturday, Sunday, or other day on which the Clerk's Office is closed to the public, or after 4:30 p.m. on a

business day, shall be considered for filing on the next business day. The time of receipt of a document is the timestamp provided by the Supreme Court's e-mail/fax system, the timestamp provided by any other computer/fax system shall not alter the time of receipt and affect this rule.

D. All risks associated with fax/e-mail filing are borne by the sender (e.g., court's phone/computer system being out of order, the receiving fax machine running out of paper, etc.)

E. Any document filed by fax/e-mail must also be served concurrently by fax, e-mail, hand-delivery or mail on all other parties to the appeal, and the faxed/e-mailed document must contain a certificate of service attesting to such service and that the document was initially filed with the Court via fax/e-mail. The time for filing a response to a document filed by fax/e-mail runs from the date the document was received by the Court pursuant to subsection (C) above.

F. The Clerk may reject documents that are not clearly legible or that fail to comply with these requirements.

Rule 8. Form—Jurat or declaration—Number of copies

Such petition shall be in writing with pages sequentially numbered at the bottom center of each page and signed, and either shall be sworn to before a notary public, Justice, or other person authorized by law to administer oaths and take acknowledgements or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of the declarant's knowledge and belief. An unstapled original of such petition shall be filed.

Rule 9. Contents

Such petition, or charge, shall contain the following:

1. the full name, address, telephone number, e-mail and fax number, if any, of the person filing the petition.
2. if the petition is filed on behalf of another person or organization, the full name, address, telephone number, e-mail and fax number, if any, of the party or organization represented.
3. the full name, address, telephone number, e-mail and fax number, if any, of the person against whom the charge is made (herein referred to as respondent).
4. a clear and concise statement of the facts, constituting the alleged claim, including the date, place and names of those parties involved in the alleged claim.
5. a clear and concise statement of the legal authority and jurisdiction under which the cause of action is being predicated.

Rule 10. Use of Bar Identification number

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his or her name, with Cherokee Nation Bar Association number and State Bar Association number.

III. NOTICE

Rule 11. Service of the petition and return

A copy of the petition and a copy of the summons issued by the Clerk of the Supreme Court shall be served by the Petitioner or his or her representative by certified mail-return receipt requested or by personal service by a process server licensed by the State of Oklahoma. Return of service shall be verified by the individual accomplishing such service and shall be filed with the Clerk of the Supreme Court.

Rule 12. Rejection of petition

If at any time it appears to a majority of the Court that a formal proceeding is not warranted, the Court shall cause to be served on the parties a formal notice of rejection of the petition.

Rules 13 to 19. Reserved

IV. SERVICE AND FILING OF PAPERS

Rule 20. Service of pleadings, orders and notices

A. Service of pleadings to parties or their representatives who have entered their appearances by the parties shall be by personal delivery or regular mail with certificates of mailing/delivery attached.

B. Service of notices, notice of hearings, final order, orders and decisions of the Supreme Court shall be made by the Clerk of the Supreme Court by mail, fax or e-mail and shall be certified by the Clerk of the Supreme Court.

Rule 21. Date of service—Filing of proof of service

A. The date of service shall be the day when the matter served is deposited in the United States mail or is actually delivered, as the case may be.

B. The person or party serving the papers or process on other parties shall submit a written statement of service thereof to the Supreme Court, stating the names of the parties served and the date and manner of service. Failure to make proof of service does not affect the validity of the service.

Rule 22. Certification of papers and documents

The Court Clerk or Deputy Court Clerk of the Supreme Court or, in the event of their absence or disability, whosoever may be designated by the Chief Justice shall be authorized to certify copies of all papers and documents which are a part of any of the files or records of the Supreme Court as may be necessary or desirable from time to time.

Rule 23. Signature of orders

The Court Clerk or Deputy Court Clerk of the Supreme Court or, in the event of their absence or disability, whosoever may be designated by the Supreme Court in their place and stead is hereby authorized to sign all orders of the Supreme Court.

Rules 24 to 29. Reserved

V. ANSWER

Rule 30. When and by whom filed—Contents

Unless otherwise directed in the notice or scheduling order, the respondent shall, within twenty (20) days from the service of the petition, file a response thereto. The response may be in the form of a motion to dismiss or other such motion. The respondent's answer shall specifically admit, deny or explain each of the facts alleged in the petition unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

Rule 31. Place of filing—Service upon other parties—Form

An unstapled original of the response or answer shall be filed with the office of the Supreme Court, Cherokee Nation, P.O. Box 1097, Tahlequah, Oklahoma, 74465 by mail to or in person at the Cherokee Nation Courthouse, Cherokee Capitol Square, 101 S. Muskogee Ave., Tahlequah, Oklahoma. Filing by fax/e-mail is appropriate pursuant to Rule 7. Immediately upon the filing of a response, the respondent shall serve a copy thereof on the other parties. The pleadings of a party represented by counsel shall be signed by at least one attorney of record whose address, phone number, e-mail and fax number shall be stated, in their individual name. A party who is not represented by an attorney shall sign the pleadings and state an address, phone, e-mail and fax number, if any. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of the person filing an answer constitutes a certificate that the signer has read the answer; that to the best of the signer's knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the answer had not been filed. For willful violation of this rule, the signing party may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Rule 32. Extension of time for filing

The Chief Justice, or the Justice who is assigned to the case, upon own motion or upon proper cause shown through motion by any other party, may by written order extend the time within which a response or pleading shall be filed.

Rule 33. Amendment

Petitioner may amend the petition and the respondent may amend the answer at any time prior to the time allowing amendments as set forth in the scheduling order by the Chief Justice. When the time set in the scheduling order to amend has passed, amendments may only be allowed through good cause shown by motion to the Chief Justice or the Justice assigned to the case. If amendment is allowed, the Chief Justice or Justice shall fix such terms and periods providing so. If there is no scheduling order then the petition or answer maybe amended without permission from the Chief Justice or Justice.

Rules 34 to 39. Reserved

VI. MOTIONS

Rule 40. Place of filing—Contents—Service on other parties—Time for filing of motions and responses thereto

All motions shall be filed in writing in the office of the Supreme Court either in person, by mail, fax or e-mail as provided in Rule 7. All motions for summary judgment shall also be filed in writing in the office of the Supreme Court either in person, by mail, fax or e-mail as provided in Rule 7. Unless otherwise provided in these rules or by order of the Supreme Court, motions and responses thereto shall be filed promptly and within such time as not to delay the proceedings. Promptness and diligence are favored in all filings in the Supreme Court.

Rule 41. Rulings on motions generally

The Chief Justice's rulings as provided in Rule 11 and all other judicial rulings and orders shall be issued in writing and a copy served on each of the parties. The Justice designated to conduct the hearing shall rule on all motions after the opening of the hearing, and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases, the Justice shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall rule on the matter in the decision.

Rule 42. Motions, rulings and orders to be part of the record

All motions, rulings, and orders shall become a part of the record.

Rule 43. Motion to dismiss

The respondent may file a motion to dismiss at any time prior to the scheduling order or as permitted in the scheduling order, or move for dismissal at any hearing for:

1. lack of jurisdiction over subject matter.
2. lack of jurisdiction over persons.
3. insufficiency of process or service thereof.
4. failure of petitioner to state a claim upon which relief can be granted.

Rule 44. Motion for summary judgment

Either party may move for summary judgment by alleging that there is no genuine issue as to any material fact and by alleging that the moving party is entitled to judgment as a matter of law.

Rule 45. Granting of motion to dismiss entire petition

All dispositive motions must be considered by the Court en banc except as set forth in Rule 11.

Rule 46. Filing of answer or other participation in proceedings not deemed a waiver of rights

The right to make motions or to make objections to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the Supreme Court.

Rule 47. Intervention

Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. An unstapled original of written motions shall be filed. Immediately upon filing such motion, the moving party shall serve a copy thereof on the other parties. The Court shall rule upon all such motions filed and shall cause a copy of said rulings to be served on the other parties. The Court may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as deemed proper.

Rules 48, 49. Reserved

VII. APPELLATE PROCEDURE

Rule 50. Who may appeal

- A. Any party significantly and adversely affected by a decision of the District Court of the Cherokee Nation in a civil case may appeal.
- B. Any party in a criminal case may appeal a judgment or sentence. The prosecution may only appeal a decision to the extent it raises a question of law, rather than a question of fact.

Rule 51. Procedure for appeal—Time period to appeal

- A. An appeal to the Supreme Court in civil cases shall be by petition in error filed no later than thirty (30) days after the entry of the written judgment or order of the District Court.
- B. An appeal to the Supreme Court in criminal cases shall be made no later than thirty (30) days after entry of the written judgment or order of the District Court.
- C. If one party has filed an appeal within the time period provided, the other party shall file a response and may take a Cross–Appeal by filing across–petition in error within thirty (30) days of filing of the initial appeal.
- D. Late appeals shall be denied filing by the Clerk of the Supreme Court unless leave for late filing has been granted by the Court.
- E. The Court may, at their discretion, grant leave to appeal from any order or judgment upon the showing by appellant, supported by affidavit, that there is merit in the reasons for appeal and that late filing was not due to appellant or appellant's attorney/advocate's negligence.

Rule 52. Appeal

- A. An appeal is made by the filing of a petition in error with the Clerk of the Supreme Court.
- B. The petition in error must specify the party or parties taking the appeal by naming each one in the caption or body of the petition in error; designating and attaching a certified copy of the judgment, order, or part thereof being appealed; state whether oral arguments are requested, and the decision on the appeal desired from the Supreme Court.
- C. No appeal shall be dismissed for deficiency of form or title of the petition in error, or for failure to name a party whose intent to appeal is otherwise clear from the Petition In Error.
- D. Upon receipt of the petition in error and full payment of the filing fee, the Clerk of the Supreme Court shall docket the appeal and notify the Chief Justice of the pending appeal.

Rule 53. Service of notice of appeal

- A. A copy of the petition in error shall be served by the party filing the appeal on all parties' counsel of record and on the Clerk of the District Court or Administrative Court.
- B. Upon filing a petition in error, the appellant must pay a filing fee of Fifty Dollars (\$50.00). A filing will only be accepted without payment when an appellant's pauper's affidavit is approved.

Rule 54. Bond or supersedeas bond

Upon the filing of the petition in error of a civil money judgment, the District Court may order the filing of a bond or other security in an amount sufficient to satisfy the judgment including costs in the event that the judgment is affirmed on appeal. The Supreme Court may waive the bond if the party demonstrates by petition or affidavit that he/she is unable to post the bond.

Rule 55. Stay or injunction

Application for a stay of the judgment or order of the District Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must be made first in the District Court. A motion for such relief may be made to the Supreme Court, but the motion shall show that application to the District Court for the relief sought is not practicable, or that the District Court has denied an application, or has failed to afford the relief which the applicant requested with the reasons given by the District Court for its action. Reasonable notice of the motion shall be given to all parties.

A stay shall be granted if the purposes of justice require it, and irreversible harm may occur if the stay is not granted.

Rule 56. Designation of record

All parties to an appeal shall file either a designation of record or counter designation of record. Concurrently with filing a petition in the Supreme Court, the party desiring the appeal shall mail to the other parties and file in both the District Court and Supreme Court a designation of any pertinent pleadings or documents filed in the case, transcript of proceedings, and evidence adduced which are sought to be included in the record of appeal. The Supreme Court reserves the right to order any additional parts of the entire District Court record to be transmitted to the Supreme Court at any stage of the appeal.

The designation of record shall be made using the designation record form or court docket sheet. Pleadings and other documents filed with the District Court Clerk in the case can be designated by circling the document on a copy of the court docket sheet or by listing the specific pleadings and other documents on the designation of record form.

The record on appeal shall not include unless ordered by the Supreme Court the following: subpoenas, summonses, certificate of service, and procedural motions or orders (e.g., extensions, continuances, etc.)

All appellees shall file a counter designation of record in the District Court and Supreme Court within thirty (30) days after appellant's designation of record is filed. The counter designation of record shall be made by using the counter designation of record form or court docket sheet.

Each appellant must advance the costs for transcripts ordered by any party relating to the appeal of the appellant. Failure to pay costs shall not be a good cause for an extension of time to complete the record and shall be grounds for dismissal of the appeal.

Rule 57. Record of appeal

A. Upon receiving the designation of record, the Clerk of the District Court shall compile the record for transmittal to the Supreme Court. The Clerk of the District Court shall certify the contents of the record as true, correct, and complete.

B. If no report of the evidence or proceeding at a trial or hearing was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence. The appellant must file a copy of the statement with the Supreme Court and the appellee shall have twenty (20) days to raise objections and make amendments. The Supreme Court shall rule on the objections and amendments and approve the statement for inclusion in the record of appeal.

C. In place of the record on appeal, the parties may prepare, sign, and submit to the District Court a statement of the case showing how the issues presented by the appeal arose and were decided in the District Court. The statement must set forth only those facts certain and proved or sought to be proved that are essential to the Court's resolution of the issues. If the statement is truthful, the statement, together with any additions that the District Court may consider necessary to a full presentation of the issues on appeal must be approved by the District Court and must then be certified to the Supreme Court as the record on appeal.

D. The record on appeal shall be ready for transmission to the Supreme Court no later than six (6) months from the date of the judgment appealed.

Rule 58. Certification of the record

A. The accuracy of the record on appeal shall be certified by the Clerk of the District Court of Cherokee Nation.

B. The Clerk of the District Court shall transmit by certified mail or its equivalent the complete record and all duly numbered copies of original documents to the Clerk of the Supreme Court within six (6) months of the designation of record.

C. The Clerk of the District Court shall mail a copy of the certification of the record to the parties.

Rule 59. Reserved

VIII. BRIEFS

Rule 60. Filing and service of briefs

A. The appellant shall file and serve an appellate brief-in-chief within sixty (60) days after the date on which the appellee has filed his or her response to the petition in error. The appellee shall file and serve the appellant's brief within forty (40) days after service of the brief of the appellant. The appellant may file and serve a reply brief within twenty (20) days after service of the brief of the appellee.

B. One (1) original unstapled/unbound copy of each brief shall be filed with the Court Clerk, and one copy shall be served on counsel for each party separately represented.

C. If an appellant fails to file the appellant's brief-in-chief within the time provided by this rule, or within the time as extended, the Court may dismiss the appeal. If an appellee fails to file the appellee's brief within the time provided by this rule, or within the time as extended, the appellee will not be heard at oral argument except by permission of the Court upon a showing of good cause submitted in writing prior to argument; and in determining the appeal, the Court may rule on the appellant's statement of the facts and issues.

D. The appellant or appellee may file an extension of time to file a brief or response to a brief for extraordinary circumstances and the Court may grant it for good cause shown. An extension shall be granted for no more than fourteen (14) days.

Rule 61. Briefs

A. Briefs filed by both the appellant and appellee shall contain the following:

1. a table of contents, with page references.
2. a table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.
3. a statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.
4. a statement of the issues presented for review, with references to the assignments of error to which each issue relates.
5. a statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the District Court.
6. a statement of facts relevant to the assignments of error presented for review, with appropriate reference to the record. (References in the briefs to parts of the record shall be to the pages of the parts of the record involved; e.g., Answer p. 2, Transcript p. 47.)
7. a conclusion briefly stating the relief sought by the party.

B. Briefs shall not exceed thirty (30) pages in length excluding cover page, table of contents, table of authorities, appendix, attorney signature line and information, and certificate of service.

C. An appellee's answer brief shall be combined with the brief-in-chief on any counter or cross-appeal filed by the appellee. The combined brief shall be filed within forty (40) days after the filing of the brief-in-chief of the appellant. The brief-in-chief on any other counter or cross-appeal

shall be filed within forty (40) days after the filing of the brief-in-chief of the appellant.

An appellant shall combine a reply brief, if any is filed, with an answer brief to a brief-in-chief on a counter or cross-appeal against the appellant. The combined brief shall be filed within thirty (30) days after the filing of the brief-in-chief on the counter or cross-appeal. Any other party against whom a counter or cross-appeal has been filed shall file an answer brief within thirty (30) days after the filing of the brief-in-chief on such counter or cross-appeal.

A counter or cross-appellant may file a reply brief to the answer brief on the counter or cross-appeal within twenty (20) days after the filing of the answer brief on the counter or cross-appeal.

D. A combined brief by a party to a counter or cross appeal shall not exceed forty (40) pages excluding the cover page, table of contents, table of authorities, appendix, attorney signature line and information, and certificate of service.

Rule 62. Amicus curiae brief

An amicus curiae brief may be filed if accompanied by the written consent of all parties, or by leave of Court pursuant to a properly filed motion, or at the request of the Court. The amicus curiae brief shall specify whether consent was granted or if granted by leave of Court, and its cover shall identify the party supported. The brief shall be confined to the issues raised by the parties and shall be submitted within the time allowed for filing the brief for the party supported, or if in support of neither party, within the time allowed for filing the petitioner's or appellant's brief.

Rules 63 to 69. Reserved

IX. EX-PARTE COMMUNICATIONS

Rule 70. Communication between Justices or employees of Supreme Court and persons involved in proceedings—Communication between Justices and assistants

Unless required for the disposition of ex parte matters authorized by law, Justices of the Supreme Court or their employees involved in a proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any party, nor, in connection with any issue of law, with any party, except upon notice and opportunity for all parties to participate. A Justice may communicate with other Justices and may have the advice of one or more persons.

Rules 71 to 79. Reserved

X. WITNESSES

Rule 80. Examination of witnesses generally—Depositions

A. Witnesses shall be examined orally under oath, except that for good cause shown after the

issuance of a notice, testimony may be taken by deposition.

B. Applications to take depositions shall be in writing, setting forth the reasons why such depositions should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for the purposes of this section hereinafter referred to as the officer). Such application shall be made to the office of the Supreme Court prior to the hearing, and to the Presiding Justice during the hearing. Such application shall be served by the Justice on all other parties, not less than seven (7) days (when the deposition is to be taken within the continental United States) and fifteen (15) days (if the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. The Justice shall have the discretion upon receipt of the application, if good cause has been shown, to make and serve on the parties an order which will specify the name of the witness whose deposition is to be taken, the time and the place, and designation of the officer before whom the witness is to testify, who may or may not be the same officer as the one specified in the application. Such order shall be served on all the other parties by the Justice.

C. Such deposition may be taken before any officer authorized by law to administer oaths.

D. At the time and place specified in said order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all the parties appearing, and the testimony shall be reduced to typewriting by the officer or under the officer's direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have the power to rule upon any objections but shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer, who shall attach a certificate stating that the witness was duly sworn by the officer, that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the event of the proceeding. If the deposition is not signed by the witness because of illness or death, because the witness cannot be found or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and two (2) copies of said transcript, together with the certificate, in person or by certified mail with return receipt requested, to the office of the Supreme Court.

E. The Justice shall rule upon the admissibility of the deposition or any part thereof.

F. All errors or irregularities in compliance with the provisions of this rule shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence, might have been, ascertained.

G. If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

Rule 81. Payment of witness fees and mileage

Witnesses requested to appear before the Supreme Court shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witnesses' fees and mileage shall be taxed against the party at whose instance the witness appears and the fees of persons taking the deposition shall be taxed against the party at whose instance the deposition is taken.

Rule 82. Pretrial discovery depositions

A. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of Court is required only if a party seeks to take the deposition prior to the expiration of thirty (30) days after service of the petition upon the respondent.

B. The parties shall enter into a written stipulation to take the oral deposition of a witness or witnesses. In the event such written stipulation cannot be accomplished, the party desiring to take a witness' oral deposition shall give written notice of examination to all parties setting forth the date, time, and place and identification of any documents to be presented, not less than five (5) days prior to the date of the deposition.

C. The witnesses may be compelled to appear for deposition by subpoena, or, subpoena duces tecum if documents are required to be produced at the deposition.

D. The deposition shall be taken before a certified shorthand reporter (CSR) or a licensed shorthand reporter (LSR) licensed by the State of Oklahoma or as ordered by the Court.

E. The requesting party shall schedule the reporter identified in subsection (D) and shall all parties participating in the deposition a copy of the testimony.

F. A deposition upon oral examination shall not last more than six (6) hours and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than Saturday, Sunday, or National Holiday recognized by Cherokee Nation unless ordered by the Court or by agreement.

G. A deposition may be recorded by non-stenographic means by persons licensed by the State of Oklahoma in addition to the stenographic recording, by agreement of the parties or by Court order. The requesting party shall furnish copies of all recordings to all other parties.

H. Any witness or party during the deposition determined to be testifying in bad faith by the Court shall be subject to sanctions by the Court including attorney fees and cost incurred by any of the parties as a result thereof.

I. The deposition recording may be reviewed by the witness before certification by the recording officer and within five (5) days of receiving a copy of such recording from the recording officer the witness may note requested changes to be accompanied with the certified recordings.

Rules 83 to 89. Reserved

XI. PRETRIAL PROCESS

Rule 90. Scheduling order

A scheduling order may be issued at the discretion of the Chief Justice. The Chief Justice of the Supreme Court may enter a scheduling order for a time and date certain for the performance of the following duties and any other duties the Chief Justice deems appropriate:

1. response or amended response of defendant;
2. reply, if any, of plaintiff;
3. mutual exchange of names of proposed witnesses and expected testimony;
4. mutual exchange of proposed exhibits and description of such exhibits;
4. filing of motions to join additional parties or to dismiss;
5. status conference report due;
6. status and simplification conference;
7. cut-off for amendments to pleadings;
8. settlement conference;
9. mutual exchange of authorities to be relied upon at trial and mutual exchange of trial briefs, if any;
10. final exchange of list of witnesses and exhibits;
11. cut-off for filing additional motions or responses to amended pleadings, if any;
12. discovery cut-off;
13. cut-off for filing responses to motions, if any;
14. pretrial conference report due;
15. pretrial conference;
16. disposition of pending motions; and

17. trial.

Rule 91. Time for hearing—Certain

Each individual hearing shall be set at a time certain.

Rule 92. Status and simplification conference

A. Prior to the first status and simplification conference scheduled by the Supreme Court as set forth in the scheduling order, counsel for each of the parties shall confer and prepare a status report. The plaintiff's counsel shall tender the report to the Supreme Court, unless plaintiff is a pro se litigant, then the defendant's counsel shall tender the report. In all cases where Cherokee Nation is a party, Cherokee Nation's counsel shall be responsible to tender the report to the Supreme Court. The jointly prepared status report shall be a single document signed by counsel or any pro se litigant, whatever the case may be. The report shall be filed at least ten (10) days before the status conference unless otherwise directed in the scheduling order.

B. All parties either through counsel or themselves if pro se shall be in attendance and be represented at the status conference. Those in attendance must have authority to commit their client for all purposes. The status conference may be conducted by phone if the assigned Justice decides circumstances warrant such.

Rule 93. Settlement conference

A. Settlement conference. Unless the Court otherwise directs, each case shall be scheduled for a mandatory settlement conference at the earliest practicable time. This will normally be a date certain set forth in the scheduling order.

B. Settlement Judge disinterested. A disinterested District Judge or past Supreme Court Justice designated by the Chief Justice will normally preside at the settlement conference.

C. Fully-authorized representative required. At least one attorney for each of the parties who is fully familiar with the case shall appear, along with all parties involved. In the event one or more of the parties is a trust, partnership, corporation and/or government entity, a representative of such party shall appear in addition to the attorney, with authority to enter into a binding settlement. If a party is pro se then such party shall personally appear at the settlement conference, prepared to discuss the matter, and to enter into a binding settlement of the dispute. Unless approved in advance by the Chief Justice, settlement conferences shall be conducted in person and not by telephone. However, a settlement conference, which is a continuance of an earlier settlement conference, may be conducted by telephone. The Settlement Judge presiding over the settlement conference may make such other and additional requirements of the parties as shall be deemed proper in order to expedite an amicable resolution of the case.

D. Confidences kept. It is expected that the parties, their representatives and attorneys be

completely candid with the Settlement Judge so that settlement discussions may be properly and productively guided. To encourage candor, the confidential nature of settlement discussions conducted under the auspices of a Court-sponsored settlement conference will be absolutely respected by all participants, and strictly enforced by the Court. The Settlement Judge may meet jointly or individually with any participant(s). Statements made in any sub-conference will not be shared with participants not party to the sub-conference, unless specific permission of the declarant is obtained. Any statement made in the context of the settlement conference will not constitute an admission and will not be used in any form in the litigation or trial of the case. The Settlement Judge will not discuss the substance of the conference with the Justices of the Supreme Court.

E. Report of Settlement Judge. At the conclusion of the settlement conference, the Judge presiding over the settlement conference shall provide the Chief Justice with a brief one-page report on the happenings of the settlement conference subject to subsection (D) of this rule. Settlement Judges shall be paid from the Court Fund or by the parties as determined by the Chief Justice.

Rule 94. Pretrial order

On or before a date certain as set forth in the scheduling order, or if there is no scheduling order then at least ten (10) days prior to the pretrial conference, the petitioner's counsel shall tender a jointly prepared proposed pretrial conference order unless petitioner is acting pro se, then the respondent's counsel shall have the duty of tendering the proposed pretrial order. In all cases to which Cherokee Nation is party, Cherokee Nation's counsel shall have the duty of tendering the proposed pretrial order.

Rule 95. Purpose of the agreed pretrial order—Expectations and directions for parties

A. Purpose of the agreed pretrial order. The purpose of the agreed pretrial order is to condense all material information into one working document that will control the trial of the case.

B. Prior rulings. The agreed pretrial order must reflect the current status of the case and accurately reflect all prior rulings by the court.

C. Unprofessional conduct. Failure of the plaintiff's attorney to timely initiate and/or failure of any attorney in the case to cooperate in timely preparation of the agreed pretrial order shall be deemed by the Court to be unprofessional conduct.

D. Good faith disputes. While all reasonable efforts should be made by counsel and litigants to timely agree on a pretrial order, if, following good faith effort, disputes still remain regarding factual and/or legal issues, such should be noted in the single pretrial order submitted, for ultimate resolution by the Court.

E. No adoption of pleadings by reference. Counsel may not adopt pleadings and incorporate them into the pretrial order by reference.

F. Reservation of rights not allowed. No reservation of an asserted right to add additional witnesses

or exhibits or to take additional discovery will be allowed in the agreed pretrial order.

G. Late exhibits. Late exhibits are those not listed in the agreed pretrial order. If late exhibits are discovered, the party desiring to offer them shall immediately mark them for identification and furnish copies to opposing counsel with a statement explaining their late production. If objected to, the sponsoring party must file a written motion requesting permission to supplement the exhibit list.

H. Late witnesses. Additional witnesses, listed after the witness exchange date, will be permitted to testify only if ordered to prevent manifest injustice and only then, if proper notice is given, under the facts and circumstances of the case, to the other party, and a written motion is immediately filed requesting permission to supplement the witness list.

I. Pro se litigants. Pro se litigants and opposing counsel should confer before a pretrial conference and be prepared to discuss at the conference significant disputes relative to issues of fact and law, exhibits, witnesses, evidence, in limine matters and all matters bearing on an expeditious settlement or trial of the case.

J. Pretrial conference. At the pretrial conference, the Court may take any appropriate action to insure a fair trial to all parties.

K. Demonstrative aids, exhibits and summaries. All demonstrative aids, exhibits and summaries intended to be used for any purpose at trial shall be displayed to opposing counsel at least fourteen (14) days in advance of trial, unless a shorter time is allowed pursuant to the scheduling order.

Rule 96. Informal conference to settle discovery dispute

A. Conference required. Regarding all motions relative to discovery the Supreme Court will refuse to hear any such motion, unless counsel for movant first advises the Supreme Court in writing that the lawyers, lay representative and/or pro se litigants have personally met and conferred in good faith, but that, after a sincere attempt to resolve differences has been made, they have been unable to reach an accord. However, no personal conference shall be required where the movant's counsel represents to the Court in writing that counsel has conferred by telephone and the distance between counsels' offices renders a personal conference not feasible. An exchange of correspondence alone does not satisfy this requirement.

B. Unprofessional conduct exception. An opposing counsel's repeated failure to communicate in connection with discovery disputes will be viewed as unprofessional conduct on the part of that attorney. A demonstration of such unprofessional conduct, deemed sufficient by the Court and contained in a motion to compel, will satisfy the requirements of subsection (A).

Rules 97 to 99. Reserved

XII. HEARINGS

Rule 100. Duties and powers of Supreme Court Justices generally

It shall be the duty of the Justice assigned to the case to inquire fully into the facts alleged in the petition or notice. The Justice shall have authority, with respect to cases assigned:

1. to administer oaths and affirmations;
2. to rule upon offers of proof and receive relevant evidence;
3. to take or cause depositions to be taken whenever the ends of justice would be served thereby;
4. to regulate the course of the hearing and, if appropriate or necessary to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;
5. to hold conferences for the settlement or simplification of the issues;
6. to dispose of procedural requests, motions or similar matter or to amend pleadings; to order hearings reopened; and upon motion to order proceedings consolidated or severed prior to the issuance of the Justices' decisions;
7. to approve stipulations voluntarily entered into by all parties to the case which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing and which will also provide for the waiver by the respective parties of their right to file exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the Justice shall make in the decision;
8. to make and file decisions in conformity with 20 CNCA § 55;
9. to call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence;
10. to request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
11. to take any other action necessary under the foregoing and authorized by the published rules and procedures of the Supreme Court; and
12. to, under appropriate circumstances, give credit and honor to any individual or entity committed to, by acts and deeds, the cause of justice and fairness.

Rule 101. Disqualification of Justices

See Rule 161.

Rule 102. Rights of parties generally—Copies submitted

Any party shall have the right to appear at hearings and/or trials in person, by counsel, or by other representative, to call, examine and cross-examine witnesses, and to introduce into the record documentary or other evidence, except that the participation of any party shall be limited to the extent permitted by the Justice; and provided further, that documentary evidence shall be submitted in triplicate if the matter is a hearing and quintuplicate if the matter is a trial. An unrepresented party shall have the right to have an unpaid lay person assist such party in any proceeding before the Supreme Court on such terms and conditions as may be deemed appropriate.

Rule 103. Applicability of Federal Rules of Evidence and Federal Rules of Civil Procedure

All proceedings hereunder shall be conducted in accordance with the Court's rules herein. In the event these rules are incomplete in evidentiary and/or civil procedure issues then the Court may look to the Federal Rules of Evidence and Federal Rules of Civil Procedure for guidance.

Rule 104. Admissibility of stipulations of fact

In any proceeding, stipulations of fact may be introduced in evidence with respect to any issue.

Rule 105. Objections to conduct of hearing and/or trial

Any objection with respect to the conduct of a hearing and/or trial, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing and/or trial.

Rule 106. Opportunity for oral argument—Filings of briefs and proposed findings

Any party may be entitled, upon request, to a reasonable period at the close of the proceeding for oral argument, which shall be included upon request in the stenographic report of the proceeding. Any party may be entitled, upon request made before the close of the proceeding, to file a brief or proposed findings and conclusions, or both, with the Court who may fix a reasonable time for such filing, but not to exceed thirty-five (35) days from the close of the proceeding.

Rule 107. Continuances and adjournments

In the discretion of the Chief Justice or the presiding Justice, the proceeding may be continued from day to day, or adjourned to a later date, by announcement thereof at the proceeding, or by other appropriate notice.

Rule 108. Penalties for misconduct at any proceeding before a Justice

A. Misconduct at any proceeding before a Justice of the Supreme Court shall be grounds for summary exclusion from the proceeding.

B. Such misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment by the Supreme Court from further practice before it after due notice and hearing.

C. The refusal of a witness at any such proceeding to answer any question which has been ruled proper shall, in the discretion of the Justice, be grounds for striking all testimony previously given by such witness on related matters and such witness shall be in direct contempt of Court.

Rule 109. Reserved

XIII. JUDGMENTS

Rule 110. Procedure for obtaining, entering, enforcement and collection of judgments

The procedure for obtaining, entering, enforcement and collection of judgments set forth in the Federal Rules of Civil Procedure and in the rules and statutes of the State of Oklahoma shall apply to the obtaining, entering, enforcement and collection of judgments of the District Court and Supreme Court of Cherokee Nation.

Rule 111. Full faith and credit

The Courts of Cherokee Nation shall give full faith and credit to judgments entered by the State of Oklahoma. Likewise, the State of Oklahoma gives full faith and credit to judgments entered by the Courts of Cherokee Nation.

Rule 112. Recognition of other sovereign judgments—Full faith and credit

The Supreme Court of Cherokee Nation shall grant full faith and credit and cause to be enforced to any sovereign judgment, where the sovereign that issued the judgment grants reciprocity to judgments of the Supreme Court of Cherokee Nation.

1. Listing of sovereigns granting reciprocity—A list of the sovereigns that grant full faith and credit to the Courts of Cherokee Nation of Oklahoma shall be maintained by the Court Clerk of the Supreme Court. Any sovereign may provide the Court Clerk a copy of the ordinance, statute, court rule or other evidence that demonstrates that the sovereign grants reciprocity to the Supreme Court.

2. Filing of judgments—A copy of any judgment may be filed in the office of the Court Clerk. The Court Clerk shall treat the judgment in the same manner as a judgment of the Supreme Court which may be enforced or satisfied as deemed proper.

3. Notice of filing—At the time of filing of the judgment with the Court Clerk, the sovereign filing the judgment or the sovereign's attorney shall make and file with the Court Clerk an affidavit setting forth the name and last-known address of all parties in the action, including the name and last-known address of any party's attorney.

Promptly upon the filing of the judgment and the affidavit, the Court Clerk shall mail notice of the filing of the judgment to the party against whom the judgment was rendered at the address given and shall make a note of the mailing in the docket. The notice shall include the name and address of the party filing the judgment, and that party's attorney, if any. In addition, the party filing the judgment shall mail a notice of the filing of the judgment to the party against whom judgment was rendered and shall file an affidavit proving the mailing of the notice with the Court Clerk within ten (10) days of the date that the tribal judgment was filed with the Court Clerk. Failure of the Court Clerk to mail the notice of filing of the judgment shall not affect the enforcement proceedings if an affidavit proving the mailing of the notice has been filed by the party filing the judgment.

No execution or other process for enforcement of a tribal court judgment filed hereunder shall issue until the affidavit proving the mailing of the notice has been filed with the Court Clerk, and twenty (20) days have expired from the date the judgment was filed with the Court Clerk.

Rule 113. Declaratory judgments

A. Standing in a declaratory judgment action must be predicated on an interest that is direct, immediate and substantial.

B. An action for declaratory judgment shall not be invoked to try a disputed question of fact as a determinative issue.

C. An action for declaratory judgment shall not be invoked to determine political policy.

Rules 114 to 119. Reserved

XIV. ELECTION RECOUNT PROCEDURE

Rule 120. Supervision of recounts by Supreme Court

All recount elections shall be conducted under the supervision of the Supreme Court. Such supervision shall be to ensure that regulations developed by the Election Committee and approved by the Council are adhered to during the recount process.

Rules 121 to 129. Reserved

XV. ATTORNEYS

Rule 130. Eligibility

Any member in good standing of the bar of any state is eligible for admission to the bar of Cherokee Nation.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one (1) attorney of record in his or her name, with his or her Cherokee Nation Bar Association number, and his or her state bar association number.

Rule 131. Temporary admission

Any attorney who is eligible for admission to the bar of Cherokee Nation may, in the discretion of a Justice or District Court Judge, including an Associate District Court Judge, be granted temporary admission to practice in a pending case or proceeding before each judicial official. The judicial official presiding in such pending case or proceeding may, in his or her discretion, require presentment of a current certificate of good standing from the attorney's resident bar association prior to granting temporary admission. Any lawyer who seeks, and is granted, temporary admission thereby submits himself or herself to the jurisdiction of the Courts of Cherokee Nation, and the applicability of these rules, during the pendency of such case or proceeding for which it is granted.

Rule 132. Membership in Cherokee Nation Bar required to practice before Cherokee Nation Courts—Qualifications for membership

No person shall practice as an attorney and counselor-at-law in any Court of Cherokee Nation unless said person first obtains membership in the Cherokee Nation Bar Association. An attorney shall submit a certificate certifying the attorney's good standing from a state bar in which the attorney has been admitted. This Court may take into consideration the suspension or disbarment from practice in any other court of law. All members in good standing may be admitted upon making application and submitting themselves to the jurisdiction of Cherokee Nation Courts and subjecting themselves to the contempt powers of Cherokee Nation Courts. Annual dues may be charged for membership in the Cherokee Nation Bar. *5 CNCA § 1*

Rule 133. Oath required

Any person admitted to the Cherokee Nation Bar shall, before he is allowed to appear as an attorney in any court, agency or commission take the following oath:

"I do solemnly swear, that I will, to the best of my knowledge and ability, support and defend all causes that may be entrusted to my care, and that in so doing, I will be true to the Court and to the Constitution and laws of Cherokee Nation and subject myself to the contempt powers of Cherokee Nation Courts. So help me God." *5 CNCA § 2*

Rule 134. Removal of attorney

Any attorney practicing before Cherokee Nation Courts may be removed by the Supreme Court for any deceit, malpractice, or other gross misconduct, willful neglect of the interests of his client, or collusion with the opposite party, upon complaint and showing made to the Supreme Court by the aggrieved party, and upon due notification given to the accused of such charge; and the expenses of any inquiry, instituted by the Supreme Court in reference to the removal of any attorney shall be

borne by the party at whose instance the expense shall be incurred. *5 CNCA § 3.*

Rule 135. Granting special permission to appear before the Court

A. Any attorney, recognized as such under the laws of any other Indian nation or tribe, eligible for membership in the Cherokee Nation Bar, and in good standing where so recognized and admitted to practice law, may, on special occasions, be allowed, by permission of the Presiding Judge, to appear before any Courts of this Nation.

B. Any regularly-admitted practicing attorney in the courts of record of a state other than Oklahoma who has business in the Courts of this Nation may, on motion and at the discretion of the Judge presiding over the case, be admitted to practice before the Cherokee Nation Court for the purpose of said business only. Before practicing law in Cherokee Nation Courts, each specially admitted attorney must take the oath proscribed in Rule 133 of these Rules and must appear in the court with an attorney who is a resident of or who maintains a law office within the State of Oklahoma, duly and regularly admitted to the Oklahoma Bar Association upon whom service may be had in all matters connected with said action, with the same effect as if personally made on such foreign attorney. Specially admitted attorneys will be subject to the removal power provided in Rule 134 of these Rules. *5 CNCA § 4*

Rule 136. Choice of counsel

Parties may manage, prosecute, or defend their own suits, and by such counsel as they see fit to engage. *5 CNCA § 5*

Rule 137. Judge shall not appear as counsel

No Judge appointed under the authority of this Nation shall be allowed to appear as counsel or attorney and to practice law in the Courts of this Nation. *5 CNCA § 6*

Rule 138. Discipline by the Court

A. Any member of the bar of Cherokee Nation guilty of a violation of the prescribed oath of office, or of a violation of the Supreme Court Rules of Professional Conduct, or of any conduct unbecoming a member of the bar of Cherokee Nation, shall be subject to reprimand, suspension, disbarment or such other disciplinary action as the Supreme Court deems appropriate.

B. Discipline by Other Courts; Criminal Convictions. Whenever it appears to the Supreme Court that any member admitted to practice in the Courts of Cherokee Nation, including a lawyer granted temporary admission or admission for limited practice, has been suspended or disbarred from the practice of law by any other court of competent jurisdiction or has been convicted of a felony or any crime involving moral turpitude in any court, such disbarment, suspension, or conviction shall operate as an automatic disbarment of the attorney's right to practice in the courts of Cherokee Nation, and an order of disbarment shall be issued by the Supreme Court. The order of disbarment shall remain in effect unless, within thirty (30) days from the date of the order of disbarment, the

attorney has by motion to the Supreme Court shown good cause as to why disbarment should not be imposed.

Rule 139. Filing and processing of grievances

A. A grievance or request for investigation involving a lawyer or lay advocate shall be in writing and signed by the person filing the same. All proceedings concerning processing of grievances shall be confidential.

B. A grievance or request for investigation involving a lawyer or lay advocate shall be filed with the Office of the Attorney General for a preliminary investigation and determination of the validity of the grievance. The lawyer or lay advocate who is the subject of the grievance or request for investigation will be immediately notified of the receipt of a grievance and furnished a copy thereof.

C. In a matter involving lesser misconduct, which is defined as conduct not involving misappropriation of funds, dishonesty, deceit, fraud, misrepresentation, or serious crimes involving dishonesty or fitness, the Attorney General may resolve the grievance without publication.

D. If the Attorney General determines that a formal hearing is required to address the grievance, the Attorney General shall submit the evidence produced by the Attorney General's investigation to the District Court for certification of a formal complaint to the Supreme Court for adjudication. The District Court shall have the sole discretion, after review of the Attorney General's offer of evidence, to forward the grievance as a formal complaint before the Supreme Court.

E. The Attorney General shall prosecute the grievances submitted to the Supreme Court. The verified complaint shall set forth with specificity all facts alleging the misconduct. A copy of the complaint shall be personally served on the respondent from which the respondent shall have thirty (30) days to file a written response. In the event the respondent fails to answer, the charges shall be deemed admitted upon the submission of evidence for the purpose of discipline to be imposed. The disciplinary proceedings and evidentiary reception shall be governed by the Federal Rules of Civil Procedure so far as practicable. The charge or charges must be established by clear and convincing evidence and at least three (3) Justices must concur in the findings. The respondent may be represented by counsel.

F. All proceedings mentioned hereinabove may be reviewed by the Supreme Court upon a verified request of an aggrieved party.

XVI. LAY ADVOCATES

Rule 140. Lay advocates

Any lay person demonstrating experience or education in Indian Law and the laws of Cherokee Nation may be registered to practice before this Court upon filing with the Court Clerk of the Cherokee Nation, on a form prescribed by the Supreme Court, a written application for admission,

signed by the applicant.

Rule 141. Registry of lay advocates

Subject to all of the requirements set forth in these Rules and Procedures, the Lay Advocate Registry of Cherokee Nation shall consist of those lay advocates admitted to practice before the Courts of Cherokee Nation who have taken the oath prescribed in Rule 133 of these Rules and who have completed and signed the prescribed application for lay advocates.

Every pleading, motion and other paper of a party represented by a lay advocate shall be signed by the lay advocate of record in his or her name.

Rule 142. Procedure for admission

Every applicant to the Lay Advocate Registry shall file with the Court Clerk of the Cherokee Nation, on a lay advocate form prescribed by the Supreme Court, a written application for admission, signed by the applicant, which shall be referred immediately to the Chief Justice of the Supreme Court for investigation into the applicant's qualifications and fitness (per standards established in 5 CNCA § 1 et seq., and these Rules) to be registered to the Lay Advocate Registry of this Court. The Chief Justice shall report his recommendations in writing to all Justices. Upon a favorable report of the full Supreme Court, the applicant may be admitted.

Rule 143. Fees and dues

Every applicant shall pay to the Court Clerk of the Cherokee Nation a non-refundable fee of Ten Dollars (\$10.00). Annual dues shall be charged for membership to the Lay Advocate Registry.

Rule 144. Lay advocate withdrawal from case

In civil cases, lay advocates of record shall not withdraw from the case except by leave of the Justice or Judge to whom the case is assigned, upon reasonable notice to the client and all other parties who have appeared in the case. Withdrawal may be granted subject to the conditions stated by the presiding Justice or Judge, including the condition that subsequent papers may continue to be served upon the lay advocate for forwarding purposes or upon the Court Clerk of the Cherokee Nation, as the presiding Justice, or Judge, may direct, unless and until the client appears by another lay advocate, by counsel or pro se, and any notice to the client shall so state and any filed consent of the client shall so acknowledge.

Rule 145. Discipline by the Court

A. Any lay advocate registered with Cherokee Nation guilty of a violation of the prescribed oath of office, or of a violation of the Supreme Court Rules of Professional Conduct, or of any conduct unbecoming as a court advocate of Cherokee Nation, shall be subject to reprimand, suspension, losing privilege as a court advocate, or such other disciplinary action as the Supreme Court deems appropriate.

B. Sanctions. Discipline by the Supreme Court may include fine, loss of privilege as lay advocate, suspension from practice for a definite time, reprimand, or other discipline which the Supreme Court deems proper.

C. Unauthorized practice. Any person who before admission to practice as a lay advocate of Cherokee Nation or who during suspension or loss of privilege exercises any of the privileges bestowed upon members of the Lay Advocate Registry or who pretends to be entitled to such privileges shall be guilty of contempt of court and shall be subject to punishment and shall be subject to any other discipline which the Supreme Court may impose. Lay advocates shall not charge for their services.

Rule 146. Statement by litigant

Prior to a lay advocate accepting the obligation to represent a litigant before any Cherokee Nation Court, the litigant must submit a verified statement that he/she understands that the lay advocate is not a trained lawyer licensed to practice law as defined in these Rules, and, that the lay advocate cannot accept payment for his representation, and, that the litigant understands a lay advocate is held to the same standards of expertise as a trained, licensed lawyer and further can be subject to malpractice claims.

Rules 147 to 149. Reserved

XVII. ARBITRATORS

Rule 150. Workers' compensation disputes

A. Arbitration will be mandatory to all workers' compensation claims and will be conducted according to the provisions of this act. The Supreme Court shall be responsible for certifying those persons who are eligible and qualified to serve as arbitrators. An individual may be certified as an arbitrator by application to the Court. Qualified individuals will be a member of the Cherokee Nation bar, be trained in arbitration and the Cherokee Nation Uniform Arbitration Act, and practice or have practiced in workers' compensation law.

B. The Court Clerk of the Supreme Court shall maintain a list of potential arbitrators. The parties in the dispute shall select an arbitrator from this list. If the parties cannot agree to an arbitrator, the arbitrator will be determined by the Court Clerk by selecting the first arbitrator on the list. The list will be rotated when an arbitrator has been selected for arbitration by moving his or her name to the bottom of the list. The next arbitrator on the list will be moved to the top of the list to be selected for the next arbitration.

C. Arbitrators shall be required to complete at least six (6) hours of continuing education per two-(2) year period in the areas of arbitration or workers' compensation. Proof of compliance with this requirement shall be submitted to the Court Clerk of the Supreme Court.

D. If the dispute is agreed to by both parties and resolved, any final settlement of the action shall be completed upon the filing of a joint petition or an agreement between the employer and employee as to relation to injury and payment of compensation and pursuant to 12 CNCA § 1322.

E. Arbitration will be binding in workers' compensation disputes unless a motion made pursuant to 12 CNCA § 1323 or 12 CNCA § 1325 has been filed in the District Court.

Rules 151 to 159. Reserved

XVIII. MISCELLANEOUS JUDICIAL RULES

Rule 160. Judicial office

If a judicial office term expires prior to a successor being approved to take that office then the incumbent Justice shall hold over until a successor is duly qualified and takes the oath of office.

Rule 161. Disqualification of Justices

A. A Justice may be deemed disqualified in any case in which he or she has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his or her opinion, for him or her to sit during any proceeding therein.

B. Any party to a proceeding may request a Justice to withdraw on the grounds of personal bias or disqualification prior to any hearings in the proceedings. Before filing any motion to disqualify a Justice, an "in camera" request shall first be made to the Justice by the moving party seeking to disqualify the Justice. If such request is not satisfactorily resolved within a reasonable time from the time the oral request is made, the moving party may file a written motion with the Supreme Court containing an affidavit, which sets forth in detail the matters alleged to constitute grounds for disqualification. If the Justice does not withdraw from the proceedings, the Justice shall so rule and state the grounds for the ruling on the record and then proceed with the case. A majority of the Justices may review the request for recusal.

Rule 162. Superintendence over all Courts

The Supreme Court shall exercise a general superintendence over all Courts.

Rule 163. Chief Justice

The Chief Justice of the Supreme Court shall be a Justice who has two (2) remaining years left in his/her term of office and who has served on the Court for two (2) years prior to his/her taking office as Chief Justice. In the event no Justice qualifies hereunder then the Justice that has four (4) remaining years left in his/her term of office shall serve as Chief Justice. The Chief Justice term of office shall expire upon the expiration of his term of office as Justice.

Rule 164. Judicial Conference

A. The Chief Justice of Cherokee Nation shall summon annually the Courts of Cherokee Nation to conference.

B. The Chief Justice shall submit to the Council and Principal Chief an annual report of the proceedings of the Judicial Conference and recommendations for legislation at the annual Judicial Conference.

Rule 165. Judicial promulgation of rules and procedures

The Supreme Court shall promulgate additional rules and procedures to provide any remedy guaranteed by the Cherokee Nation Constitution in the event the Council has failed to prescribe procedures for such remedy and such rules and procedures shall remain in effect until the Council prescribes such procedures.

APPENDIX II TO TITLE 20

COURT RULES FOR THE DISTRICT COURT OF CHEROKEE NATION

I. PLEADINGS

II. COURTROOM DECORUM

III. COURT PROCEDURE—CRIMINAL CASES

IV. COURT PROCEDURE—GENERAL

V. DOCKETS

VI. ATTORNEY BOND PRIVILEGES

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XI. PETITION

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XV. PRETRIAL PROCESS

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XIX. ATTORNEYS

XX. LAY ADVOCATES

XXI. COURT PROCEDURE—GRIEVANCES

XXII. RULES TO BE LIBERALLY CONSTRUED, AMENDMENT AND RESCISSION OF RULES

I. PLEADINGS

Rule 1. Initial pleadings

All initial pleadings must include a certification by the attorney which demonstrates the subject matter jurisdiction of the Court. All pleadings shall be filed with the Court Clerk of the District Court, P.O. Box 1097, Tahlequah, Oklahoma 74465. The offices of the District Court of Cherokee Nation are at the Cherokee Nation Courthouse, Cherokee Capitol Square, 101 South Muskogee Avenue, Tahlequah, Oklahoma.

Rule 2. Requirement of filing fees

The petitioner must pay the required filing fee of Seventy-Five Dollars (\$75.00) for the Civil Petition Filing, or Fifty Dollars (\$50.00) for a Landlord/Tenant Petition, Guardian Petition, Adoption Petition, Name Change Petition, Garnishment, or Foreign Judgment. Payments can be made in the form of cash, check, or money order payable to the Court. An Application for Waiver of Fee—Pauper's Affidavit can be completed and submitted to the Court Administrator for approval.

Rule 3. Use of fax/e-mail

1. Fax

a. Parties may file affidavits, pleadings, motions and other documents by use of fax transmission

for documents of ten (10) pages or less.

b. The fax must include a transmittal/cover sheet reflecting the sending party's name, address, bar number, phone number, fax number, case name and case number. The fax number for the Cherokee Nation District Court is (918) 458-9572.

c. The faxed document, which must bear a facsimile of the required signature, will be accepted as an "original" document.

2. E-mail

a. A document permitted to be filed by e-mail pursuant to these rules shall be sent to the Court Clerk of the District Court using the following e-mail address: kristi-moncooyea@cherokee.org. Documents sent to any other e-mail address of the District Court shall not be considered for filing under any circumstances.

b. The e-mail must reflect the sending party's name, address, bar number, phone number, e-mail address, case name and case number.

c. A document permitted to be filed by e-mail shall be submitted as a PDF file (Portable Document Format).

d. A document that may be filed by e-mail pursuant to these rules shall include a scanned version of the person's original signature or a signature line with a backslash followed by an "s" followed by the person's name in print (e.g., /s/ "John T. Smith").

3. Documents transmitted by fax or e-mail pursuant to these rules and received on a Saturday, Sunday, or other day on which the Clerk's Office is closed to the public, or after 4:30 p.m. on a business day, shall be considered for filing on the next business day. The time of receipt of a document is the timestamp provided by the District Court's e-mail/fax system, the timestamp provided by any other computer/fax system shall not alter the time of receipt and effect this rule.

4. All risks associated with fax/e-mail filing are borne by the sender (e.g., Court's phone/computer system being out of order, the receiving fax machine running out of paper, etc.).

5. Any document filed by fax/e-mail must also be served concurrently by fax, e-mail, hand-delivery or mail on all other parties to the appeal, and the faxed/e-mailed document must contain a certificate of service attesting to such service and that the document was initially filed with the Court via fax/e-mail. The time for filing a response to a document filed by fax/e-mail runs from the date the document was received by the Court pursuant to subdivision 3 of this rule.

6. The Clerk may reject documents that are not clearly legible or that fail to comply with these requirements.

Rule 4. Court files not to be removed

Original papers on file in the Court Clerk's office shall not be removed from the Clerk's office without a written order signed by a Judge, except the Clerk or the Clerk's deputies may bring them to the courtrooms to be used by the Court officials, the parties and their attorneys, for the purposes of trial, and they shall then be returned to the Clerk's office. An attorney of record in the case or Official Reporter may take the Court files from the Clerk's office or from the Clerk or Deputy Clerk for official use, but must give the Clerk a written receipt for them and return them to the Clerk's office within forty-eight (48) hours, excluding days when Court is not in session. Criminal case files should not be removed from the custody of the Court Clerk except upon order of the Court.

Rule 5. Exhibits

No exhibit offered or admitted in evidence shall be removed from the courtroom or from the custody of the Court Clerk or Court Reporter, as the case may be, without permission of the Judge and a written receipt shall be taken from the person receiving it.

Rules 6 to 9. Reserved

II. COURTROOM DECORUM

Rule 10. Use of courtrooms

The use of tobacco, beverages, food or candy, pagers and/or cell phones, by anyone, at any time, in any of the District courtrooms, is forbidden. All persons are forbidden to scratch, alter, spit on or deface in any manner, by any means, any of the furniture, equipment, floors, walls, or ceilings of the courtrooms.

Rule 11. Photographs, broadcasting and televising of judicial proceedings

The following rules governing the taking of photographs, the broadcasting and televising of judicial proceedings in the Courthouse are hereby promulgated:

Except as expressly permitted by the individual Judge the use of cameras, television and other broadcasting equipment is prohibited:

1. inside a courtroom;
2. in the immediate vicinity of a courtroom, including the hallways.

The use of cameras, television and broadcasting equipment is not prohibited in other areas of the Courthouse, provided, that media representatives exercise diligence to insure that such equipment, and the use thereof, does not interfere with the session of any proceeding being covered or with any proceeding in a courtroom adjacent to the proceeding being covered.

Notwithstanding the above and foregoing rules, the Presiding Judge or an individual Judge, may promulgate special rules governing the use of cameras, television and broadcasting equipment to remain in force and effect for any specific proceeding or event.

The purpose of this directive is to insure that Courtroom proceedings be conducted at all time with dignity and in a manner calculated to avoid the disruption of order and decorum which the judicial process demands.

It should be emphasized that the representatives of the news media are expected to conduct themselves at all times in a professional manner consistent with the spirit and intent of this directive. In order to insure such conduct, in the event conduct of the news media is brought to the attention of any Judge which is violative of the foregoing rules, the offending person shall be immediately notified to cease and desist such activity. If the offending party refuses to comply with such order, then the Judge may immediately command official personnel to take affirmative action causing cessation of such activity, including the seizure of the equipment of such person. Any offender may be dealt with for contempt of court.

This directive does not tend to prohibit any Judge from giving photographic or broadcasting interviews with any television or radio station or to be photographed in any manner in chambers, and any Judge may permit broadcasting, televising, recording or photographing of investigative, ceremonial proceedings or any moot court trial use for education or scientific purpose.

Rule 12. Courtroom conduct

The following is requested of counsel for proper courtroom conduct:

1. Arguments shall be addressed to the Court and not to opposing counsel.
2. Stand when talking to the Court or when addressed by the Court.
3. When examining a witness, stand or sit where the Court, witness, jury and reporter can hear you.
4. Do not sit on counsel table.
5. Cell phones and pagers are to be turned off while in the courtroom.
6. Do not read newspapers in the courtroom.
7. Do not take files, pleadings, or papers away from the Court Clerk's desk or exhibits from the Court Reporter unless you obtain permission to do so.
8. When your business in Court is finished, depart from the courtroom quietly if you wish to retire. Do not hold conferences in the courtroom with your client when Court is in session.
9. Advise your clients as to the impropriety of discussing pending matters in the courtroom.

10. Your conduct in the courtroom as a member of the Bar demonstrates your respect for the administration of justice.

Rules 13 to 19. Reserved

III. COURT PROCEDURE—CRIMINAL CASES

Rule 20. Initial appearances and bond setting—Telephone

The District Court may conduct initial appearances and bond settings by telephone hearing. The hearing may consist of the Court Clerk, the District Court Judge, the defendant, and the prosecutor in attendance by conference call or speakerphone at two or more telephones. Each person shall be able to speak and hear the conversations of each of the others.

Rule 21. District Court arraignments: Continuances

Trial arraignments shall be held only on the day, and at the time designated by each Judge. Counsel shall be prepared at the time of the trial arraignment to assist the Court in setting the trial date to avoid conflicts with prior commitments of counsel.

Rule 22. Notification of entry of appearance of private counsel in criminal cases

In criminal cases in which private counsel accepts employment to represent a client who is represented by the Public Defender's Office, written notice of such entry or appearance shall be given immediately to the Court and to the Public Defender's Office.

Rule 23. Withdrawal of counsel in criminal cases

In any case, regularly set for trial, any application for permission to withdraw as counsel for a defendant or to seek continuance of the trial date, must be presented to the Trial Judge at least ten (10) days before the date on which the case is set for trial.

Rule 24. Expunge order

The following procedure shall be followed by the Court Clerk upon receipt of an Expunge Order in criminal cases wherein a defendant has received a deferred sentence and the prior pleas of guilty (or nolo contendere) are being ordered expunged from the records:

The order of probation and the Expunge Order on pleas of guilty (or nolo contendere) shall be removed from the case file and retained together with a copy of the docket sheet in a separate confidential file.

All reference to the defendant's plea of guilty (or nolo contendere) shall then be deleted from the docket sheet, leaving only the references to the dismissal of the case.

No information concerning the confidential files shall be revealed except upon a written order of a District or Associate District Judge.

Rule 25. Transcripts in criminal cases

The delivery of transcripts in criminal cases where the fee for making the transcript is paid in the first instance by Cherokee Nation or by a defendant shall be as follows: A transcript of the Court Reporter's notes, upon request and for the use of an indigent defendant or a prosecuting attorney, may not be charged to the court fund unless, before its preparation, the cost to be incurred was authorized by written judicial order.

When a Judge authorizes or orders a transcript of the Court Reporter's notes of any proceeding to be prepared at the expense of the Court Fund, or where a Prosecuting Attorney orders such a transcript at public or Court Fund expense and the accused as an indigent is constitutionally entitled to a free copy of the transcript, a Reporter shall prepare an original and two (2) copies of the transcript so ordered and file it with the Clerk of the Trial Court. The Court Reporter shall immediately notify the Prosecuting Attorney and the defendant of the date the transcript was filed. The Prosecuting Attorney and the defendant shall have access to the copies of the transcript on such terms as the Trial Court may impose. The Chief Judge may prescribe rules for access to or disposition of the copies of the transcript. In addition to the copies which are required to be filed as set forth above, a party who desires a copy shall be furnished a copy by the Court Reporter upon payment of the costs for that copy by said party.

Rule 26. Public Defender—Duties

Each month the Public Defender shall examine into the causes for confinement of any and all persons detained in the Penal Institution, and report, briefly, the facts of such examination to the Judge and Prosecutor, in writing, on or before the fifteenth (15th) day of each month. An original of said report shall be filed in the Office of the Court Clerk for reference by any properly authorized person as an official record.

Rules 27 to 29. Reserved

IV. COURT PROCEDURE—GENERAL

Rule 30. Voir dire examination

The Judge shall initiate the voir dire examination of jurors by identifying the parties and their respective counsel. The Judge may outline the nature of the case, the issues of fact and law to be tried, and may then put to the jurors any questions regarding their qualifications to serve as jurors in the cause on trial. The parties or their attorneys shall be allowed a reasonable opportunity to supplement such examination. Counsel shall scrupulously guard against injecting any argument in their voir dire examination and shall refrain from asking a juror how he or she would decide hypothetical questions involving law or facts. Counsel shall avoid repetition, shall not call jurors

by their first names or indulge in other familiarities with individual jurors, and shall be fair to the Court and opposing counsel.

Rule 31. Uniformity of rulings

When a question of law, fact or procedure has been presented to a Judge, the same question, so far as it relates to the same case, shall not thereafter knowingly be presented to another Judge sitting in the District without apprising the subsequent Judge of the former Judge's ruling or, if no ruling has been made, that such question has already been presented to the first Judge. When this rule has been violated, an order that is issued by the second Judge may be vacated at any time before the entry of a final judgment.

Rule 32. Vacation of final judgments

A. In any proceeding to vacate, modify or reopen a final judgment that is commenced more than thirty (30) days after its rendition, (1) proceeding by motion instead of by petition or by petition instead of by motion, or (2) failure to verify the petition, or (3) incorrect service of process or the required notice is waived if the opposing party appears in the proceeding but does not immediately object thereto; and such defects are waived by any party in default who had actual notice of the proceeding.

B. In any proceeding to vacate, modify or reopen a judgment, whether by a motion, petition or application, jurisdictional grounds are not waived by being joined with non-jurisdictional grounds in the motion, petition or application or by raising non-jurisdictional defenses in an accompanying pleading.

Rule 33. Matters taken under advisement

In any matter taken under advisement, a decision shall be rendered within sixty (60) days of the date on which the matter was taken under advisement or, if briefs are to be submitted, within sixty (60) days of the date of the filing of the final brief.

When a Trial Court takes a matter under advisement, the Judge shall specify the date by which a decision shall be rendered. If briefs are to be submitted the dates for filing such shall also be specified.

The Chief Judge may extend the deadline for a decision upon sworn application for an extension of time of the Trial Judge setting forth with specificity the reasons therefor.

Upon entering and filing the decision with the Court Clerk, it shall be the duty of the Judge to see that copies of the minute order or judgment setting out such decision are delivered or mailed by the Court Clerk to counsel in the case and to any party appearing pro se. The time to appeal from a decision rendered in absentia runs from the day its copy is mailed or personally delivered to the parties.

Rule 34. Jury sessions—Motion and demurrer sessions—When and how held—Jury terms

Jury sessions of the District Court may be held at any time upon order of the Judge. A session for the hearing and disposition of at least once every thirty (30) days, and any motion or demurrer that has been on file for at least five (5) days shall be placed on the docket. The date or dates of regular sessions for the hearing of motions and demurrers shall be fixed by any of the Judges of the District Court unless the District Judges shall prescribe otherwise provided that a Judge may hear any matter in any case assigned to him more frequently than provided herein.

The Presiding Judge shall be in charge of the jury panel and shall excuse and discharge those jurors not engaged when their services are no longer required.

Jurors shall be summoned to appear for jury terms of one (1) week duration.

Rules 35 to 39. Reserved

V. DOCKETS

Rule 40. Time of hearing—Set certain

Court dockets are held on the first Wednesday, first, second and third Friday of each month. On the first Wednesday and third Friday, adoptions and juvenile matters are held beginning at 9:00 a.m.; criminal and civil matters begin at 10:00 a.m. On the first and second Friday, adoptions and juvenile matters are held beginning at 10:00 a.m.; criminal and civil matters begin at 11:00 a.m. Judges at their discretion may alter the times of certain hearings in the economy of justice.

Rule 41. Citation docket

There shall be a Judge assigned to be responsible for the docket concerning all citations issued pursuant to the following procedures and rules:

The peace officer shall set all citations and promises to appear at the Cherokee Nation Courthouse, Cherokee Nation Capitol Square, 101 S. Muskogee Ave., Tahlequah, Oklahoma. Citations may be disposed of pursuant to 22 CNCA § 1115 et seq.

All cases in which the defendant enters a plea of not guilty at arraignment will be set on a monthly disposition docket. At the calling of the disposition docket, the defendant will have the following alternatives:

1. enter a plea of guilty or a plea of nolo contendere, subject to the approval of the Court, and be sentenced immediately;
2. waive right to trial and have the case set for sentencing on a date certain; or
3. have the case set for trial on a date certain.

No continuances will be granted except by the Court and for good cause shown.

Where a bench warrant has been issued for defendant because of non-appearance, that defendant must thereafter post bond before release, and no attorney's affidavit will be accepted in such events, except for good cause shown at the discretion of the Court. Bench warrants issued for failure to pay costs, fees, fines, etc. may be satisfied by payment of the obligation to the Court Clerk. In that event, the bench warrant may be recalled without incarceration of the defendant or the defendant may be released from custody without the necessity of being brought personally before the Court.

Pleas of guilty to traffic tickets may be entered before the Court Clerk in person or by mail in accordance with 22 CNCA § 1115, in all cases except the following:

- a. driving while under the influence of intoxicating liquor or drugs;
- b. being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs;
- c. driving with a blood-breath alcohol concentrate of 0.08 or more;
- d. leaving the scene of an accident;
- e. driving without a license or while license is suspended or revoked;
- f. reckless driving;
- g. any other charge filed because of a motor vehicle accident in which personal injury or death occurred; or
- h. crimes which if committed under the laws of Oklahoma would be a felony.

The fines, including court costs, imposed upon a plea of guilty entered before the Court Clerk shall be as provided in by order of the District Court.

Any person violating the provisions of 47 CNCA § 10, 47 CNCA § 11, 47 CNCA § 12, 47 CNCA § 13, 47 CNCA § 14 or 47 CNCA § 16, where a jail sentence is not mandatory, may in the discretion of the Prosecutor and subject to the approval of the Court, be permitted to enter a plea of guilty by written statement by the person charged to be presented to the Court.

Except as provided in paragraphs (g) and (h) above, all pleas of guilty must be made orally by the defendant before the Court.

Rules 42 to 49. Reserved

VI. ATTORNEY BOND PRIVILEGES

Rule 50. Procedures concerning release of defendants upon attorney's Affidavit of Responsibility for Court Appearance of Client (O.R. system)

The privilege of having defendants released upon their attorney's Affidavit of Responsibility for Court Appearance is hereby given to all attorneys who are members of the Cherokee Bar Association, under the following terms and conditions:

1. That said privilege shall apply only to defendants arrested for crimes which are misdemeanors;
2. That the defendant involved shall never have been convicted of a felony or convicted of an offense involving dishonesty;
3. That the defendant is a resident of Cherokee Nation;
4. That the attorney involved signs an affidavit that personally holds the attorney responsible to the Court for the appearance of said defendant at all proceedings until final disposition has been made of the case to the satisfaction of the Court;
5. That the Court Clerk shall have the duty of administering the procedures of the O.R. system;
6. That the Court Clerk shall maintain a list of eligible members having the O.R. privilege;
7. That no attorney shall be allowed O.R. privileges who has previously executed an attorney's Affidavit of Responsibility for Court Appearance of a client, and that said client did not appear at any proceedings required, the same which resulted in a Bench Warrant being issued for the said defendant and outstanding, unless the Court Clerk has, upon hearing, reinstated said attorney with O.R. privileges;
8. That the Clerk of said Court shall give written notice to attorneys of revocation of their O.R. privileges.

Rules 51 to 59. Reserved

VII. DISQUALIFICATION OF JUDGES

Rule 60. Disqualification of Judges in civil and criminal cases

Before filing any motion to disqualify a Judge, an "in camera" request shall first be made to the Judge to disqualify or to transfer the cause to another Judge. If such request is not satisfactorily resolved, not less than ten (10) days before the case is set for trial, a written motion to disqualify a Judge or to transfer a cause to another Judge may be filed and a copy delivered to the Judge.

Any interested party who deems himself aggrieved by the refusal of a Judge to grant a motion to

disqualify or transfer a cause to another Judge may petition the Supreme Court within five (5) days from the date of said refusal by a written request for rehearing. A copy of the request shall be mailed or delivered to the Chief Justice of the Supreme Court, to the adverse party and to the Judge who entered the original order.

An original proceeding in mandamus to disqualify a Judge in a civil action or proceeding shall be brought before the Supreme Court.

Rule 61. Disqualification of Trial Judge

No Judge of any Court shall sit in any cause or proceeding in which the Judge may be interested, or in the result of which the Judge may be interested, or when the Judge is related to any party to said cause within the fourth degree of consanguinity or affinity, or in which the Judge has been of counsel for either side, or in which is called in question the validity of any judgment or proceeding in which the Judge was of counsel or interested, or the validity of any instrument or paper prepared or signed by the Judge as counselor or attorney, without the consent of the parties to said action entered of record.

No Judge of any Court shall sit in any contested civil cause or proceeding that is related to any attorney of record in such cause within the third degree of consanguinity or affinity without the consent of the parties in such cause or proceeding who have entered a formal appearance of record. This disqualification shall not apply when an appearance is made by a party for the purpose of disclaiming any interest in such action or proceeding or waiving the right to appear and contest such cause or proceeding.

No Judge of any Court shall sit in the trial or hearing of any criminal cause or proceeding if the Judge is related to any attorney of record in such cause within the third degree of consanguinity or affinity without the consent of the parties who have made an appearance in such cause or proceeding entered of record. This disqualification shall not apply to arraignments, the fixing of bail, or the acceptance of pleas.

"Attorney of record" as used in this rule shall include not only the attorney actually appearing in such action but any other attorney who is an associate or a member of a partnership or professional corporation with such appearing attorney. However, **"attorney of record"** as the term relates to the Prosecuting Attorney and Public Defender's Office shall mean only that attorney actually appearing in the cause or proceeding.

The disqualifications provided for in this rule shall not exclude the disqualifications at common law.

Rule 62. Disqualification of Judge, claim of mandamus

Any party to any cause pending in a court of record may in term time or in vacation file a written application with the Clerk of the Court, setting forth the grounds or facts upon which the claim is made that the Judge is disqualified, and request said Judge so to certify, after reasonable notice to

the other side, same to be presented to such Judge, and upon failure so to do within three (3) days before said cause is set for trial, application may be made to the proper tribunal for mandamus requiring him so to do.

Rules 63 to 69. Reserved

VIII. CONTEMPT

Rule 70. Direct contempt

Power of the Court. The Court has the power to punish any contempt in order to protect the rights of the parties and the interests of the public by assuring that the administration of justice shall not be thwarted. The Trial Judge has the power to cite and if necessary punish summarily anyone who, in open court, willfully obstructs the court or judicial proceedings after an opportunity to be heard has been afforded.

Admonition and warning. No sanction other than censure should be imposed by the Trial Judge unless (i) it is clear from the identity of the offender and the character of the acts that disruptive conduct was willfully contemptuous, or (ii) the conduct warranting the sanction was preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

Notice of intent to use contempt power; postponement of adjudication. The Trial Judge should as soon as practicable after the Judge is satisfied that courtroom misconduct requires contempt proceedings, inform the alleged offender of the intention to institute such.

The Trial Judge should consider the advisability of deferring adjudication of contempt or courtroom misconduct of a defendant, an attorney or a witness until after the trial, and should defer such a proceeding unless prompt punishment is imperative.

Notice of charges and opportunity to be heard. Before imposing any punishment for contempt, the Judge should give the offender notice of the charges and at least a summary opportunity to adduce evidence or argument relevant to guilt or punishment.

Referral to another Judge. The Judge before whom courtroom misconduct occurs may impose appropriate sanctions, including punishment for contempt, but should refer the matter to another Judge, if his conduct was so integrated with the contempt that the Judge contributed to it or was otherwise involved, or objectivity can reasonably be questioned.

Rule 71. Indigent defendant in civil contempt action—Right to counsel—Attorney fees

In a civil contempt action which may result in the incarceration of a defendant who appears without counsel, the Court must inform the defendant that he or she has a right to counsel and that if the defendant is financially unable to employ counsel and desires such, the Court must assign counsel to represent the defendant. Only after receiving notice of this right, can the defendant

knowingly and intelligently waive the right to counsel. A defendant who desires counsel and can establish indigence under the normal standards for appointment of counsel in a criminal case, shall have an attorney appointed to represent him or her. The attorney shall represent the defendant until final disposition of the civil contempt action and shall receive compensation, payable from the Court Fund, in an amount set by the Trial Court.

Rules 72 to 79. Reserved

IX. COURT REPORTERS

Rule 80. Persons qualified for appointment as Court Reporter

Only the following persons may act and are eligible for employment on a full-time or part-time basis as official Court Reporters for the Courts:

Persons now certified or hereafter certified by the State Board of Examiners of Official Shorthand Reporters.

Rule 81. Duties of Reporter—Methods—Transcripts

The Court Reporter shall make a full reporting by means of stenographic hand, steno-mask or machine notes, or a combination thereof, of all proceedings, including the statements of counsel and the Court and the evidence, in trials and other judicial proceedings to which the Court Reporter is assigned by the appointing Judge unless excused by the Judge who is trying the case with the consent of the parties to the action. A refusal of the Court to permit or to require any statement to be taken down by the Court Reporter or transcribed after being taken down, upon the same being shown by affidavit or other direct and competent evidence, to the Supreme Court, shall constitute a denial of due process of law. The Court Reporter may use an electronic instrument as a supplementary device. In any trial, hearing or proceedings, the Judge before whom the matter is being heard may, unless objection is made by a party or counsel, order the proceedings electronically recorded. A trial or proceedings may proceed without the necessity of a Court Reporter being present, unless there is objection by a party or counsel. Provided that if an official transcript is ordered then it shall be prepared by the certified Court Reporter.

Upon request of either party in a civil or criminal case the Reporter shall transcribe the proceedings in a trial or other judicial proceeding, or so much thereof as may be requested by the party, certify to the correctness of the transcript, and deliver the same as the Court may prescribe. The fee for an original transcript shall be Five Dollars (\$5.00) per page. Two (2) copies of the original transcript shall be furnished without additional charge. A charge of Seventy-Five Dollars (\$75.00) per hour if not transcribed provided that this amount shall be deducted if transcription is requested at a later date. Mileage is set at the government rate. Each page shall be at least twenty-five (25) lines to the page and typed in ten-point pica type. Said page as mentioned herein shall be no more than double-spaced and the margin on the left side of the page shall be no more than one and one-half (1 1/2) inches and the margin on the right side of the page shall be no more than one-half (1/2) inch from the edge of the paper. The fees for making the transcript shall be paid in the first instance by

the party requesting the transcript and shall be taxed as costs in the suit.

When the Judge's own motion orders a transcript of the Reporter's notes, the Judge may direct the payment of charges therefor and the taxation of the charges as costs in such manner as may seem just. In a criminal action, if the defendant shall present to the Judge an affidavit that defendant intends in good faith to take an appeal in the case and that a transcript of the Reporter's notes is necessary to enable defendant to prosecute the appeal, and that the defendant does not have the means to pay for the transcript, the Court, upon finding that there is reasonable basis for the averment, shall order the transcript made at the expense of the District Court Fund. The format preparation, delivery and filing of transcripts to be used in civil and criminal appeals may be regulated by the Supreme Court.

The Court Reporter shall file records of the evidence and the proceedings taken in any case with the Clerk of the Court in which the case was tried.

To the extent that it does not substantially interfere with the Court Reporter's other official duties, the Judge by whom a reporter is employed or to whom assigned may assign a Reporter to secretarial or clerical duties arising out of official Court operations.

Rule 82. Transcripts—Access to copies—Costs

A transcript of the Court Reporter's notes, upon request and for the use of an indigent defendant or a Prosecutor, may not be charged to the Court Fund unless, before its preparation, the cost to be incurred was authorized by written judicial order.

When a Judge authorizes or orders a transcript of the Court Reporter's notes of any proceeding to be prepared at the expense of the Court Fund, or where a Prosecuting Attorney orders such a transcript at public or Court Fund expense and the accused as an indigent is constitutionally entitled to a free copy of the transcript, a Reporter shall prepare an original and two (2) copies of the transcript so ordered and file it with the Clerk of the Trial Court. The Court Reporter shall immediately notify the Prosecuting Attorney and the defendant of the date the transcript was filed. The prosecuting attorney and the defendant shall have access to the copies of the transcript on such terms as the Trial Court may impose. The Chief Judge may prescribe rules for access to or disposition of the copies of the transcript.

Rule 83. Admissibility of transcripts as evidence

Any transcript of notes, duly certified as correct by the Reporter who took the evidence, and filed with the Clerk of the Court in which the cause was tried, shall be admissible as evidence in all cases, of like force and effect, as testimony taken in the cause by deposition, and subject to the same objection, a transcript of said notes may be incorporated into any appellate record. If any Reporter ceases to be the official Reporter of the Court, and thereafter makes a transcript of the notes while acting as official Reporter, the Court Reporter shall swear to the transcript as true and correct and when so verified, the transcript shall have the same force and effect as if certified while an official Reporter.

Rules 84 to 89. Reserved

X. COURT FUND

Rule 90. Deposit of fees, fines and forfeitures in the Court Fund—Uses—Agent of Fund—Bond

All fees, fines and forfeitures shall, when collected by the Court Clerk, be designated as an account in the Cherokee Nation Treasury designated "The Court Fund", and shall be used, from year to year, in defraying the expenses of holding Court.

Rule 91. Claims allowable—Approval

Claims against the Court Fund shall include only such expenses as may be lawfully incurred for the operation of the Court. Payment of the expenses may be made after the claim therefor is approved by the Court Administrator.

The term "**expenses**" shall include the following items and none other:

1. compensation of staff;
2. juror and witness fees and mileage, as well as overnight accommodations and food expense for jurors kept together as well as compensation to a witness for attendance as set out in legislation as created by the Cherokee Nation Tribal Council, except that expert witnesses who appear on behalf of Cherokee Nation shall be paid a reasonable fee for their services from the Court Fund;
3. office supplies, books for records, postage and printing;
4. furniture, fixtures and equipment;
5. renovating, remodeling and maintenance of courtrooms, Judges' chambers, Clerks' offices and other areas primarily used for judicial functions;
6. judicial robes;
7. attorney fees for indigents in the Trial Court and on appeal;
8. transcripts ordered by the Court;
9. necessary telephone expenses, gas, water and electrical utilities for the part of the courthouse occupied by the Court;
10. the cost of publication notice in juvenile proceedings as provided in 10 CNCA § 1105 and in termination of parental rights proceedings brought by the Nation as provided in 10 CNCA § 1131;

11. interpreter fees; and
12. any other expenses now or hereafter expressly authorized by court rule and/or statute.

Rules 92 to 99. Reserved

XI. PETITION

Rule 100. Contents

Such petition, or charge, shall contain the following:

1. The full name, address, telephone number and fax number, if any, of the person filing the petition;
2. If the petition is filed on behalf of another person or organization, the full name, address, telephone number and fax number, if any, of the party or organization represented;
3. The full name, address, telephone number and fax number, if any, of the person against whom the charge is made (herein referred to as respondent);
4. A clear and concise statement of the facts, constituting the alleged claim, including the date, place and names of those parties involved in the alleged claim;
5. A clear and concise statement of the legal authority and jurisdiction under which the cause of action is being predicated.

Rule 101. Use of bar identification number

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his or her name, with a Cherokee Nation Bar Association number.

Rules 102 to 106. Reserved

XII. SERVICE OF PLEADINGS–DISMISSAL–FRIVOLOUS PLEADINGS

[Rule 107. Service–Dismissal–F frivolous pleadings]

After summons is issued, the original shall be returned and filed in the case with the Court Clerk. In those cases where the Court has issued contempt or restraining orders, or granted injunctive relief or in other extraordinary proceedings requiring personal notice to the party affected, the original order shall be filed with the Court Clerk after its issuance, and certified copies thereof shall be used for service on the parties.

If the Court (Judge or Court Clerk) has examined the court file and docket sheet of a case and determines that more than one-hundred eighty (180) days have elapsed without service being made on a named defendant, the Court may notify the plaintiff or plaintiff's attorney with notice to all parties or counsel of record to file a pleading to show cause why the action should not be dismissed as to that defendant. If good cause is not shown or response is not made, the Court may dismiss the case without prejudice.

If a pleading is found to be frivolous, the Court may, on its own motion or on the oral or written motion of the opposing party, tax costs in the case or a portion of the costs up to and including the frivolous pleading, against the party filing it. The Court may make subsequent orders to insure compliance with the Court's findings.

XIII. BRIEFS

[Rule 108. Briefs—Requirements]

Each brief shall be clearly styled to show whether it is in support of a motion, in opposition to a motion, or a reply brief, the particular application or proceeding to which it relates, and the party or parties on whose behalf it is presented.

All motions and applications and responses to them, including briefs if required, shall not exceed twenty (20) pages in length without prior permission of the Court. Reply briefs are permitted only by leave of Court by application stating the reason for filing a reply brief. No reply brief may exceed five (5) pages in length. No further briefs shall be filed without prior permission of the Court.

XIV. RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS

[Rule 109. Answers or objections to be preceded by interrogatory or request]

Each answer or objection to an interrogatory, request for admission, or request for production of documents shall be immediately preceded by the interrogatory or request to which response is being made.

XV. PRETRIAL PROCESS

Rule 110. Scheduling order

A scheduling order may be issued at the discretion of the District Court Judge. The Judge may enter a scheduling order for a time and date certain for the performance of the following duties and any other duties the Judge deems appropriate:

1. response or amended response of defendant;

2. reply, if any, of plaintiff;
3. mutual exchange of names of proposed witnesses and expected testimony;
4. mutual exchange of proposed exhibits and description of such exhibits;
5. filing of motions to join additional parties or to dismiss;
6. status conference report due;
7. status and simplification conference;
8. cut-off for amendments to pleadings;
9. settlement conference;
10. mutual exchange of authorities to be relied upon at trial and mutual exchange of trial briefs, if any;
11. final exchange of list of witnesses and exhibits;
12. cut-off for filing additional motions or responses to amended pleadings, if any;
13. discovery cut-off;
14. cut-off for filing responses to motions, if any;
15. pretrial conference report due;
16. pretrial conference;
17. disposition of pending motions; and
18. trial.

Rule 111. Pretrial order

Plaintiff's counsel shall initiate the preparation of the pretrial order by submitting a proposed pretrial order to opposing counsel no later than fifteen (15) days before the pretrial conference hearing. If plaintiff's counsel fails to do so, then at least ten (10) days before the pretrial conference hearing, defendant's counsel shall submit a proposed pretrial order to plaintiff's counsel. If plaintiff is pro se, the first named represented party shall initiate its preparation. Opposing counsel and pro se parties must cooperate with the preparing party in the completion of the pretrial order and shall return the completed pretrial order to opposing counsel no later than five (5) days before the pretrial hearing. In all cases in which Cherokee Nation is party, Cherokee Nation's counsel shall

have the duty of tendering the proposed pretrial order.

Rule 112. Purpose of the agreed pretrial order—Expectations and directions for parties

Purpose of the agreed pretrial order. The purpose of the agreed pretrial order is to condense all material information into one working document that will control the trial of the case.

Prior rulings. The agreed pretrial order must reflect the current status of the case and accurately reflect all prior rulings by the Court.

Unprofessional conduct. Failure of the plaintiff's attorney to timely initiate and/or failure of any attorney in the case to cooperate in timely preparation of the agreed pretrial order shall be deemed by the Court to be unprofessional conduct.

Good faith disputes. While all reasonable efforts should be made by counsel and litigants to timely agree on a pretrial order, if, following good faith effort, disputes still remain regarding factual and/or legal issues, such should be noted in the single pretrial order submitted for ultimate resolution by the Court.

No adoption of pleadings by reference. Counsel may not adopt pleadings and incorporate them into the pretrial order by reference.

Reservation of rights not allowed. No reservation of an asserted right to add additional witnesses or exhibits or to take additional discovery will be allowed in the agreed pretrial order.

Late exhibits. Late exhibits are those not listed in the agreed pretrial order. If late exhibits are discovered, the party desiring to offer them shall immediately mark them for identification and furnish copies to opposing counsel with a statement explaining their late production. If objected to, the sponsoring party must file a written motion requesting permission to supplement the exhibit list.

Late witnesses. Additional witnesses, listed after the witness exchange date, will be permitted to testify only if ordered to prevent manifest injustice and only then, if proper notice is given, under the facts and circumstances of the case, to the other party, and a written motion is immediately filed requesting permission to supplement the witness list.

Pro se litigants. Pro se litigants and opposing counsel should confer before a pretrial conference and be prepared to discuss at the conference significant disputes relative to issues of fact and law, exhibits, witnesses, evidence, in limine matters and all matters bearing on an expeditious settlement or trial of the case.

Pretrial conference. At the pretrial conference, the Court may take any appropriate action to insure a fair trial to all parties.

Demonstrative aids, exhibits and summaries. All demonstrative aids, exhibits and summaries

intended to be used for any purpose at trial shall be displayed to opposing counsel at least fourteen (14) days in advance of trial, unless a shorter time is allowed pursuant to the scheduling order.

Rule 113. Application to Withdraw and Order for Withdrawal

Upon application, counsel may request an Order for Withdrawal as Counsel. The application must state the reason for requesting the withdrawal and the status of the case.

Every order allowing withdrawal must contain:

1. the case's current status, including when hearings, if any, have been scheduled;
2. a certificate of mailing to the client showing the last known mailing address and to all other attorneys of record in the case; and
3. Whether new or substitute counsel has been obtained by the client and entered an appearance.

An Application to Withdraw will only be considered if submitted to the Judge at least twenty (20) days prior to a scheduled hearing or trial.

Rules 114 to 119. Reserved

XVI. MOTIONS

Rule 120. Place of Filing—Contents—Service on other parties—Time for filing of motions and responses thereto

All motions shall be filed in writing in the office of the District Court either in person, by mail or fax. All motions for summary judgment shall also be filed in writing in the office of the District Court either in person, by mail or fax. Unless otherwise provided in these rules or by order of the District Court, motions and responses thereto shall be filed promptly and within such time as not to delay the proceedings. Promptness and diligence are favored in all filings in the District Court.

Rule 121. Rulings on motions—Generally

The District Court Judge designated to conduct the hearing shall rule on all motions after the opening of the hearing, and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases, the Judge shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall rule on the matter in the decision.

Rule 122. Motions, rulings and orders to be part of the record

All motions, rulings and orders shall become a part of the record.

Rule 123. Motion to dismiss

The respondent may file a motion to dismiss at any time prior to the scheduling order or as permitted in the scheduling order, or move for dismissal at any hearing for:

1. lack of jurisdiction over subject matter;
2. lack of jurisdiction over persons;
3. insufficiency of process or service thereof;
4. failure of petitioner to state a claim upon which relief can be granted.

Rule 124. Motion for summary judgment

Either party may move for summary judgment by alleging that there is no genuine issue as to any material fact and by alleging that the moving party is entitled to judgment as a matter of law.

Rule 125. Filing of answer or other participation in proceedings not deemed a waiver of rights

The right to make motions or to make objections to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the District Court.

Rule 126. Intervention

Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. An unstapled original of written motions shall be filed. Immediately upon filing such motion, the moving party shall serve a copy on the other parties. The assigned Judge may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as deemed proper.

XVII. WITNESSES' FEES AND MILEAGE

Rule 127. Witness fees and mileage

Witnesses requested to appear before the District Court shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witnesses' fees and mileage shall be taxed against the party at whose instance the witness appears and the fees of persons taking the deposition shall be taxed against the party at whose instance the deposition is taken.

XVIII. REQUEST FOR JURY TRIAL

Rule 128. Request for jury trial

A request for a jury trial must be made with the pretrial order. No pretrial order will be filed without payment of the jury fees. Failure to post jury fees could result in the loss of a jury trial.

XIX. ATTORNEYS

Rule 129. Attorneys

Attorneys allowed to practice in the District Courts of Cherokee Nation are required to follow procedures codified by the Supreme Court of Cherokee Nation in Supreme Court Rules 130 to 138.

XX. LAY ADVOCATES

Rule 129A. Lay advocates

Lay advocates are allowed to practice in the courts of Cherokee Nation and shall be required to follow procedures codified by the Supreme Court of Cherokee Nation in Supreme Court Rules 140 to 145.

XXI. COURT PROCEDURE—GRIEVANCES

Rule 130. District Court shall review all requests for formal hearings

Pursuant to Supreme Court Rule 139, the District Court shall review all requests made by the Cherokee Nation Attorney General for certification for formal hearing of a grievance against an attorney or lay advocate before the Cherokee Nation Supreme Court.

Rule 131. District Court to determine jurisdiction for formal hearing

The District Court before certifying a grievance for formal hearing before the Cherokee Nation Supreme Court shall determine that the attorney or lay advocate is a member of the Cherokee Nation Bar Association and the subject matter of the grievance occurred within the jurisdiction of Cherokee Nation Courts.

Rule 132. Burden of proof—Clear and convincing evidence

The District Court before certifying a grievance for formal hearing before the Cherokee Nation Supreme Court shall determine that there is clear and convincing evidence in support of the Attorney General's request for a formal hearing.

XXII. RULES TO BE LIBERALLY CONSTRUED, AMENDMENT OR RESCISSION OF RULES

Rule 140. Rules to be liberally construed

The rules and procedures in this appendix shall be liberally construed to effectuate the purposes and provisions of the appendix.

Rule 141. Amendment or rescission of Rules

Any rule or procedure may be amended or rescinded by the Supreme Court of Cherokee Nation at any time; provided, however, any amendment or rescission of rules by the Supreme Court of Cherokee Nation must meet the requirements of 20 CNCA § 57(B) and (C).

TITLE 21

CRIMES AND PUNISHMENTS

PART I. IN GENERAL

PART II. CRIMES AGAINST PUBLIC JUSTICE

PART III. CRIMES AGAINST THE PERSON

PART IV. CRIMES AGAINST PUBLIC DECENCY AND MORALITY

PART V. CRIMES AGAINST PUBLIC HEALTH AND SAFETY

PART VI. CRIMES AGAINST PUBLIC PEACE

CHEROKEE NATION FIREARMS ACT OF 1971

PART VII. CRIMES AGAINST PROPERTY

PART VIII. CONTROLLED DANGEROUS SUBSTANCES

PART I

IN GENERAL

CHAPTER 1

PRELIMINARY PROVISIONS

§ 1. Title of code

This title shall be known and may be cited as the Penal Code of Cherokee Nation.

§ 2. Criminal acts are only those prescribed—"This code" defined

No act or omission shall be deemed criminal or punishable except as prescribed or authorized by this code. The words "**this code**" as used in the "penal code" shall be construed to mean "Cherokee Nation Code Annotated."

§ 3. Crime and public offense defined

A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, any of the following punishments:

1. Imprisonment;
2. Fine;
3. Removal from office;
4. Disqualification to hold and enjoy any office of honor, trust, or profit, under this Nation;
5. Restitution;
6. Community service; or
7. Victim compensation assessment.

§ 4. Crimes classified

All crimes or offenses are classified as "crimes."

§ 7. Objects of penal code

This title specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; and defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each. The manner of prosecuting and convicting criminals is regulated by the Code of Criminal Procedure, 22 CNCA.

§ 8. Conviction must precede punishment

The punishments prescribed by this title can be inflicted only upon a legal conviction in a court having jurisdiction.

§ 10. Punishment of crimes

Except in cases where a different punishment is prescribed by this title or by some existing

provisions of law, every offense declared to be a crime is punishable by the maximum punishment provided for by the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(7). The Court may not impose for conviction of any one (1) offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of Five Thousand Dollars (\$5,000.00) or both; except that the Court may subject a defendant to a term of imprisonment greater than one (1) year but not to exceed three (3) years for any one (1) offense, or a fine greater than Five Thousand Dollars (\$5,000.00) but not to exceed Fifteen Thousand Dollars (\$15,000.00), or both, if the defendant is a person accused of a criminal offense who (a) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or (b) is being prosecuted for an offense comparable to an offense that would be punishable by more than one (1) year of imprisonment if prosecuted by the United States or any of the states.

§ 10a. Punishment of crimes concerning public officials, appointed officials or department heads

Any elected official, appointed official or department head who is convicted of a crime concerning bribery, embezzlement, fraud, perjury, or forgery or larceny may in addition to the punishments provided under this title, be subject to the punishment of disqualification from employment with Cherokee Nation.

§ 11. Specific statutes in other titles as governing—Acts punishable in different ways—Acts not otherwise punishable by imprisonment

A. If there be in any other titles of the laws of this Nation a provision making any specific act or omission criminal and providing the punishment therefor, and there be in this penal code any provision or section making the same act or omission a criminal offense or prescribing the punishment therefor, that offense and the punishment thereof, shall be governed by the special provisions made in relation thereto, and not by the provisions of this penal code. But an act or omission which is made punishable in different ways by different provisions of this code may be punished under any of such provisions, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can it be punished under more than one section of law; and an acquittal or conviction and sentence under any one section of law, bars the prosecution for the same act or omission under any other section of law.

B. Provided, however, notwithstanding any provision of law to the contrary, any offense, including traffic offenses, in violation of the laws of this Nation which is not otherwise punishable by a term of imprisonment or confinement shall be punishable by a term of imprisonment not to exceed one day in the discretion of the Court, in addition to any fine prescribed by law.

CHAPTER 2

GENERAL PROVISIONS

MISCELLANEOUS PROVISIONS

ATTEMPTS

SENTENCE AND IMPRISONMENT

PERJURY ON EXAMINATION OF PRIVILEGED WITNESS

DEFINITIONS

OTHER REMEDIES AND PUNISHMENTS

FINES AND PENALTIES

CRIME VICTIMS COMPENSATION ACT

MISCELLANEOUS PROVISIONS

§ 21. Prohibited act a crime, when

Where the performance of an act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a crime.

§ 22. Gross injuries—Grossly disturbing peace—Openly outraging public decency—Injurious acts not expressly forbidden

Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency, and is injurious to public morals, although no punishment is expressly prescribed therefor by this code, is guilty of a crime.

§ 24. Acts punishable under foreign laws

An act or omission declared punishable by this title is not less so because it is also punishable under the laws of a state, another government or country, unless the contrary is expressly declared in this title.

§ 25. Foreign conviction or acquittal

Whenever it appears upon the trial that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of a state, another government or country, founded upon the act or omission in respect to which he is upon trial, this is a sufficient defense.

§ 26. Contempts, criminal acts which are also punishable as

A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

§ 27. Mitigation of punishment

Where it is made to appear at the time of passing sentence upon a person convicted, that such person has already paid a fine or suffered an imprisonment for the act which he stands convicted, under an order adjudging it a contempt, the Court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

§ 28. Aiding in a crime

Whenever an act is declared a crime, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act, is guilty of a crime, and punishable in the same manner as the principal offender.

§ 29. Sending letter—When complete—Place of prosecution

In the various cases in which the sending of a letter is made criminal by this title, the offense is deemed complete from the time when such letter is deposited in any post office or any other place, or delivered to any person with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it shall be received by the person to whom it is addressed.

§ 30. Failure to perform duty

No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

ATTEMPTS

§ 41. Conviction for attempt not permitted where crime is perpetrated

No person can be convicted of an attempt to commit a crime when it appears that the crime intended or attempted was perpetrated by such person in pursuance of such attempt.

§ 42. Attempts to commit crimes—Punishment

Every person who attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempt, as follows:

If the offense so attempted be punishable by imprisonment and or by a fine, the offender convicted of such attempt may be punished by both imprisonment and or fine, not exceeding one-half (1/2) the longest term of imprisonment and one-half (1/2) the largest fine which may be imposed upon a conviction for the offense so attempted.

§ 43. Unsuccessful attempt—Another crime committed

The last two sections do not protect a person who in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

§ 44. Attempt defined

A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

1. purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or
2. when causing a particular result in an element of the crime, does anything with the purpose of causing or with the belief that it will cause such result, without further conduct on his part.

§ 53. Attempt to conceal death of child—Punishment on subsequent conviction

Every person who, having endeavored to conceal the live birth of an child, or the death of any such child under the age of two (2) years, is guilty of a crime.

SENTENCE AND IMPRISONMENT

§ 61.1. Sentences to be served in order received by penal institution—Concurrent sentences

When any person is convicted of two or more crimes in the same proceeding or court or in different proceedings or courts, and the judgment and sentence for each conviction arrives at a Cherokee Nation penal institution on different dates, the sentence which is first received at the institution shall commence and be followed by those sentences which are subsequently received at the institution, in the order in which they are received by the institution, regardless of the order in which the judgments and sentences were rendered by the respective courts, unless a judgment and sentence provides that it is to run concurrently with another judgment and sentence.

§ 61.2. Sentences to run concurrent with federal or state court sentence

When a defendant is sentenced in a Cherokee Nation Court and is also under sentence from a federal court or a state court, the Court may direct that custody of the defendant be relinquished to the federal or state authorities and that such Nation Court sentence as is imposed may run concurrently with the federal or state sentence imposed.

§ 61.4. Suspended sentence—Revocation—Relinquishment of custody

When a defendant has received a suspended sentence from a Cherokee Nation Court and is also

under sentence from a federal court or a state court, the Court may revoke the suspended sentence and direct that custody of the defendant be relinquished to the federal or the state's authorities and that the sentence may run concurrently with the federal or the state's sentence which has been imposed.

§ 61.5. Return to Cherokee Nation to complete sentence

Provided, that, after a defendant has been transferred to another jurisdiction pursuant to the provisions of this title, if any sentence remains to be served in Cherokee Nation, such defendant shall be returned by the sentencing court to Cherokee Nation to complete his sentence.

§ 64. Fine, though not prescribed, may be added to imprisonment

Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the Court may impose a fine as provided in 25 U.S.C. § 1302(a)(7).

§ 65. Civil rights suspended

A sentence of imprisonment suspends all the civil rights of the person so sentenced, except the right to make employment contracts, during confinement under said sentence, subject to the approval of the Nation's Court, when this benefits the vocational training or release preparation of the prisoner, and forfeits all public offices.

§ 67. Person of convict protected

The person of a convict sentenced to imprisonment in the Cherokee Nation penal institution is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

§ 68. Conviction does not work forfeiture

No conviction of any person for crime works any forfeiture of any property, except in the cases of any outlawry for treason, and other cases in which a forfeiture is expressly imposed by law.

§ 69. Sentence—Transfer to Bureau of Prisons

The District Court, upon the request of the Marshal or the Attorney General, may refer any person sentenced to a term of imprisonment in the Nation to the Bureau of Prisons for transfer of he inmate to the nearest appropriate and available Bureau of Prisons facility.

PERJURY ON EXAMINATION OF PRIVILEGED WITNESS

§ 81. Testimony—Privilege of witnesses and perjury

The various sections of this title which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

DEFINITIONS

§ 91. Terms to have meanings specified unless different meaning appears

Wherever the terms mentioned in the following sections are employed in this title, they are deemed to be employed in the senses hereafter affixed to them, except where a different sense plainly appears.

§ 92. Willfully defined

The term "**willfully**" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

§ 93. Negligent—Negligence

The terms "**neglect**," "**negligence**," "**negligent**" and "**negligently**," when so employed, import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

§ 94. Corruptly

The term "**corruptly**" when so employed, imports a wrongful design to acquire some pecuniary or other advantage to the person guilty of the act or omission referred to.

§ 95. Malice—Maliciously

The terms "**malice**" and "**maliciously**," when so employed, import a wish to vex, annoy or injure another person, established either by proof or presumption of law.

§ 96. Knowingly

The term "**knowingly**," when so applied, imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

§ 97. Bribe

The term "**bribe**" signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking, asked, given or accepted, with a

corrupt intent to influence unlawfully the person to whom it is given, in his action, vote or opinion, in any public or official capacity.

§ 98. Vessel

The word "**vessel**," when used with reference to shipping, includes ships of all kinds, steamboats, and steamships, canal boats, and every structure adapted to be navigated from place to place.

§ 99. Peace officer

The term "**peace officer**" signifies any marshal, sheriff, law enforcement officer, highway patrolman, constable or policeman, and any other officers whose duty it is to enforce and preserve the public peace.

§ 100. Signature

The term "**signature**" includes any name, mark or sign, written with the intent to authenticate any instrument or writing.

§ 101. Writing includes printing

The term "**writing**" includes printing.

§ 102. Real property

The term "**real property**" includes every estate, interest and right in lands, tenements and hereditaments.

§ 103. Personal property

The term "**personal property**" includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments by which any pecuniary obligation, right or title to property, real or personal, is created or acknowledged, transferred, increased, defeated, discharged or diminished.

§ 104. Property defined

The term "**property**" includes both real and personal property.

§ 105. Person defined

The word "**person**" includes corporations, as well as natural persons who are subject to the jurisdiction of Cherokee Nation pursuant to federal law.

§ 106. Person as designating party whose property may be subject of offense

Where the term "**person**" is used in this Title to designate the party whose property may be the subject of any offense, it includes this Nation, any state, other government or country which may lawfully own any property within this Nation, and all public and private corporations or joint associations, as well as individuals.

§ 107. Singular includes plural

The singular number includes the plural, and the plural the singular.

§ 108. Gender

Words used in the masculine gender comprehend as well the feminine and neuter.

§ 109. Present tense

Words used in the present tense include the future, but exclude the past.

§ 110. Intent to defraud

Whenever, by any of the provisions of this title, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate whatever.

OTHER REMEDIES AND PUNISHMENTS

§ 131. Civil remedies not affected

The omission to specify or affirm in this title, any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

§ 132. Proceeding to impeach or remove

The omission to specify or affirm in this title, any ground of forfeiture of a public office or other trust or special authority conferred by law, to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

FINES AND PENALTIES

§ 141. Payment into Cherokee Nation

All fines, forfeitures and pecuniary penalties prescribed as a punishment by any of the provisions of this title, when collected, shall be paid to Cherokee Nation.

CRIME VICTIMS COMPENSATION ACT

§ 142.1. Intent of Cherokee Nation Council

It is the intent of the Cherokee Nation Council to provide a method of compensating and assisting those persons within the Nation who are victims of criminal acts and who suffer bodily injury or death. To this end, it is the further intent of the Council to provide compensation in the amount of expenses actually incurred as a direct result of the criminal acts of other persons.

§ 142.18. Victim compensation assessments

A. In addition to the imposition of any costs, penalties or fines imposed pursuant to law, any person convicted or pleading guilty to a crime involving criminally injurious conduct shall be ordered to pay a victim compensation assessment of at least Five Dollars (\$5.00), but not to exceed Five Thousand Dollars (\$5,000.00), for each crime for which he was convicted. In imposing this penalty, the Court shall consider factors such as the severity of the crime, the prior criminal record, and the ability of the defendant to pay, as well as the economic impact of the victim compensation assessment on the dependents of the defendant.

B. When a cash bond is posted for any offense included in this subsection, the bond shall also include a sufficient amount to cover the victim compensation assessment.

C. All monies collected pursuant to this section shall be deposited in the Victims Compensation Revolving Fund.

CHAPTER 3

PERSONS LIABLE TO PUNISHMENT

§ 151. Persons liable to punishment in Cherokee Nation

The following persons are liable to punishment under the laws of this Nation:

1. All persons who commit, in whole or in part, any crime within the Nation.
2. All who commit theft out of this Nation, and bring, or are found with the property stolen, in this Nation.
3. All who, being out of this Nation, abduct or kidnap, by force or fraud, any person contrary to the laws of the place where such act is committed, and bring, send, or convey such person within the limits of this Nation, and are afterward found therein.

4. And all who, being out of this Nation, cause or aid, advise or encourage, another person, causing an injury to any person or property within this Nation by means of any act or neglect which is declared criminal by this code, and who are afterward found within this Nation.

§ 152. Persons capable of committing crimes—Exceptions—Children—Idiots—Lunatics—Ignorance—Commission without consciousness—Involuntary subjection

All persons are capable of committing crimes, except those belonging to the following classes:

1. Children under the age of seven (7) years.
2. Children over the age of seven (7) years, but under the age of fourteen (14) years, in the absence of proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness.
3. Idiots.
4. Lunatics, insane persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.
5. Persons who committed the act, or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation.
6. Persons who committed the act charged without being conscious thereof.
7. Persons who committed the act, or make the omission charged, while under involuntary subjection to the power of superiors.

§ 153. Intoxication no defense

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition.

§ 154. Morbid propensity no defense

A morbid propensity to commit prohibited acts existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

§ 155. Subjection to superior exonerates

The involuntary subjection to the power of a superior which exonerates a person charged with a criminal act or omission from punishment therefor, arises from duress.

§ 156. Duress must be actual

The duress which excuses a person from punishment who has committed a prohibited act or omission must be an actual compulsion by use of force or fear.

CHAPTER 4

PARTIES TO CRIME

§ 171. Classification of parties

The parties to crimes are classified as:

1. Principals, and,
2. Accessories.

§ 172. Principals defined

All persons concerned in the commission of crime, and whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, are principals.

§ 173. Accessories defined

All persons who, after the commission of any crime, conceal or aid the offender, with knowledge that he has committed a crime, and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.

§ 175. Punishment of accessories

Except in cases where a different punishment is prescribed by law, an accessory to a crime is punishable as a principal.

CHAPTER 6

CRIMES AGAINST THE EXECUTIVE POWER

§ 264. Falsely assuming to be peace officers—Private persons may make arrests

Any person who shall without due authority exercise or attempt to exercise the functions of or hold himself out to any one as a deputy sheriff, marshal, policeman, constable or peace officer, shall be deemed guilty of a crime: Provided, however, that this section shall not be so construed as to prevent private persons from making arrests for crimes committed in their presence.

§ 265. Bribing or offering bribe to executive officer

Every person who gives or offers any bribe to any executive officer, with intent to influence him in respect to any act, decision, vote, opinion, or other proceedings of such officer, is guilty of a crime.

§ 266. Asking or receiving bribes

Every executive officer or person elected or appointed to executive office who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby, is guilty of a crime and in addition thereto, forfeits his office and is forever disqualified from holding any public office under the laws of the Nation.

§ 267. Preventing officer's performance of duty

Every person who attempts, by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by law, is guilty of a crime.

§ 268. Resisting executive officer

Every person who knowingly resists, by the use of force or violence, any executive officer in the performance of his duty, is guilty of a crime.

§ 269. Asking or receiving unauthorized reward for official act

Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, excepting such as may be authorized by law, for doing any official act, is guilty of a crime.

§ 270. Reward for omission to act, asking or receiving

Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a crime.

§ 278. Refusal to surrender books to successor

Every person who having been an executive officer of this Nation, wrongfully refuses to surrender the official seal or any of the books and papers appertaining to his office, to his successor, who has been duly elected or appointed, and has duly qualified, and has demanded the surrender of the books and papers of such office is guilty of a crime.

§ 279. Administrative officers included

The various provisions of this article which relate to executive officers apply in relation to

administrative officers in the same manner as if administrative and executive officer were both mentioned together.

CHAPTER 7

CRIMES AGAINST THE LEGISLATIVE POWER

§ 301. Preventing meetings of Council

Every person who willfully and by force or fraud prevents the Council, or any of the Members thereof, from meeting or organizing, is guilty of a crime.

§ 304. Preventing Council Member or personnel from performing official duties—Penalty

Any person who alone or in concert with others willfully either by force, physical interference, fraud, intimidation, or by means of any independently unlawful act, prevents or attempts to prevent any member, officer or employee of the council from performing any official act, function, power or duty shall be guilty of a crime.

§ 308. Bribery of or influencing Council Members

Every person who gives or offers to give a bribe to any Member of the Council, or attempts directly or indirectly, by menace, deceit, suppression of truth or any other corrupt means, to influence a Member in giving or withholding his vote, or in not attending the Council meeting, or any committee thereof is guilty of a crime.

§ 309. Soliciting bribes—Trading votes

Every Member of the Council who asks, receives or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity or who gives, or offers or promises to give any official vote in consideration that another Member of the Council shall give any such vote, either upon the same or another question, is guilty of a crime.

§ 312. Forfeiture of office—Disqualification to hold office

The conviction of a Member of the Council of bribery involves as a consequence, in addition to the punishment prescribed by this code, a forfeiture of his office, and disqualifies him from ever afterwards holding any office under this Nation.

§ 318. Bribery

No person, firm, or member of a firm, corporation, or association shall give or offer any money, position or thing of value to any Member of the Council to influence him to work or to vote for any

proposition, nor shall any Member of the Council accept any money, position, promise, or reward or thing of value for his work or vote upon any bill, resolution or measure before the Council.

§ 321. Member of Council—Soliciting or securing employment with Cherokee Nation

It shall be unlawful for any Member of the Council to solicit, receive or accept any money or thing of value either directly or through another person for soliciting or securing employment of or for another person from any department or institution of the Nation, where the said department or institution is supported in whole or in part from revenues levied pursuant to shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives, or offers or promises to give any official vote in consideration that another Member of the Council shall give any such vote, either upon the same or another question, is guilty of a crime.

CHAPTER 8

CRIMES AGAINST THE REVENUE AND PROPERTY OF THE NATION

§ 341. Embezzlement and false accounts by officers

Every public officer of the Nation and every deputy or clerk of any such officer and every other person receiving any money or other thing of value on behalf of or for account of this Nation or any department of the government of this Nation or any bureau or fund created by law and in which this Nation or the people thereof, are directly or indirectly interested, who either:

First: Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money or anything of value received by him as such officer, clerk, or deputy, or otherwise, on behalf of this Nation, or any subdivision of this Nation, or the people thereof, or in which they are interested; or

Second: Receives, directly or indirectly, any interest, profit or perquisites, arising from the use or loan of public funds in his hands or money to be raised through his agency for the Nation; or

Third: Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to any monies so received by him, on behalf of the Nation, or the people thereof, or in which they are interested; or

Fourth: Fraudulently alters, falsifies, cancels, destroys or obliterates any such account; or

Fifth: Willfully omits or refuses to pay over to the Nation, or its officers or agents authorized by law to receive the same, any money or interest, profit or perquisites arising therefrom, received by him under any duty imposed by law so to pay over the same, shall upon conviction thereof, be deemed guilty of a crime, and in addition thereto shall be disqualified to hold office in this Nation, and the court shall issue an order of such forfeiture, and should appeal be taken from the judgment of the Court, the defendant may, in the discretion of the Court, stand suspended from such office

until such cause is finally determined.

§ 344. Fraud by officer authorized to sell, lease or make contract

Every public officer, being authorized to sell or lease any property, or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a crime.

§ 346. Obstructing the collection of taxes

Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which, or any part of which the people of this Nation are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a crime.

§ 349. Injuring or burning public buildings

Every person who willfully burns, destroys, or injures any public buildings or improvements in this Nation, is guilty of a crime.

§ 351. False statement regarding taxes

Every person who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states any material matter which he knows to be false, is guilty, upon conviction, of a crime.

§ 353. Officer dealing in warrants—Crime

It shall be unlawful for any public officer or deputy or employee of such officer to either directly or indirectly, buy, barter for, or otherwise engage in any manner in the purchase of any bonds, warrants or any other evidence of indebtedness against this Nation, any subdivision thereof, of which he is an officer.

§ 355. Member of governing body not to furnish public supplies for consideration

It shall be unlawful for any Member of the Council of the nation to furnish, for a consideration any material or supplies for the use of said Nation or subdivision.

§ 358. False, fictitious or fraudulent claims against Cherokee Nation

It shall be unlawful for any person, firm, corporation, association or agency to make, present, or cause to be presented to any employee or officer of Cherokee Nation, or to any department or agency thereof, any false, fictitious or fraudulent claim for payment of public funds upon or against Cherokee Nation, or any department or agency thereof, knowing such claim to be false, fictitious or fraudulent.

§ 359. Penalties

Any person, firm, corporation, association or agency found guilty of violating the foregoing section shall be guilty of a crime.

PART II

CRIMES AGAINST PUBLIC JUSTICE

CHAPTER 10

BRIBERY AND CORRUPTION

§ 380. Bribery of fiduciary

A. Any fiduciary who, with a corrupt intent and without the consent of his beneficiary, intentionally or knowingly solicits, accepts, or agrees to accept any bribe from another person with the agreement or understanding that the bribe as defined by law will influence the conduct of the fiduciary in relation to the affairs of his beneficiary, upon conviction, is guilty of a crime.

B. Any person who offers, confers, or agrees to confer any bribe the acceptance of which is an offense pursuant to the provisions of subsection (A) of this section, upon conviction, is guilty of a crime.

C. As used in subsection (A) of this section:

1. "**Beneficiary**" means any person for whom a fiduciary is acting.

2. "**Fiduciary**" means:

a. an agent or employee; or

b. a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary;
or

c. a lawyer, physician, accountant, appraiser, or other professional advisor; or

d. an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

§ 381. Bribing officers

Whoever corruptly gives, offers, or promises to any executive, legislative, judicial, or other public officer, or any employee of Cherokee Nation or any political subdivision thereof, including peace

officers and any other law enforcement officer, or any person assuming to act as such officer, after his election or appointment, either before or after he has qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment on any matter, question, cause, or proceeding which then may be pending, or may by law come or be brought before him in his official capacity, or as a consideration for any speech, work, or service in connection therewith, shall be guilty of a crime.

§ 382. Officers receiving bribes

Every executive, legislative, judicial, or other public officer, or any employee of Cherokee Nation or any political subdivision thereof, including peace officers and any other law enforcement officer, or any person assuming to act as such officer, who corruptly accepts or requests a gift or gratuity, or a promise to make a gift, or a promise to do an act beneficial to such officer, or that judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust, or appointment under the laws of this Nation, is guilty of a crime.

§ 383. Bribing jurors, referees, etc.

Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, umpire or assessor, or to any person who may be authorized by law or agreement of parties interested to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is guilty of a crime.

§ 384. Receiving bribes by jurors, referees, etc.

Every juror, referee, arbitrator, umpire or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be thereby influenced, is guilty of crime.

§ 385. Misconduct of jurors

Every juror or person drawn or summoned as a juror, or chosen arbitrator, or umpire, or appointed referee, who either:

1. Makes any promise or agreement to give a verdict for or against any party; or
2. Willfully permits any communication to be made to him, or receives any book, paper, instrument, or information relative to any cause pending before him, except according to the regular course of proceeding upon the trial of such cause,

is guilty of a crime.

§ 386. Accepting gifts

Every judicial officer, juror, referee, arbitrator or umpire, who accepts any gift from any person, knowing him to be a party in interest or the attorney or counsel of any party in interest to any action or proceeding then pending or about to be brought before him, is guilty of a crime.

§ 387. Gifts defined

The word "**gift**" in the foregoing section shall not be taken to include property received by inheritance, by will or by gift in view of death.

§ 388. Attempts to influence jurors

Every person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as arbitrator or appointed a referee, in respect to his verdict, or decision of any cause or matter pending, or about to be brought before him, either:

1st, By means of any communication oral or written had with him, except in the regular course of proceedings upon the trial of the cause;

2nd, By means of any book, paper, or instrument, exhibited otherwise than in the regular course of proceedings, upon the trial of the cause;

3rd, By means of any threat or intimidation;

4th, By means of any assurance or promise of any pecuniary or other advantage; or,

5th, By publishing any statement, argument or observation relating to the cause, is guilty of a crime.

§ 389. Drawing jurors fraudulently

Every person authorized by law to assist at the drawing of any jurors to attend any court, who willfully puts or consents to the putting upon any list of jurors as having been drawn any name which shall not have been drawn for that purpose in the manner prescribed by law; or, who omits to place on such list any name that shall have been drawn in the manner prescribed by law, or who signs or certifies any list of jurors as having been drawn which was not drawn according to law; or, who is guilty of any other unfair, partial or improper conduct in the drawing of any such list of jurors, is guilty of a crime.

§ 390. Misconduct by officer in charge of jury

Every officer to whose charge any juror or jury is committed by any court or magistrate who

negligently or willfully permits them, or any one of them, either:

1. To receive any communication from any person;
2. To make any communication to any person;
3. To obtain or receive any book or paper or refreshment; or
4. To leave the jury room, the jury box, or his immediate custody or control, without the leave of such court or magistrate first obtained, is guilty of a crime.

Every bailiff, or other officer or person, into whose custody and care any court of record contemplates committing any juror or jury, before entering upon his duties as such for the Court term or such lesser period of such service as the Court may determine, shall first be admonished and shall make in writing and file with the Clerk of such Court a solemn oath, sworn to before the Clerk or Judge of such Court, to the effect that he will regard the foregoing provisions of this section and that he will faithfully prevent the same and obstruct any attempt to accomplish or to attempt to do any of them, but at the same time to have regard to the comfort and well-being of the jurors and all of them, entrusted into his care in each and every jury trial in any cause during such Court term or lesser period of appointment by such Court.

In every Court the same admonition shall be given and the same oath required as above, in each jury trial; but the Court shall have the option whether the same be oral, or in writing and filed in such case, but thereafter during the trial of the same cause and until such jury is dismissed from further consideration of the same it shall not be necessary, for all intent and purposes of this act, to administer again such admonition or to require such oath.

CHAPTER 11

CONSPIRACY

§ 421. Conspiracy—Definition—Punishment

A. If two or more persons conspire, either:

1. To commit any crime; or
2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or
3. Falsely to move or maintain any suit, action or proceeding; or
4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat or to obtaining money or property by false pretenses; or

5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws, they are guilty of a conspiracy.

B. Except in cases where a different punishment is prescribed by law the punishment for conspiracy shall be a crime.

§ 422. Conspiracy outside Cherokee Nation against the peace of the Nation

If two or more persons, being out of this Nation, conspire to commit any act against the peace of this Nation, the commission or attempted commission of which, within this nation, would be treason against the Nation, they are guilty of a crime.

§ 423. Overt act necessary

No agreement to commit a crime amounts to a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

§ 424. Punishment for conspiracy against Cherokee Nation

If two or more persons conspire either to commit any offense against Cherokee Nation, any subdivision thereof, or to defraud Cherokee Nation, any subdivision thereof, in any manner or for any purpose, and if one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be guilty of a crime.

CHAPTER 11A

ELECTION FRAUD

§ 425. Voting fraud

Every person, not having the qualification of a voter, who shall fraudulently vote, or attempt to vote, at any election, or who shall vote or attempt to vote, more than once for the same candidate, at any election, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not less than One Hundred Dollars (\$100.00), and be imprisoned for any time less than one (1) year and exceeding six (6) months, and be forever disqualified from voting.

§ 426. Unlawful influence of voters

Every person who shall by bribery, treats or offers of employment, attempt to influence any voter in giving his vote, or shall use threats to procure any voter to vote contrary to the inclination of such voter, or to deter him from giving his vote, shall be deemed guilty of a crime, and, upon conviction, be fined in a sum of not less than One Hundred Dollars (\$100.00), and not more than Five Hundred Dollars (\$500.00), or be imprisoned for any time less than one (1) year, and

exceeding three (3) months, or both by fine and imprisonment, at the discretion of the Court.

§ 427. Receiving the votes of unqualified voters

Any Election Board member who shall willfully and knowingly receive or sanction the reception of the vote of any person not having the qualification of a voter, or who shall be guilty of a wilful neglect of duty, or of any corrupt action in the execution of the same, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in a sum of not less than One Hundred Dollars (\$100.00), nor more than One Thousand Dollars (\$1,000.00), and be imprisoned for any term less than one (1) year and exceeding three (3) months.

§ 428. Tampering with election returns

Any person, who shall fraudulently alter, mutilate, destroy, or unlawfully open, after being sealed up, any returns of election, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned for any term less than one (1) year and exceeding three (3) months.

CHAPTER 12

ESCAPES AND AIDING THEREIN

§ 431. Rearrest of escaped prisoners

Every prisoner confined upon conviction for a criminal offense, who escapes from a penal institution, may be pursued, retaken and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he is retaken, and he shall remain so imprisoned until tried for such escape, or discharged, on a failure to prosecute therefor.

§ 434. Escape from penal institution

Every prisoner confined in the penal institution, who escapes by force or fraud from such penal institution, is guilty of a crime.

§ 436. Attempt to escape from penal institution

Every prisoner confined in any penal institution who attempts by force or fraud, although unsuccessfully, to escape therefrom, is guilty of a crime.

§ 437. Assisting prisoner to escape

Every person who willfully by any means whatever, assists any prisoner confined in any penal institution to escape therefrom, is guilty of a crime.

§ 438. Carrying into penal institution things to aid escape

Every person who carries or sends into any penal institution anything useful to aid any prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as guilty of a crime.

§ 439. Concealing escaped prisoner

Every person who willfully and knowingly conceals any prisoner, who having been confined in penal institution upon a charge or conviction of crime, has escaped therefrom, is guilty of a crime.

§ 440. Harboring criminals and fugitives—Penalty

Any person who shall knowingly feed, lodge, clothe, arm, equip in whole or in part, harbor, aid, assist or conceal in any manner any person guilty of any crime, or outlaw, or fugitive from justice, or any person seeking to escape arrest for any crime committed within this Nation or state, jurisdiction or territory, shall be guilty of a crime.

§ 441. Assisting escape from officer

Every person who willfully assists any prisoner in escaping or attempting to escape from the custody of any officer or person having the lawful charge of such prisoner under any process of law or under any lawful arrest, is guilty of a crime.

§ 442. Prisoner defined

The term "**prisoner**" in this chapter includes every person held in custody under process of law issued from a court of competent jurisdiction, whether civil or criminal, or under any lawful arrest.

§ 443. Escape from penal institution

Any person having been imprisoned awaiting charges or prisoner awaiting trial or having been sentenced to confinement who escapes from such confinement, either while actually confined therein, or while permitted to be at large as a trusty, or while awaiting transportation thereto, is guilty of a crime regardless of being in physical custody.

§ 443A. Additional punishment under rules and regulations of penal institution after escape

In addition, all prisoners who escape from the aforesaid penal institutions either while confined therein, or while at large as a trusty, when apprehended and returned to the penal institution, shall be punishable by the penal institution authorities in such manner as may be prescribed by the rules and regulations of the penal institution, provided that such punishment shall not be cruel or unusual.

§ 444. Escape or attempt to escape from arrest or detention

A. It is unlawful for any person, after being lawfully arrested or detained by a peace officer, to

escape or attempt to escape from such peace officer.

B. Such person who escapes or attempts to escape after being lawfully arrested or detained for custody for a crime offense shall be guilty of a crime.

§ 445. Unauthorized entry into penal institution, jail, etc.—Penalties

Any person who willfully gains unauthorized entry into any Cherokee Nation penal institution, any place where prisoners are located, or the penal institution grounds, upon conviction, shall be guilty of a crime.

CHAPTER 13

FALSIFYING EVIDENCE

§ 450. Misprision of crime and false statements to law enforcement

A. Misprision of crime. It shall be unlawful for any person having knowledge of the actual commission of a crime cognizable by a Court of the Cherokee Nation, which crime would be a felony under the laws of the State of Oklahoma or the United States of America, to affirmatively conceal and not make known that crime to a Cherokee Nation Judge or some other person in civil authority within Cherokee Nation. Such act shall constitute a crime against Cherokee Nation, and shall be punished as provided in 21 CNCA § 10.

B. False statement to law enforcement. In connection with a law enforcement investigation, whoever, in any manner within the jurisdiction of Cherokee Nation knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be guilty of a crime, subject to punishment as provided in 21 CNCA § 10.

§ 451. Offering false evidence

Every person who, upon any trial, proceedings, inquiry or investigation whatever, authorized by law, offers in evidence, as genuine, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged, or fraudulently altered, is guilty of a crime.

§ 452. Deceiving witness

Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a crime.

§ 453. Preparing false evidence

Every person guilty of falsely preparing any book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced as genuine upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of a crime.

§ 454. Destroying evidence

Every person who knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry or investigation whatever, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a crime.

§ 455. Preventing witness from giving testimony

Every person who willfully prevents any person from giving testimony who has been duly summoned or subpoenaed or endorsed on the criminal information as a witness or threatens physical or mental harm through force or fear with the intent to prevent the witness from appearing in Court to give his testimony, or to alter his testimony, is guilty of a crime.

§ 456. Bribing witness—Subornation of perjury

Every person who gives or offers or promises to give to any witness or person about to be called as a witness in any matter whatever, any bribe upon any understanding or agreement that the testimony of such witness shall be influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony is guilty of a crime, but if the offer, promise, or bribe is in any way to induce the witness to swear falsely, then it shall be held to be subornation of perjury.

CHAPTER 14

FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS

§ 461. Larceny or destruction of records by clerk or officer

Every clerk, register or other officer having the custody of any record, maps or book, or of any paper or proceeding of any Court, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying or unlawfully removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is guilty of a crime.

§ 462. Larceny or destruction of records by other persons

Every person not an officer such as is mentioned in the last section, who is guilty of any of the acts specified in that section, is guilty of a crime.

§ 463. Offering forged or false instruments for record

Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this Nation, which instrument, if genuine, might be filed or registered or recorded under any law of this Nation or of the United States, is guilty of a crime.

§ 464. Forging name to petition—Penalties

Any person who shall knowingly sign, subscribe or forge the name of any other person, without the consent of such other person, to any petition, application, remonstrance, or other instrument of writing, authorized by law to be filed in or with any Court, board or officer, with intent to deceive or mislead such Court, board or officer, shall be guilty of a crime.

CHAPTER 15

ILLEGAL USE OF GOVERNMENT DOCUMENTS

§ 471. Criminal activity with respect to Cherokee Nation citizenship

A. A person who knowingly buys or barter the Cherokee Nation Citizenship Card from another tribal citizen for whatever purposes may be subject to criminal prosecution. The penalty upon conviction of the offense specified in this subsection shall be no longer than one (1) year imprisonment, or a fine of no more than Five Thousand Dollars (\$5,000.00), or both.

B. A person who knowingly sells or barter his or her Cherokee Nation Citizenship Card to another tribal citizen or person for whatever purposes maybe subject to criminal prosecution. The penalty upon conviction of the offense specified in this subsection shall be no longer than one (1) year imprisonment, or a fine of no more than Five Thousand Dollars (\$5,000.00), or both.

C. In addition to the foregoing sanctions, any person who knowingly buys, sells, or barter the Cherokee Nation Citizenship Card to or from another person for whatever purposes may be subject to a civil penalty as hereinafter provided. The penalty for violating this subsection shall be a fine of not more than Five Thousand Dollars (\$5,000.00).

D. Any person who knowingly uses, or allows another person to use, any Cherokee Nation Citizenship Card, Cherokee Nation Registry Number, or Cherokee Roll Number, for the purpose of defrauding Cherokee Nation or the United States, or for any other fraudulent purpose, may be subject to criminal prosecution. The penalty upon conviction of the offense specified in this subsection shall be no longer than one (1) year imprisonment, no greater than a Five Thousand Dollars (\$5,000.00) fine, or both.

CHAPTER 16

NEPOTISM

§ 481. Repealed by LA 34–07, eff. September 13, 2007

§ 482. Unlawful to pay salary to ineligible persons

It shall be unlawful for any such executive, legislative, ministerial or judicial officer mentioned in the preceding section, to draw or authorize the drawing of any warrant or authority for the payment out of any public fund, of the salary, wages, pay or compensation of any such ineligible person, and it shall be unlawful for any executive, legislative, ministerial or judicial officer to pay out of any public funds in his custody or under his control the salary, wages, pay or compensation of any such ineligible person.

§ 483. Appointment of one related to another officer

It shall be unlawful for any executive, legislative, ministerial, or judicial officer to appoint and furnish employment for any person whose services are to be rendered under his direction and control and paid for out of the public funds, and who is related by either blood or marriage within the third degree to any other executive, legislative, ministerial or judicial officer when such appointment is made in part consideration that such other officer shall appoint and furnish employment to any one so related to the officer making such appointment.

§ 485. Penalty

Any executive, legislative, ministerial or judicial officer who shall violate any provision of this article, shall be deemed guilty of a crime involving official misconduct.

§ 486. Removal from office for violation of chapter

Every person guilty of violating the provisions of this chapter, shall, independently of, or in addition to any criminal prosecution that may be instituted, be removed from office according to the mode of trial and removal prescribed in the Constitution and laws of this Nation.

§ 487. Officers affected

Under the designation executive, legislative, ministerial or judicial officer as mentioned herein are included the Principal Chief, Deputy Principal Chief, Council Members, Commissioners, all the heads of the Departments of the Nation Government, Judges of all the Courts of this Nation, Trustees, Officers and Commissioners of subdivisions of the Nation.

CHAPTER 17

PERJURY AND SUBORNATION OF PERJURY

§ 491. Perjury defined—Defense

Whoever, in a trial, hearing, investigation, deposition, certification or declaration, in which the making or subscribing of a statement is required or authorized by law, makes or subscribes a statement under oath, affirmation or other legally binding assertion that the statement is true, when in fact the witness or declarant does not believe that the statement is true or knows that it is not true or intends thereby to avoid or obstruct the ascertainment of the truth, is guilty of perjury. It shall be a defense to the charge of perjury as defined in this section that the statement is true.

§ 492. Oath defined

The term "**oath**," as used in the last section, includes an affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law.

§ 493. Oath of office

So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the previous sections.

§ 494. Irregularities no defense

It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

§ 495. Incompetency no defense

It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was required to give such testimony or made such deposition or certificate.

§ 497. Making deposition or certificate

The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person with the intent that it be uttered or published as true.

§ 498. Degree of proof required

A. Proof of guilt beyond a reasonable doubt is sufficient for conviction under this chapter, and it shall not be necessary also that proof be by a particular number of witnesses or by documentary or other type of evidence.

B. Lack of materiality of the statement is not a defense but the degree to which a perjured statement might have affected some phase or detail of the trial, hearing, investigation, deposition, certification or declaration shall be considered, together with the other evidence or circumstances, in imposing sentence.

§ 500. Punishment for perjury

Perjury is a crime.

§ 501. Summary committal of witness

Whenever it appears probable in any court of record, that any person who has testified in any action or proceeding in such Court has committed perjury, such Court must immediately commit such person by an order or process for that purpose to a penal institution or take a recognizance with sureties for his appearance and answering to an information for perjury.

§ 503. Documents may be retained

If, upon the hearing of such action or proceeding in which such perjury has probably been committed, any papers or documents produced by either party shall be deemed necessary to be used on the prosecution for such perjury, the Court may by order detain such papers or documents from the party producing them, and direct them to be delivered to the Prosecuting Attorney.

§ 504. Perjury by subornation—Attempted perjury by subornation

Whoever procures another to commit perjury is guilty of perjury by subornation. Whoever does any act with the specific intent to commit perjury by subornation but fails to complete that offense is guilty of attempted perjury by subornation.

§ 505. Punishment of subornation of perjury

Any person guilty of subornation of perjury is punishable in the same manner as he would be if personally guilty of the perjury so procured.

CHAPTER 18

RESCUES

§ 521. Rescuing prisoners

Every person who by force or fraud rescues or attempts to rescue, or aids another person in rescuing or in attempting to rescue any prisoner from any officer or other person having him in lawful custody, is guilty of a crime.

§ 522. Taking goods from legal custody

Every person who willfully injures or destroys, takes or attempts to take, or assists any other person in taking or attempting to take from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a crime.

CHAPTER 19

OTHER CRIMES AGAINST PUBLIC JUSTICE

§ 531. Injury to records—Embezzlement by officer

Every sheriff, marshal, police officer, clerk, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of an ministerial officer who either:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or
2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property entrusted to him in virtue of his office;

is guilty of a crime.

§ 532. Permitting escapes

Every sheriff, marshal, policeman, coroner, clerk of a court, constable or other ministerial officer and any deputy or subordinate of any ministerial officer, who either:

1. Willfully or carelessly allows any person lawfully held by him in custody to escape or go at large, except as may be permitted by law; or
2. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or
3. Commits any unlawful act tending to hinder justice;

is guilty of a crime.

§ 533. Refusing to receive prisoners

Every officer who, in violation of a duty imposed upon him by law as such officer to receive into his custody any person as a prisoner, willfully neglects or refuses so to receive such person into his custody, is guilty of a crime.

§ 535. Arrest without authority

Every public officer or person pretending to be a public officer, who under the pretense or color of any process or other legal authority arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses anyone of any lands or tenements without due and legal process, is guilty of a crime.

§ 537. Refusing to aid officer

Every person who, after having been lawfully commanded to aid any officer in arresting any person or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, is guilty of a crime.

§ 538. Refusing to make arrest

Every person who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a crime.

§ 540. Obstructing officer

Every person who willfully delays or obstructs any peace officer in the discharge or attempt to discharge any duty of his office, is guilty of a crime.

§ 540A. Eluding police officer

Any operator of a motor vehicle who has received a visual and audible signal, a red light and a siren from a peace officer driving a motor vehicle showing the same to be an official police, marshal, sheriff, highway patrol or state game ranger vehicle directing the said operator to bring his vehicle to a stop and who willfully increases his speed or extinguishes his lights in an attempt to elude such peace officer, or wilfully attempts in any other manner to elude the peace officer, or who does elude such peace officer, is guilty of a crime.

§ 540B. Roadblocks

A peace officer may set up one or more roadblocks to apprehend any person riding upon or within a motor vehicle traveling upon a highway, street, turnpike, or area accessible to motoring public, when the officer has probable cause to believe such person is committing or has committed:

1. a violation of 21 CNCA § 540A;
2. escape from the lawful custody of any peace officer;
3. a crime under the laws of this Nation or the laws of any other jurisdiction.

A roadblock is defined as a barricade, sign, standing motor vehicle, or similar obstacle temporarily placed upon or adjacent to a public street, highway, turnpike or area accessible to the motoring public, with one or more peace officers in attendance thereof directing each operator of approaching motor vehicles to stop or proceed.

Every operator of a motor vehicle approaching such roadblock has a duty to stop at the roadblock unless directed otherwise by a peace officer in attendance thereof and the willful violation hereof

shall constitute a separate offense from any other offense committed. Any person who willfully attempts to avoid such roadblock or in any manner willfully fails to stop at such roadblock or who willfully passes by or through such roadblock without receiving permission from a peace officer in attendance thereto, is guilty of a crime.

§ 543. Compounding crimes

Every person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime, or violation of statute, or to abstain from any prosecution therefor, or to withhold any evidence thereof, is guilty of a crime.

§ 544. Compounding prosecution

Every person who takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, discontinue or delay any prosecution then pending for any crime or violation of statute, or to withhold any evidence in aid thereof, is guilty of a crime.

§ 545. Attempt to intimidate officer

Every person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial or ministerial officer, to any juror, referee, arbitrator, umpire or assessor or other person authorized by law to hear or determine any controversy, with intent to induce him either to any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, is guilty of a crime.

§ 546. Suppressing evidence

Every person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other matter or thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other matter or thing which might be evidence in such suit or proceeding, or prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a crime.

§ 547. Buying lands in suit

Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any Court, knowing the pendency of such suit, and that the grantor was not in possession of such lands or tenements, is guilty of a crime.

§ 554. Attorneys—Buying demands for suit—Misleading inferior courts

Every attorney who either directly or indirectly buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon is guilty of a crime. Any attorney who in any proceeding before any Court in which he appears as attorney, willfully misstates any proposition or seeks to mislead the Court in any matter of law is guilty of a crime and on any trial therefor the nation shall only be held to prove to the Court that the cause was pending, that the defendant appeared as an attorney in the action, and showing what the legal statement was, wherein it is not the law. If the defense be that the act was not willful the burden shall be on the defendant to prove that he did not know that there was error in his statement of the law.

§ 555. Prosecutors and their partners

Every attorney who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any Court, the prosecution of which is carried on, aided or promoted by any person as prosecutor or other public attorney; with whom such person is directly or indirectly connected as a partner, or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a crime.

§ 556. Prosecutor advising the defense

Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as prosecutor or other public attorney, afterward, directly or indirectly, advises in relation to, or takes any part in the defense thereof, as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a crime; and in addition to the punishment prescribed therefor he shall forfeit his license to practice.

§ 557. Attorneys may defend themselves

The two last sections do not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

§ 565. Definition of direct contempt and indirect contempt

Contempts of court shall be divided into direct and indirect contempts. Direct and indirect contempts can be civil or criminal in nature.

A. Direct and indirect contempts

1. Direct contempts shall consist of disorderly or insolent behavior committed during the session of the Court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any

breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings, shall be deemed direct contempt of court, and may be summarily punished as hereinafter provided for.

2. Indirect contempts of court shall consist of willful disobedience of any process or order lawfully issued or made by court; resistance willfully offered by any person to the execution of a lawful order or process of a Court.

B. Civil and criminal contempts

1. Civil contempts: failure to obey a court order that was issued for another party's benefit. A civil contempt procedure is coercive or remedial in nature.

2. Criminal contempts: acts that obstruct justice or attack the integrity of the court. A criminal contempt proceeding is punitive in nature.

§ 565.1. Trial court—Power to punish contempt—Censure—Contempt proceedings

A. The Trial Judge has the power to cite for contempt anyone who, in his presence in open court, willfully obstructs judicial proceedings. If necessary, the Trial Judge may punish a person cited for contempt after an opportunity to be heard has been given.

B. Censure shall be imposed by the Trial Judge only if:

1. it is clear from the identity of the offender and the character of his acts that disruptive conduct is willfully contemptuous; or

2. the conduct warranting the sanction is preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

C. The Trial Judge, as soon as practicable after he is satisfied that courtroom misconduct requires contempt proceedings, should inform the alleged offender of his intention to institute said proceedings.

D. Before imposing any punishment for contempt, the Judge shall give the offender notice of the charges and an opportunity to adduce evidence or argument relevant to guilt or punishment.

E. The Judge before whom courtroom misconduct occurs may impose appropriate sanctions including punishment for contempt. If the Judge's conduct was so integrated with the contempt that he contributed to it or was otherwise involved or his objectivity can reasonably be questioned, the matter shall be referred to another Judge.

§ 566. Punishment for direct or indirect contempt—Guidelines for determination of sentence and purge fee for failure to comply with certain orders regarding children

A. Unless otherwise provided for by law, punishment for direct or indirect contempt shall be by the

imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail not exceeding six (6) months, or by both, at the discretion of the Court.

B. 1. In the case of indirect contempt for the failure to comply with an order for child support, other support, visitation, or other court orders regarding minor children the Supreme Court shall promulgate guidelines for determination of the sentence and purge fee. If the Court fails to follow said guidelines, the Court shall make a specific finding stating the reasons why the imposition of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:

- a. the proportion of the child support or other support that was unpaid in relation to the amount of support that was ordered paid;
- b. the proportion of the child support or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;
- c. the present capacity of the party found in contempt to pay any arrearages;
- d. any willful actions taken by the party found in contempt to reduce factor c;
- e. the past history of compliance or noncompliance with the support or visitation order; and
- f. willful acts to avoid the jurisdiction of the Court.

2. When a court of competent jurisdiction makes an order compelling a parent to furnish monetary support, necessary food, clothing, shelter, medical attention, medical insurance or other remedial care for the minor child of the parent:

a. proof that:

- i. the order was made, filed, and served on the parent, or
- ii. the parent had actual knowledge of the existence of the order, or
- iii. the order was granted by default after prior due process notice to the parent, or
- iv. the parent was present in Court at the time the order was pronounced; and

b. proof of noncompliance with the order,

shall be prima facie evidence of an indirect civil contempt of court.

§ 567. Indirect contempts—Notice—Trial by jury—Appearance bond

A. In all cases of indirect contempt the party charged with contempt shall be notified in writing of

the accusation and have a reasonable time for defense; and the party so charged shall, upon demand, have a trial by jury.

B. In the event the party so charged shall demand a trial by jury, the Court shall thereupon set the case for trial at the next jury term of said Court, and shall fix the amount of an appearance bond to be posted by said party charged, which bond shall be signed by said party and two sureties, which sureties together shall qualify by showing ownership of real property, the equal of which property shall be in double the amount of the bond, or, in the alternative, the party charged may deposit with the Court Clerk cash equal to the amount of the appearance bond.

C. In a case of indirect contempt, it shall not be necessary for the party alleging indirect contempt, or an attorney for that party, to attend an initial appearance or arraignment hearing for the party charged with contempt, unless the party alleging the indirect contempt is seeking a cash bond. If a cash bond is not being requested, the Clerk of the Court shall, upon request, notify the party alleging the indirect contempt of the date of the trial.

D. Notwithstanding any other provision of law, a party charged with indirect civil contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the terms of a valid child support order shall not be entitled to trial by jury.

§ 567.1. Indirect contempt for failure to pay child support—Purge fee

When a person is found guilty of indirect contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses, that person may purge the contempt by:

1. Making all future payments for child support, day care expenses and unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the current order for child support; and
2. a. paying the full amount of the arrearage, or some portion thereof, as a lump sum if the Court determines the contemnor has the financial ability to do so; and
b. if the full amount of the arrearage is not paid in a lump sum, then by making additional monthly payments in an amount equal to one-half of the current monthly child support obligation, exclusive of day care expenses.

All payments made pursuant to this subdivision (2)(b) shall be applied to reduce the amount of child support arrearage which was the subject of the contempt action. Payments made in accordance with the provisions of this subdivision (2)(b) shall bear interest as set forth in 43 CNCA § 511(C) and 43 CNCA § 513.

3. The total amount of the payments required to be made pursuant to subdivisions (1) and (2)(b) above shall not exceed forty percent (40%) of the contemnor's current gross monthly income. For

purposes of this subdivision, the contemnor's gross income shall be determined in accordance with the provisions of 43 O.S. § 118(2) and (3) as incorporated by reference in the Cherokee Nation Code Annotated at 43 CNCA § 514. If the total amount of the payments required to be made pursuant to subdivisions (1) and (2)(b) above exceeds forty percent (40%) of the contemnor's gross monthly income, then the amount required to be paid under subdivision (2)(b) above shall be reduced such that the total payments required under subdivision (1) and (2)(b) shall equal forty percent (40%) of the contemnor's gross monthly income. If application of this subdivision (3) creates a payout schedule which exceeds three (3) years then the terms and provisions of 43 CNCA § 511(B) shall apply.

4. The payments required to be made pursuant to this section shall continue until the child support arrearage, which was the subject of the contempt action has been paid in full, at which time the contempt shall be deemed purged.

5. If a contemnor is committed to the custody of the sheriff to serve the sentence imposed by the Court, the contemnor may thereafter only be discharged from the custody of the sheriff:

a. upon payment in full of the adjudicated arrearage; or

b. upon serving the full sentence: or

c. upon the making of a subsequent agreement by the parties as to payment of the arrearages, which agreement has been approved by the Court and entry of a court order that the contemnor be released from the custody of the sheriff with the balance of the sentence to be conditionally suspended, subject to performance of the terms of the agreement and the provisions of the court order for release. Persons incarcerated pursuant to the provisions of this section shall not be entitled to credit for good time, blood time, trustee time, or any other credit for time served. Persons incarcerated pursuant to the provisions of this section shall serve flat time in all cases.

§ 568. Contempt—Substance of offense made of record

Whenever a person shall be imprisoned for contempt the substance of the offense shall be set forth in the order for his confinement, and made a matter of record in the Court.

§ 569. Attorneys—Second application to another judge to stay trial

Every attorney or counselor at law who, knowing that an application has been made for an order staying the trial of an indictment, to a Judge authorized to grant the same, and has been denied, without leave reserved to renew it, makes an application to another Judge to stay the same trial, is guilty of a crime.

§ 573. Fraudulent concealment of property

Every person who, having been called upon, by the lawful order of any Court, to make a true exhibit of his real and personal effects, either:

1. willfully conceals any of his estate or effects, or any books or writing relative thereto; or,
2. willfully omits to disclose to the Court any debts or demands which he has collected, or any transfer of his property which he had made after being ordered to make an exhibit thereof, is guilty of a crime.

§ 575. Attorneys, misconduct by—Deceit—Delaying suit—Receiving allowance for money not laid out

Every attorney who, whether as attorney or as counselor, who:

1st, is guilty of any deceit or collusion, or consents to any deceit or collusion with intent to deceive the Court or any party; or

2nd, willfully delays his client's suit, with a view to his own gain; or

3rd, willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for, is guilty of a crime; and, in addition to the punishment prescribed therefor by this code, he forfeits to the party injured treble damages, to be recovered in a civil action.

§ 576. Attorney permitting other person to use his name

If any attorney knowingly permits any person not being his general law partner or a clerk in his office to sue out any process or to prosecute or defend any action in his name, except as authorized by the next section, such attorney, and every person who shall so use his name is guilty of a crime.

§ 577. Attorneys, use of name lawful, when

Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers or municipal corporation, on behalf of another party, the prosecutor, or attorney of such public officer or board or corporation may permit any proceeding therein to be taken in his name by an attorney to be chosen by the party in interest.

§ 578. Inheritance, intercepting by fraudulent production of infant

Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate, from any person lawfully entitled thereto, is guilty of a crime.

§ 579. Substituting child

Every person to whom an infant has been confided for nursing, education, or any other person,

who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is guilty of a crime.

§ 584. Prosecuting suit or bringing action or procuring arrest in false name

Every person who maliciously institutes or prosecutes any action or legal proceeding; or makes or procures any arrest, in the name of a person who does not exist, or has not consented that it be instituted or made, is guilty of a crime.

§ 587. False certificate by public officer

Every public officer who, being authorized by law to make or give any certificate or other writing, knowingly makes and delivers as true any such certificate or writing containing any statement which he knows to be false, is guilty of a crime.

§ 588. Recording of petit jury proceedings—Listening or observing—Penalty

Any person, firm or corporation who knowingly and willfully, by means of any device whatsoever, records or attempts to record the proceedings of any jury in any Court of Cherokee Nation while such jury is deliberating or voting or listens to or observes, or attempts to listen to or observe, the proceedings of any jury of which he is not a member in any Court of Cherokee Nation while such jury is deliberating or voting shall be guilty of a crime.

§ 589. False reporting of crime

It shall be unlawful to willfully, knowingly and without probable cause make a false report to any person of any crime or circumstances indicating the possibility of crime having been committed, including the unlawful taking of personal property, which report causes or encourages the exercise of police action or investigation, and any person violating the provisions hereof shall be guilty of a crime and upon conviction thereof shall be guilty of a crime.

PART III

CRIMES AGAINST THE PERSON

CHAPTER 20

ASSAULT AND BATTERY

§ 641. Assault defined

An assault is any willful and unlawful attempt or offer with force or violence to do a corporal hurt to another.

§ 642. Battery defined

A battery is any willful and unlawful use of force or violence upon the person of another.

§ 643. Force against another not unlawful, when—Self-defense—Defense of property

To use or to attempt to offer to use force or violence upon or toward the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.
2. When necessarily committed by any person in arresting one who has committed any crime, and delivering him to a public officer competent to receive him in custody.
3. When committed either by the party about to be injured, or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlawful interference with real or personal property in his lawful possession; provided the force or violence used is not more than sufficient to prevent such offense.
4. When committed by a parent or the authorized agent of any parent, or by any guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, provided restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree.
5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them at their request, in expelling from any carriage, railroad car, vessel or other vehicle any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.
6. When committed by any person in preventing an idiot, lunatic, insane person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

§ 644. Assault or assault and battery—Punishment

A. Assault shall be punishable by imprisonment in a penal institution not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or both, at the discretion of the Court.

B. Assault and battery shall be punishable by imprisonment in a penal institution not exceeding ninety (90) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or by both such imprisonment and fine.

§ 645. Assault, battery, or assault and battery with a dangerous weapon punishment

Every person who with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon the person of another with any sharp or dangerous weapon, or who, without such cause, shoots at another with any kind of firearm or air gun or other means whatever, with intent to injure any person, although without the intent to kill such person or to commit any felony, upon conviction shall be guilty of a crime.

§ 646. Aggravated assault and battery defined

A. An assault and battery becomes aggravated when committed under any of the following circumstances:

1. When great bodily injury is inflicted upon the person assaulted; or
2. When committed by a person of robust health or strength upon one who is aged, decrepit, or incapacitated, as defined in 21 CNCA § 641.

B. For purposes of this section "**great bodily injury**" means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

§ 647. Punishment for aggravated assault and battery

Aggravated assault and battery shall be a crime.

§ 648. Definitions

A. "**Dog handler**" means any police officer or peace officer who has successfully completed training in the handling of a police dog as established by the policy or standard of the law enforcement agency employing said officer.

B. "**Police dog**" means any dog used by a law enforcement agency of this Nation or political subdivision of this Nation which is especially trained for law enforcement work and is subject to the control of a dog handler.

C. "**Police horse**" means any horse which is used by a law enforcement agency of this Nation or political subdivision of this Nation for law enforcement work.

D. "**Police officer**," "**police**" or "**peace officer**" means any duly appointed person who is charged with the responsibility of maintaining public order, safety, and health by the enforcement

of all laws, ordinances or orders of this Nation or any of its political subdivisions and who is authorized to bear arms in execution of his responsibilities.

§ 649. Assault, battery or assault and battery upon police officer or other peace officer—Penalties

A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of an officer of the Cherokee Nation Marshal Service, police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other Nation peace officer employed by any Nation, state or federal governmental agency to enforce Nation laws while said officer is in the performance of his or her duties is upon conviction, guilty of a crime.

B. Every person who, without justifiable or excusable cause knowingly commits battery or assault and battery upon the person of a police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other Nation peace officer employed by any Nation governmental agency to enforce Nation laws while said officer is in the performance of his duties, upon conviction, is guilty of a crime.

C. As used in this section and in 21 CNCA § 650, "**corrections personnel** "means any person, employed by the Nation or by a political subdivision, who has direct contact with inmates of a jail or Nation correctional facility, and includes but is not limited to, penal institution employees in job classifications requiring direct contact with inmates, persons providing vocational-technical training to inmates, education personnel who have direct contact with inmates because of education programs for inmates, and persons employed by county or municipal jails to supervise inmates or to provide medical treatment or meals to inmates of jails.

§ 649.1. Certain acts against police dog or police horse prohibited—Penalties

A. No person shall willfully torture, torment, beat, mutilate, injure, disable, or otherwise mistreat a police dog or police horse owned, or the service of which is employed, by a law enforcement agency of the Nation or political subdivision of the Nation.

B. No person shall willfully interfere with the lawful performance of any police dog or police horse.

C. Except as provided in subsection (D) of this section, any person convicted of violating any of the provisions of this section shall be guilty of a crime.

D. Any person who knowingly and willfully and without lawful cause or justification violates the provisions of this section, during the commission of a crime shall be guilty of a crime.

§ 649.2. Killing police dog or police horse—Penalties

A. No person shall willfully kill any police dog or police horse owned, or the service of which is employed, by a law enforcement agency of the State of Oklahoma, federal government, Nation or a

political subdivision of the State of Oklahoma, federal government or Nation.

B. Except as provided in subsection (C) of this section, any person convicted of violating the provisions of this section is guilty of a crime.

C. Any person who knowingly and willfully and without lawful cause or justification violates the provisions of this section during the commission of a crime shall be guilty of a crime, punishable by imprisonment in a penal institution not exceeding six (6) months, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

§ 650. Aggravated assault and battery upon peace officer

A. Every person who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of a marshal, police officer, sheriff, deputy sheriff or highway patrolman, corrections personnel as defined in 21 CNCA § 649, or any state, federal or Nation peace officer employed by any Nation governmental agency to enforce Nation laws, while said officer is in the performance of his duties, shall upon conviction thereof be guilty of a crime.

B. This section shall not supersede any other act or acts, but shall be cumulative thereto.

§ 650.1. Athletic contests—Assault and battery upon referee, umpire, etc.

Every person who, without justifiable or excusable cause and with intent to do bodily harm, commits any assault, battery, or assault and battery upon the person of a referee, umpire, timekeeper, coach, official, or any person having authority in connection with any amateur or professional athletic contest is guilty of a crime.

§ 650.2. Aggravated assault and battery upon Cherokee Nation corrections employee

Every person in the custody of the Cherokee Nation penal institution or who commits any aggravated assault and battery upon the person of a Nation employee while said employee is in the performance of his duties shall upon conviction thereof be guilty of a crime.

§ 650.3. Delaying, obstructing or interfering with emergency medical technician or other emergency medical care provider—Punishment

Every person who willfully delays, obstructs or in any way interferes with an emergency medical technician or other emergency medical care provider in the performance of or attempt to perform emergency medical care and treatment or in going to or returning from the scene of a medical emergency, upon conviction, is guilty of a crime punishable by imprisonment in the penal institution not exceeding six (6) months, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

§ 650.4. Assault, battery or assault and battery upon emergency medical technician or other emergency medical care provider—Punishment

A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of an emergency medical technician or other emergency medical care provider, upon conviction, is punishable by imprisonment in a penal institution not exceeding six (6) months, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

B. Every person who, without justifiable or excusable cause and with intent to do bodily harm, commits any battery or assault and battery upon the person of an emergency medical technician or other emergency medical care provider, upon conviction, is guilty of a crime.

§ 650.5. Aggravated assault and battery or assault with firearm or other dangerous weapon upon emergency medical technician or other emergency medical care provider—Punishment

Every person who, without justifiable or excusable cause and with intent to do bodily harm, commits any aggravated assault and battery or any assault with a firearm or other deadly weapon upon the person of an emergency medical technician or other emergency medical care provider, upon conviction, is guilty of a crime.

CHAPTER 21

ATTEMPTS TO KILL

§ 651. Poison, attempt to kill by administering

Every person who, with intent to kill, administers or causes or procures to be administered to another any poison which is actually taken by such other person but by which death is not caused, is guilty of a crime.

§ 652. Shooting or discharging firearm with intent to kill—Assault and battery with deadly weapon, etc.

Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person, is guilty of a crime. Any person who commits any assault and battery upon another by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, or in resisting the execution of any legal process, is guilty of a crime.

CHAPTER 22

DUELS AND CHALLENGES

§ 661. Duel defined

A duel is any combat with deadly weapons fought between two persons by agreement.

§ 662. Punishment for dueling

Every person fighting any duel, although no death or wound ensues, is guilty of a crime.

CHAPTER 23

CRIMINAL ASSAULTS

§ 681. Assaults with intent to commit crime; Punishment

A. Every person who commits an assault with intent to commit any crime, except an assault with intent to kill, the punishment for which assault is not otherwise prescribed in this code, is guilty of a crime, punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment if the offense involved sexual assault.

B. Any person convicted for a violation of subsection (A) of this section where the offense involved sexual assault, shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

CHAPTER 24

HOMICIDE

GENERAL PROVISIONS

MURDER

MANSLAUGHTER

EXCUSABLE AND JUSTIFIABLE HOMICIDE

GENERAL PROVISIONS

§ 691. Homicide defined

Homicide is the killing of one human being by another.

§ 692. Homicide classified

Homicide is either:

1. Murder;
2. Manslaughter;

3. Excusable homicide; or

4. Justifiable homicide.

§ 693. Proof necessary to conviction of murder or manslaughter

No person can be convicted of murder or manslaughter, or of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused are each established as independent facts beyond a reasonable doubt.

§ 694. Petit treason by killing master or husband abolished—Such offenses homicides

The rules of the common law, distinguishing the killing of a master by his servant and of a husband by his wife, as petit treason are abolished and these offenses are deemed homicides, punishable in the manner prescribed by this chapter.

§ 695. Confidential or domestic relation may be considered

Whenever the grade or punishment of homicide is made to depend upon its having been committed under circumstances evincing a depraved mind or unusual cruelty, or in a cruel manner, the jury may take into consideration the fact that any domestic or confidential relation existed between the accused and the person killed, in determining the moral quality of the acts proved.

MURDER

§ 701.7. Murder in the first degree

A. A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree when he takes the life of a human being, regardless of malice, in the commission of forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances, or trafficking in illegal drugs.

C. A person commits murder in the first degree when the death of a child results from the willful or malicious injuring, torturing, maiming or using of unreasonable force by said person or who shall willfully cause, procure or permit any of said acts to be done upon the child pursuant to 21 CNCA § 843.

D. A person commits murder in the first degree when he unlawfully and with malice aforethought solicits another person or persons to cause the death of a human being in furtherance of unlawfully manufacturing, distributing or dispensing controlled dangerous substances, as defined in the

Uniform Controlled Substances Act, 21 CNCA § 2101 et seq., unlawfully possessing with intent to distribute or dispense controlled dangerous substances, or trafficking in illegal drugs.

§ 701.8. Murder in the second degree

Homicide is murder in the second degree in the following cases:

1. When perpetrated by an act imminently dangerous to another person and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual; or
2. When perpetrated by a person engaged in the commission of any crime other than the unlawful acts set out in 21 CNCA § 701.7(B).

§ 701.9. Punishment for murder

A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be guilty of a crime.

B. A person who is convicted of or pleads guilty or nolo contendere to murder in the second degree shall be guilty of a crime.

§ 701.16. Solicitation for murder in the first degree

It shall be unlawful for any person or agent of that person to solicit another person or persons to cause the death of a human being by the act of murder in the first degree as is defined by 21 CNCA § 701.7. A person who is convicted, pleads guilty or pleads nolo contendere to the act of solicitation for murder in the first degree, except as provided in 21 CNCA § 701.7, shall be guilty of a crime.

§ 702. Design to effect death inferred

A design to effect death is inferred from the fact of killing, unless the circumstances raise a reasonable doubt whether such design existed.

§ 703. Premeditation

A design to effect death sufficient to constitute murder may be formed instantly before committing the act by which it is carried into execution.

§ 704. Anger or intoxication no defense

Homicide committed with a design to effect death is not the less murder because the perpetrator was in a state of anger or voluntary intoxication at the time.

§ 705. Act imminently dangerous and evincing depraved mind

Homicide perpetrated by an act imminently dangerous to others and evincing a depraved mind, regardless of human life, is not the less murder because there was no actual intent to injure others.

MANSLAUGHTER

§ 711. Manslaughter in the first degree defined

Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a crime.
2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon; unless it is committed under such circumstances as constitute excusable or justifiable homicide.
3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

§ 712. Liability of physicians

Every physician who being in a state of intoxication without a design to effect death, administers any poison, drug or medicine, or does any other act as such physician to another person, which produces the death of such other person, is guilty of manslaughter in the first degree.

§ 713. Killing an unborn quick child

The willful killing of an unborn quick child by any injury committed upon the person of the mother of such child is manslaughter in the first degree.

§ 715. Punishment for manslaughter in the first degree

Every person committing manslaughter in the first degree is guilty of a crime.

§ 716. Manslaughter in the second degree

Every killing of one human being by the act, procurement or culpable negligence of another, which, under the provisions of this chapter, is not murder, nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree.

§ 717. Owner of mischievous animal which kills person

If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or

keeps it without ordinary care, and such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances permitted, to avoid such animal, the owner is deemed guilty of manslaughter in the second degree.

§ 722. Punishment for manslaughter in the second degree

Every person committing of manslaughter in the second degree is guilty of a crime.

EXCUSABLE AND JUSTIFIABLE HOMICIDE

§ 731. Excusable homicide, what is

Homicide is excusable in the following cases:

1. When committed by accident and misfortune in doing any lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent.
2. When committed by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat provided that no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner.

§ 732. Justifiable homicide by officer

A peace officer, correctional officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

1. In effecting an arrest or preventing an escape from custody following arrest and the officer reasonably believes both that:
 - a. such force is necessary to prevent the arrest from being defeated by resistance or escape, and
 - b. there is probable cause to believe that the person to be arrested has committed a crime involving the infliction or threatened infliction of serious bodily harm, or the person to be arrested is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay; or
2. The officer is in the performance of his legal duty or the execution of legal process and reasonably believes the use of the force is necessary to protect himself or others from the infliction of serious bodily harm; or
3. The force is necessary to prevent an escape from a penal institution from custody while in transit thereto or therefrom unless the officer has reason to know:
 - a. the person escaping is not a person who has committed a crime involving violence, and

b. the person escaping is not likely to endanger human life or to inflict serious bodily harm if not apprehended.

§ 733. Justifiable homicide by any person

Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any crime upon him, or upon or in any dwelling house in which such person is; or
2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there is a reasonable ground to apprehend a design to commit a crime, or to do some great personal injury, and imminent danger of such design being accomplished; or
3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any crime committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

CHAPTER 25

KIDNAPPING

§ 741. Kidnapping defined

A. Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either:

1. To cause such other person to be confined or imprisoned in this Nation against the will of the other person; or,
2. To cause such other person to be sent out of this Nation against the will of the other person; or,
3. To cause such person to be sold as a slave, or in any way held to service against the will of such other person, is guilty of a crime, punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment when the offense was by a non-parent and involved sexual abuse or sexual exploitation.

B. Upon any trial for a violation of this section, the consent thereto of the person kidnapped or confined, shall not be a defense, unless it appears satisfactorily to the jury, that such person was above the age of twelve (12) years, and that such consent was not extorted by threat, or by duress.

C. Any person, except for the parent of the child, convicted for a violation of subsection (A) of this section where the offense involved sexual abuse or sexual exploitation, shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the

mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 745. Kidnapping for purpose of extortion—Assisting in disposing, receiving, possessing or exchanging money or property received

A. Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, for the purpose of extorting any money, property or thing of value or advantage from the person so seized, confined, inveigled or kidnapped, or from any other person, or in any manner threatens either by written instrument, word of mouth, message, telegraph, telephone, by placing an ad in a newspaper, or by messenger, demands money or other thing of value, shall be guilty of a crime.

B. Every person, not a principal in the kidnapping and not a relative or agent authorized by a relative of a kidnapped person, but who knowingly aids, assists, or participates in the disposing, receiving, possession or exchanging of any moneys, property or thing of value or advantage from the person so seized, confined, inveigled or kidnapped, shall be guilty of a crime.

§ 746. Venue

Every offense prohibited in the last section may be tried in the jurisdiction in which the crime may have been committed or in any jurisdiction through which the person so seized, confined, inveigled or kidnapped shall have been taken, carried, or into which such person may be brought.

§ 747. Holder of hostage—Telephone communications

A. The supervising law enforcement official having jurisdiction in the geographical area where hostages are held who has probable cause to believe that the holder of one or more hostages is committing a crime shall have the authority to order a telephone company to arrange to cut, reroute or divert telephone lines in any emergency in which such hostages are being held, for the purpose of preventing telephone communication by the holder of such hostages with any person other than a peace officer or a person authorized by the peace officer.

B. The serving telephone company within the geographical area of a law enforcement unit shall designate appropriate telephone company management employees to provide, or cause to be provided, all required assistance to law enforcement officials to carry out the purposes of this section.

C. Good faith reliance on an order by a supervising law enforcement official pursuant to this section, shall constitute a complete defense to any civil or criminal action brought against a telephone company, its agents or employees, as a result of compliance with said order.

CHAPTER 26

MAIMING

§ 751. Maiming defined

Every person who, with premeditated design to injure another, inflicts upon his person any injury which disfigures his personal appearance or disables any member or organ of his body or seriously diminishes his physical vigor, is guilty of maiming.

§ 752. Maiming one's self

Every person who with design to disable himself from performance of any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled, is guilty of maiming.

§ 754. Means and manner of maiming immaterial

To constitute maiming it is immaterial by what means or instrument, or in what manner the injury was inflicted.

§ 755. Maiming by disfigurement

To constitute maiming by disfigurement, the injury must be such as is calculated, after healing, to attract observation. A disfigurement which can only be discovered by close inspection does not constitute maiming.

§ 756. Design to maim inferred

A design to injure, disfigure, or disable, is inferred from the fact of inflicting an injury which is calculated to disfigure or disable, unless the circumstances raise a reasonable doubt whether such design existed.

§ 757. Premeditated design

A premeditated design to injure, disfigure or disable, sufficient to constitute maiming, may be formed instantly before inflicting the wound.

§ 758. Recovery before trial at bar—Conviction of assault and battery

Where it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming shall be had; but the accused may be convicted of assault and battery, with or without a special intent, according to proof.

§ 759. Punishment for maiming

Every person convicted of maiming is guilty of a crime.

CHAPTER 28

ROBBERY

§ 791. Robbery defined

Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

§ 792. Force or fear—How employed

To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking.

§ 793. Degree of force immaterial

When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

§ 794. What fear is an element

The fear which constitutes robbery may be either:

1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed or of any relative of his, or member of his family; or
2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed, at the time of the robbery.

§ 795. Value of property not material

When property is taken under the circumstances, required to constitute robbery, the fact that the property was of trifling value does not qualify the offense.

§ 796. Taking secretly not robbery

The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge.

§ 797. Degrees of robbery

Robbery, when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner, it is robbery in the second degree.

§ 798. Punishment for first degree

Every person convicted of robbery in the first degree is guilty of a crime.

§ 799. Punishment for second degree

Every person convicted of robbery in the second degree is guilty of a crime.

§ 800. Robbery by two or more persons—Punishment

Whenever two or more persons conjointly commit a robbery or where the whole number of persons conjointly commits a robbery and persons present and aiding such robbery amount to two or more, each and either of such persons is guilty of a crime.

§ 801. Robbery or attempted robbery with dangerous weapon or imitation firearm—Punishment

Any person or persons who, with the use of any firearms or any other dangerous weapons, whether the firearm is loaded or not, or who uses a blank or imitation firearm capable of raising in the mind of the one threatened with such device a fear that it is a real firearm, attempts to rob or robs any person or persons, or who robs or attempts to rob any place of business, residence or banking institution or any other place inhabited or attended by any person or persons at any time, either day or night, shall be guilty of a crime.

CHAPTER 29

SUICIDE

§ 811. Suicide defined

Suicide is the intentional taking of one's own life.

§ 813. Aiding suicide

Every person who willfully, in any manner, advises, encourages, abets, or assists another person in taking his own life, is guilty of aiding suicide.

§ 814. Furnishing weapon or drug

Every person who willfully furnishes another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life, is guilty of aiding suicide, if such person thereafter employs such instrument or drug in taking his own life.

§ 815. Aid in attempt to commit suicide

Every person who willfully aids another in attempting to take his own life, in any manner which by the preceding sections would have amounted to aiding suicide if the person assisted had actually taken his own life, is guilty of aiding an attempt at suicide.

§ 816. Incapacity of person committing or attempting suicide no defense

It is no defense to a prosecution for aiding suicide or aiding an attempt at suicide, that the person who committed or attempted to commit the suicide was not a person deemed capable of committing crime.

§ 817. Punishment for aiding suicide

Every person convicted of aiding suicide is guilty of a crime.

§ 818. Punishment for aiding an attempt at suicide

Every person convicted of aiding an attempt at suicide is guilty of a crime.

CHAPTER 30

MISCELLANEOUS OFFENSES AGAINST THE PERSON

IN GENERAL

RIGHT OF PRIVACY

TATTOOING

CHILD ABUSE

EXPLOSIVES

INTIMIDATION OR HARASSMENT

IN GENERAL

§ 831. Intoxicated physician

Every physician who being in the state of intoxication administers any poison, drug or medicine, or does any other act as such physician to another person, is guilty of a crime.

§ 832. Willfully poisoning food, drink, medicine, or patent or proprietary medicine

A. 1. No person shall willfully mingle any poison, Schedule I through V drug pursuant to the

provisions of 21 CNCA § 2203 et seq., or sharp object, or any other object or substance which if used in a manner which is not customary or usual is harmful to human life, with any food, drink, medicine, or patent or proprietary medicine with intent that the same shall be taken, consumed, applied, or used in any manner by any human being to his injury; and

2. Unless authorized by law, no person shall willfully poison or place any Schedule I through V drug pursuant to the provisions of 21 CNCA § 2203 et seq., or any other object or substance which if used in a manner which is not customary or usual is harmful to human life in any spring, well, or reservoir of water.

B. Any person convicted of violating any of the provisions of this section shall be guilty of a crime.

§ 833. Unlawful confinement of lunatics

Every overseer of the poor, constable, keeper of a penal institution, or other person who confines any idiot, lunatic, or insane person, in any other manner or in any other place than is authorized by law, is guilty of a crime.

§ 834. Reconfining persons discharged upon writ of deliverance

Every person who, either solely or as a member of a court, in the execution of a judgment, order or process, knowingly recommits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from a penal institution upon a writ of deliverance, is guilty of a crime; and, in addition to the punishment prescribed therefor, he forfeits to the party aggrieved One Thousand Dollars (\$1,000.00), to be recovered in a civil action.

§ 835. Concealing persons to avoid habeas corpus

Every person having in his custody or power, or under his restraint, a party who by the provisions of law relating to habeas corpus, would be entitled to a writ of habeas corpus, or for whose relief such writ has been issued, who, with intent to elude the service of such writ, to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who, without lawful excuse, refuses to produce him, is guilty of a crime.

§ 836. Assisting in concealing person to avoid habeas corpus

Every person who knowingly assists in the violation of the preceding section is guilty of a crime.

§ 837. Intimidating laborers

Every person who, by use of force, threats or intimidation, prevents or endeavors to prevent any hired foreman, journeyman, apprentice, workman, laborer, servant or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or induces such hired person to relinquish his work or employment, or to return any work he has in

hand, before it is finished, is guilty of a crime.

Every person who, by use of force, threats, or intimidation, prevents or endeavors to prevent any farmer or rancher from harvesting, handling, transporting or marketing any agricultural products, is guilty of a crime.

§ 838. Intimidating employers

Every person who, by use of force, threats or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants or other persons employed by him, or their rate of wages or time of service, is guilty of a crime.

RIGHT OF PRIVACY

§ 839.1. Right of privacy—Use of name or picture for advertising without consent—Crime

Any person, firm or corporation that uses for the purpose of advertising for the sale of any goods, wares or merchandise, or for the solicitation of patronage by any business enterprise, the name, portrait or picture of any person, without having obtained, prior or subsequent to such use, the consent of such person, or, if such person is a minor, the consent of a parent or guardian, and, if such person is deceased, without the consent of the surviving spouse, personal representatives, or that of a majority of the deceased's adult heirs, is guilty of a crime.

§ 839.2. Right of action—Damages

Any person whose right of privacy, as created in 21 CNCA § 839.1, is violated or the surviving spouse, personal representatives or a majority of the adult heirs of a deceased person whose name, portrait, or picture is used in violation of 21 CNCA § 839.1, may maintain an action. Provided that this act shall not prevent the continued use of names of such persons by business establishments using such names and displaying such names at the effective date of this act.

§ 839.3. Right of photographer to exhibit specimens of work—Other uses excepted

Nothing contained in this act shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment, unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed; and nothing contained in this act shall be so construed as to prevent any person, firm or corporation from using the name, portrait or picture of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by him which he has sold or disposed of with such name, portrait or picture used in connection therewith; or from using the name, portrait or picture of any author, composer or artist in connection with his literary, musical or artistic productions which he has sold or disposed of with such name, portrait or picture used in

connection therewith. Provided that this act shall not prevent the continued use of names of such persons by business establishments using such names and displaying such names at the effective date of this act.

TATTOOING

§ 841. Tattooing prohibited—Definition—Exemption

It shall be unlawful for any person to tattoo or offer to tattoo any person. As used herein to "**tattoo**" means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, so as to produce a permanent indelible mark or figure visible on the skin. Provided, however, that the provisions hereof shall not apply to any act of a licensed practitioner of the healing arts performed in the course of his practice.

§ 842. Penalty

Any person violating the provisions of 21 CNCA § 841 shall be guilty of a crime and upon conviction thereof shall be punished by imprisonment in the penal institution not to exceed ninety (90) days or payment of a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

CHILD ABUSE

§ 843. Abuse of children—Penalties

A. For the purposes of this section:

1. "**Abuse**" means harm or threatened harm to a child's health, safety or welfare by a person responsible for the child's health, safety or welfare, including sexual abuse and sexual exploitation.
2. "**Child**" means any unmarried person under the age of eighteen (18) years.
3. "**Harm or threatened harm to a child's health or safety**" includes, but is not limited to:
 - a. nonaccidental physical or mental injury;
 - b. sexual abuse;
 - c. sexual exploitation;
 - d. neglect;
 - e. failure or omission to provide protection from harm or threatened harm; or
 - f. abandonment.

4. **"Neglect"** means abandonment, or failure or omission to provide any of the following:

a. adequate food, clothing, shelter, medical care, or supervision; or

b. special care made necessary by the physical or mental condition of the child.

5. **"Person responsible for a child's health, safety or welfare"** includes a parent, a legal guardian, a custodian, a foster parent, a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution, facility or day treatment program, or an owner, operator, or employee of a child care facility.

6. **"Sexual abuse"** includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety or welfare regardless of the age or consent of the child.

7. **"Sexual exploitation"** includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's health, safety or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the law, by a person responsible for the child's health, safety or welfare.

B. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a crime, punishable pursuant to 21 CNCA § 10. As used in this subsection, **"child abuse"** means the willful or malicious abuse, as defined by paragraph 1 of subsection (A) of this section, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.

C. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall, upon conviction, be punished pursuant to 21 CNCA § 10. As used in this subsection, **"enabling child abuse"** means the causing, procuring or permitting of a willful or malicious act of child abuse, as defined by paragraph 1 of subsection (A) of this section, of a child under eighteen (18) years of age by another. As used in this subsection, **"permit"** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

D. Any parent or other person who shall willfully or maliciously engage in child neglect shall, upon conviction, be punished pursuant to 21 CNCA § 10. As used in this subsection, **"child neglect"** means the willful or malicious neglect, as defined by paragraph 3 of subsection (A) of this section, of a child under eighteen (18) years of age by another.

E. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished pursuant to 21 CNCA § 10. As used in this subsection,

"enabling child neglect" means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 3 of subsection (A) of this section, of a child under eighteen (18) years of age by another. As used in this subsection, **"permit"** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

F. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this section, **"child sexual abuse"** means the willful or malicious sexual abuse, as defined by paragraph 6 of subsection (A) of this section, of a child under eighteen (18) years of age by another.

G. Any parent or other person who shall willfully or maliciously engage in sexual abuse to a child under twelve (12) years of age shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

H. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this subsection, **"enabling child sexual abuse"** means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by paragraph 6 of subsection (A) of this section, of a child under the age of eighteen (18) by another. As used in this subsection, **"permit"** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

I. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this subsection, **"child sexual exploitation"** means the willful or malicious sexual exploitation, as defined by paragraph 7 of subsection (A) of this section, of a child under eighteen (18) years of age by another.

J. Any parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

K. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this subsection, **"enabling child sexual exploitation"** means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by paragraph 7 of subsection (A) of this section, of a child under eighteen (18) years of age by another. As used in this subsection, **"permit"** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

L. Notwithstanding any other provision of law, any parent or other person convicted of rape or lewd molestation of a child under fourteen (14) years of age subsequent to a previous conviction, in any court of competent jurisdiction, for any offense of forcible anal or oral sodomy, rape, or lewd molestation of a child under fourteen (14) years of age shall be punished, punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

M. Any person convicted of violating the provisions of subsections (F) through (L) of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

N. Consent shall not be a defense for any violation of this section.

§ 843.1. Caretaker—Abuse, neglect or financial exploitation of charge

A. No caretaker or other person as defined in 43A O.S. § 10-103 shall abuse, commit financial neglect of, commit neglect of, commit sexual abuse upon, or financially exploit any person entrusted to the care of such caretaker or other person in a nursing facility or other setting or knowingly cause, secure, or permit any of said acts to be done.

B. Any person convicted of violating the provisions of this section shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that when such conviction involves sexual abuse or sexual exploitation, such sentence must include a term of imprisonment.

C. Consent shall not be a defense for any violation of this section.

D. Any person convicted of violating the provisions of this section by committing sexual abuse or sexual exploitation shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

E. For purposes of this section and 21 CNCA §§ 843.2 through 843.4:

1. "**Abuse**" means causing or permitting:

a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or

b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

2. "**Caretaker**" shall be defined as a person who has:

a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;

b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or

c. been appointed a guardian, limited guardian, or conservator.

3. "**Exploitation**" or "**exploit**" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;

4. "**Financial neglect**" means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;

b. refusing to pay for necessities or utilities in a timely manner; or

c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

5. "**Incapacitated person**" means:

a. any person eighteen (18) years of age or older:

i. who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability or other cause; and

ii. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage his or her financial resources or to meet essential requirements for his or her mental or physical health or safety without assistance from others; or

b. a person for whom a guardian, limited guardian, or conservator has been appointed.

6. "**Indecent exposure**" means forcing or requiring a vulnerable adult to:

a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or

b. touch or feel the body or private parts of another.

7. **"Neglect"** means:

a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest; or

b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or

c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

8. **"Self-neglect"** means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity;

9. **"Sexual abuse"** means:

a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object; or

b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

c. indecent exposure by a caretaker or other person providing services to the vulnerable adult.

10. **"Sexual exploitation"** includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by the Nation's laws.

11. **"Verbal abuse"** means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

12. **"Vulnerable adult"** means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

F. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the sole reason the vulnerable adult, in good faith, selects and depends upon spiritual means alone, in accordance with the practices of a recognized religious method of healing, for the treatment or cure of disease or remedial care, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable adult spiritual means alone, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable adult.

§ 843.2. Verbal abuse by caretaker

No caretaker shall verbally abuse any person entrusted to the care of the caretaker, or knowingly cause, secure, or permit an act of verbal abuse to be done. Any person convicted of violating the provisions of this section shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10.

§ 843.3. Abuse or exploitation of vulnerable adult by non-caretaker

A. Any person who engages in abuse, sexual abuse, or exploitation of a vulnerable adult, as defined in 21 CNCA § 843, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment when the offense involved sexual abuse or exploitation. Any person convicted of violating the provisions of this subsection by committing sexual abuse or exploitation shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

B. Any person who has a responsibility to care for a vulnerable adult who purposely, knowingly or recklessly neglects the vulnerable adult shall be guilty of a crime punishable pursuant to 21 CNCA § 10.

§ 843.4. Exploitation of elderly persons or disabled adults

A. As used in this section, "**exploitation of an elderly person or disabled adult**" means:

1. Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

- a. stands in a position of trust and confidence with the elderly person or disabled adult; or
- b. has a business relationship with the elderly person or disabled adult.

2. Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or

permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

B. Any person convicted of violating this section commits a crime punishable pursuant to 21 CNCA § 10.

C. For purposes of this section, "**elderly person**" means any person sixty-two (62) years of age or older.

§ 844. Ordinary force as means of discipline not prohibited

Provided, however, that nothing contained in this act shall prohibit any parent, teacher or other person from using ordinary force as a means of discipline, including but not limited to spanking, switching or paddling.

§ 845. Repealed by LA 20–08, eff. January 12, 2009

§ 846. Mandatory reporting of physical abuse or birth of chemically-dependent child— Investigations—Spiritual treatment exemption—Appointment of attorney for child

A. Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, every teacher of any child under the age of eighteen (18) years, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to Cherokee Nation and the county office of the Department of Human Services in the county wherein the suspected injury occurred. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance shall promptly report the matter to Cherokee Nation and the county office of the Department of Human Services in the county in which such birth occurred. Provided it shall be a crime for any person to knowingly and willfully fail to promptly report any incident as provided above. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as maybe after it is initially made by telephone or otherwise and shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, the nature and extent of the child's dependence on a controlled dangerous substance and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

Cherokee Nation and the county office receiving any report as herein provided shall investigate said report in accordance with priority guidelines established by Cherokee Nation and the Department of Human Services and if the county office finds evidence of abuse and neglect forward its findings to the prosecutor together with its recommendation as to disposition. In addition, a copy of the findings shall be sent to the Child Welfare Division of the Department of Human Services which shall be responsible for maintaining a permanent central registry, suitably cross-indexed, of all such reported findings. Any information contained in the central registry shall be available to any county office and to any prosecutor's office or public law enforcement agency investigating a report of suspected child abuse or neglect. The Department of Human Services may promulgate rules and regulations in furtherance of the provisions of this section.

All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the Nation, State of Oklahoma or United States in connection with the performance of their official duties. It shall be unlawful and a crime for the Commission, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any Court-Appointed Special Advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

No provision of this section shall be construed to mean that a child has been abused or neglected because said child's parent, guardian or custodian in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care of such child.

B. In every case filed under 21 CNCA § 843, the Judge of the District Court shall appoint an attorney-at-law to appear for and represent a child who is the alleged subject of child abuse in such case if the prosecutor has a conflict of interest. The attorney may be allowed a reasonable fee for such services to be paid from the Court Fund to be fixed by the District Court. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section. The attorney shall be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the Court and participate further in the proceedings to the degree appropriate for adequately representing the child. A Court-Appointed Special Advocate as defined by 10 CNCA § 1109 may be appointed to represent a child who is the alleged subject of child abuse or neglect. The Court-Appointed Special Advocate shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

§ 846.1. Report of criminally inflicted injuries

Any physician, surgeon, osteopathic physician, resident, intern, physician's assistant, or registered nurse, examining, attending, or treating the victim of what appears to be criminally injurious conduct as defined by 21 CNCA § 142.3 shall report orally or by telephone the matter promptly to the nearest appropriate law enforcement agency wherein the criminally injurious conduct occurred.

§ 847. Immunity from civil or criminal liability

Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of 21 CNCA § 846 or 21 CNCA § 846.1, or any person who, in good faith and exercising due care, allows access to a child by persons authorized to investigate a report concerning the child shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

§ 848. Admissibility of evidence

In any proceeding resulting from a report made pursuant to the provisions of 21 CNCA § 846 or 21 CNCA § 846.1 or in any proceeding where such a report or any contents of the report are sought to be introduced into evidence, such report, contents, or other fact related thereto or to the condition of the child or victim who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

EXPLOSIVES

§ 849. Wiring or equipping of vehicles or structures with explosives—Penalty

Every person who shall attach to, or place in or upon any motor vehicle or any vehicle designed or customarily used to transport a person or persons or any structure designed or customarily used for the occupancy of a person or persons, any explosive material, thing or device with the intent of causing bodily injury or death to any person shall be guilty of a crime.

INTIMIDATION OR HARASSMENT

§ 850. Malicious intimidation or harassment because of race, color, religion, ancestry, national origin or disability—Standardized reporting system

A. No person shall maliciously and with the specific intent to intimidate or harass another person because of that person's race, color, religion, ancestry, national origin or disability:

1. Assault or batter another person;
2. Damage, destroy, vandalize or deface any real or personal property of another person; or
3. Threaten, by word or act, to do any act prohibited by paragraph 1 or 2 of this subsection if there is reasonable cause to believe that such act will occur.

B. No person shall maliciously and with specific intent to incite or produce, and which is likely to incite or produce, imminent violence, which violence would be directed against another person

because of that person's race, color, religion, ancestry, national origin or disability, make or transmit, cause or allow to be transmitted, any telephone or electronic message.

C. No person shall maliciously and with specific intent to incite or produce, and which is likely to incite or produce, imminent violence, which violence would be directed against another person because of that person's race, color, religion, ancestry, national origin or disability, broadcast, publish, or distribute, cause or allow to be broadcast, published or distributed, any message or material.

D. Any person convicted of violating any provision of subsections (A), (B) or (C) of this section shall be guilty of a crime on a first offense.

E. Cherokee Nation shall cooperate with the Oklahoma State Bureau of Investigation to develop a standard system for Nation, state and local law enforcement agencies to report incidents of crime which are apparently directed against members of racial, ethnic or religious groups to the Bureau within seventy-two (72) hours of the time such incidents are reported to such agencies.

F. No person, partnership, company or corporation that installs telephone or electronic message equipment shall be required to monitor the use of such equipment for possible violations of this section, nor shall such person, partnership, company or corporation be held criminally or civilly liable for the use by another person of the equipment in violation of this section, unless the person, partnership, company or corporation that installed the equipment had prior actual knowledge that the equipment was to be used in violation of this section.

PART IV

CRIMES AGAINST PUBLIC DECENCY AND MORALITY

CHAPTER 31

ABANDONMENT AND NEGLECT OF WIFE OR CHILDREN

§ 851. Desertion of children under age of ten—Penalty

Any parent of any child or children under the age of ten (10) years, and every person to whom such child or children have been confided for nurture or education, who deserts such child or children within Cherokee Nation, or takes such child or children out of Cherokee Nation, with the intent wholly to abandon it, shall be deemed guilty of a crime.

§ 852. Omission to provide for a child—Penalties

A. Unless otherwise provided for by law, any parent, guardian, or person having custody or control over a child as defined in 10 CNCA § 1101 who willfully omits, without lawful excuse, to perform any duty imposed upon such parent, guardian, or person having custody or control of a child by law to furnish necessary food, clothing, shelter, monetary child support, or medical attendance for

such child, upon conviction, is guilty of a crime. As used in this section, the **"duty to furnish medical attention"** shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted. Any person who leaves the Nation to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, is guilty of a crime. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated. Nothing contained herein shall prevent a Court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare. Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

B. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, as such terms are defined by 43A O.S. § 3–403, to provide for the treatment, as such term is defined by 43A O.S. § 3–403, of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a crime. For the purpose of this subsection, the **"duty to provide for such treatment"** shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

§ 852.1. Child endangerment—Knowingly permitting physical or sexual abuse—Good faith reliance on spiritual healing—Penalties

A. In this section **"abandon"** means to leave a child in any place without providing reasonable and necessary care for the child under circumstance under which no reasonable similarly situated adult would leave a child of that age and ability.

B. A person commits a crime if, having custody, care or control of a child younger than fifteen (15) years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.

C. A person commits a crime if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than fifteen (15) years in imminent danger of death, bodily injury or physical or mental impairment.

D. A person who is the parent, guardian, or person having custody or control over a child as

defined in 10 CNCA § 1101, commits the crime of child endangerment when the person knowingly permits physical or sexual abuse of a child or who knowingly permits a child to be present at a location when a controlled dangerous substance is being manufactured or attempted to be manufactured as defined in 21 CNCA § 2101. However, it is an affirmative defense to this paragraph if the person had a reasonable apprehension that any action to stop the abuse would result in substantial bodily harm to the person or the child.

E. The provision of this action shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care for such child. This subsection shall in no way limit or modify the protections afforded said child in 21 CNCA § 852 or 10 CNCA § 1130.

§ 853. Desertion of wife or child under fifteen—Penalty

Every person who shall without good cause abandon his wife in destitute or necessitous circumstances and neglect and refuse to maintain or provide for her, or who shall abandon his or her minor child or children under the age of fifteen (15) years and willfully neglect or refuse to maintain or provide for such child or children, shall be deemed guilty of a crime.

§ 854. Proof of marriage—Wife as competent witness—Duty of prosecutor to prosecute

No other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children than is or shall be required to prove such fact in a civil action, and such wife shall be a competent witness to testify in any case brought under this chapter, and to any and all matters relevant thereto, including the fact of such marriage and the parentage of such child or children. It shall be the mandatory duty of each prosecutor of this Nation to diligently prosecute all persons violating any of the provisions of this chapter, and in all cases where the evidence is deemed sufficient to justify a prosecution for such violation, any prosecutor who shall willfully fail, neglect or refuse to institute criminal proceedings to enforce such provisions, shall be subject to removal from office.

CHAPTER 31A

CONTRIBUTING TO DELINQUENCY OF MINORS

§ 856. Contributing to delinquency of minor or in commission of crime—Punishment

A. Except as otherwise specifically provided by law, every person who shall knowingly or willfully cause, aid, abet or encourage a minor to be, to remain, or to become a delinquent child, upon conviction, shall be guilty of a crime.

B. Every person eighteen (18) years of age or older who shall knowingly or willfully cause, aid, abet or encourage a minor to commit or participate in committing an act that would be a crime if committed by an adult shall, upon conviction, be guilty of a crime punishable by the maximum

penalty allowed for conviction of the offense or offenses which the person caused, aided, abetted or encouraged the minor to commit or participate in committing.

§ 856.1. Causing, aiding, abetting or encouraging minor to participate in certain drug-related crimes

Every person who shall knowingly, intentionally or willfully cause, aid, abet or encourage a minor child to:

1. Distribute, dispense, possess or manufacture a controlled dangerous substance, as provided in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.;
2. Create, distribute, or possess a counterfeit controlled dangerous substance, as defined by 21 CNCA § 2101;
3. Distribute any imitation controlled substance as defined by 21 CNCA § 2101;
4. Conspire or participate in any scheme, plan or act for the purposes of avoiding, eluding or evading arrest or detection by law enforcement authorities for crimes involving controlled substances as defined by 21 CNCA § 2101; or
5. Violate any penal provisions of the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.;

shall be guilty of a crime.

§ 857. Definitions

1. **"Delinquent child,"** as used in 21 CNCA § 856, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, shall include a minor, as herein defined, who shall have been or is violating any penal statute of this Nation, or who shall have been or is committing any one or more of the following acts, to wit:

- a. Associating with thieves, vicious or immoral persons;
- b. Frequenting a house of ill repute;
- c. Frequenting any policy shop, or place where any gambling device is operated;
- d. Frequenting any saloon, dram shop, still, or any place where intoxicating liquors are manufactured, stored or sold;
- e. Possession, carrying, owning or exposing any vile, obscene, indecent, immoral or lascivious photograph, drawing, picture, book, paper, pamphlet, image, device, instrument, figure or object;

f. Willfully, lewdly or lasciviously exposing his or her person, or private parts thereof, in any place, public or private, in such manner as to be offensive to decency, or calculated to excite vicious or lewd thoughts, or for the purpose of engaging in the preparation or manufacture of obscene, indecent or lascivious photographs, pictures, figures or objects;

g. Possessing, transporting, selling, or engaging or aiding or assisting in the sale, transportation or manufacture of intoxicating liquor, or the frequent use of same;

h. Being a runaway from his or her parent or legal guardian;

i. Violating any penal provision of the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.

2. "**Encourage**," as used in 21 CNCA § 856, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, in addition to the usual meaning of the word, shall include a willful and intentional neglect to do that which will directly tend to prevent such act or acts of delinquency on the part of such minor, when the person accused shall have been able to do so.

3. "**Every person**," as used in 21 CNCA § 856, 21 CNCA § 856.1, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, shall include human beings, without regard to their legal or natural relationship to such minor, as well as legal or corporate entities.

4. "**Minor**" or "**child**," as used in 21 CNCA § 856, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, shall include male or female persons who shall not have arrived at the age of eighteen (18) years at the time of the commission of the offense.

§ 858.1. Causing, aiding, abetting or encouraging minor to be in need of supervision or dependent or neglected—Punishment—Second or subsequent conviction

A. Any parent or other person who knowingly and willfully:

1. causes, aids, abets or encourages any minor to be in need of supervision, or dependent and neglected; or

2. shall by any act or omission to act have caused, encouraged or contributed to the dependency and neglect, or the need of supervision of the minor, or to such minor becoming dependent and neglected, or in need of supervision;

shall be deemed guilty of a crime.

§ 858.2. Neglect of minor adjudicated delinquent, in need of supervision or dependent and neglected and placed in parents' or others' care

In all cases where a minor has been adjudged delinquent, in need of supervision or dependent and neglected by a court of competent jurisdiction and such court by order for care or probation, has

placed such minor in the care or on probation to the parent, legal guardian, or legal custodian of such minor, any parent, legal guardian or legal custodian of such minor who shall neglect, fail or refuse to give such minor proper parental care, or to comply with the order for care or probation shall be deemed guilty of a crime and upon conviction thereof shall, as applicable, be punished as provided in 21 CNCA § 856 or 21 CNCA § 858.1.

CHAPTER 32

CONCEALING DEATH OF CHILDREN

§ 863. Concealing stillbirth or death of child

Every person who endeavors either by himself or by the aid of others to conceal the stillbirth of an issue of a woman's body, or the death of any child, is guilty of a crime.

CHAPTER 32A

TRAFFICKING IN CHILDREN

§ 865. Definitions

As used in 21 CNCA § 866, 21 CNCA § 867, 21 CNCA § 868, and 21 CNCA § 869, the terms hereinafter enumerated shall have the following meanings:

1. **"Birth parent"** means a parent of a child being placed for adoption and includes, but is not limited to, a woman who is pregnant or who presents herself as pregnant and who is offering to place her child, born or unborn, for adoption.
2. **"Child"** means an unmarried or unemancipated person under the age of eighteen (18) years.
3. **"Child-placing agency"** means any child welfare agency licensed by any government and authorized to place minors for adoption.
4. **"Department"** means the Cherokee Nation Department of Children, Youth and Family Services.
3. **"Foster home"** means a home or other place, other than the home of a parent, relative within the fourth degree, or guardian of the child concerned, wherein a child is received for permanent care, custody and maintenance.
4. **"Person"** means any natural person, corporation, association, organization, institution, or partnership.

§ 866. Elements of offense

A. 1. The crime of trafficking in children is defined to consist of any of the following acts or any part thereof:

a. the acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at any time, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child except as otherwise provided by the Cherokee Nation Adoption Code, 10 CNCA § 55 et seq.;

b. the acceptance or solicitation of any compensation, in money, property or other thing of value, by any person or organization for services performed, rendered or purported to be performed to facilitate or assist in the adoption or foster care placement of a minor child, except by the Cherokee Nation Department of Children, Youth and Family Services or an agency licensed thereby, or an attorney authorized to practice law in Cherokee Nation. The provisions of this paragraph shall not prohibit an attorney licensed to practice law outside of Cherokee Nation or a non-Cherokee Nation child-placing agency from receiving compensation when working with an attorney licensed in Cherokee Nation who is, or when working with a child-placing agency licensed in Cherokee Nation which is, providing adoption services or other services necessary for placing a child in an adoptive arrangement.

c. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the solicitation or receipt had no intent to consent to eventual adoption;

d. the payment of a recognized hospital or a physician qualified under the laws of Cherokee Nation which renders competent and needed hospital and medical care to an expectant mother or reasonable domiciliary care to a mother and child when such hospital and medical care have been approved by the Judge of the District Court shall not be considered as compensation for the adoption of the child or in any sense of the words be referred to as "trafficking in children"; nor shall the charge of a reasonable attorney's fee for services rendered in adoption or custody proceedings, approved by the Court, be considered as trafficking in children; nor shall the fees charged by a licensed child placing agency approved by the Court, for services rendered in the care of any child or its parent, the investigation and counseling services to and on behalf of the child, its parents and prospective adoptive home, be considered as trafficking in children; provided, however, that all such procedure relating to the care of an expectant unwed mother and her child and the adoption procedure therein comprised, or any other adoption, shall remain confidential in its nature, as otherwise provided by law;

e. offering to place, or advertising to place, a child for adoption or for care in a foster home, by any person, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child;

f. bringing or causing to be brought into this Nation or sending or causing to be sent outside this Nation any child for the purpose of placing such child in a foster home or for the adoption thereof without first obtaining the consent of the Department of Children, Youth and Family Services. Provided, however, that this provision shall have no application to the parent or guardian of the

child nor to a person bringing said child into this Nation for the purpose of adopting the child into such person's same into his own family;

g. acceptance of or the offering or payment of any compensation, in money, property or other thing of value, by any person, in connection with the acquisition or transfer of the legal or physical custody of a child, except as ordered by the Court or except as otherwise provided by law;

h. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a woman who knows she is not pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption;

i. the receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a birth parent who receives, from one or more parties, an aggregate amount of One Thousand Dollars (\$1,000.00) or more in total value without first disclosing to each prospective adoptive parent, child-placing agency, or attorney the receipt of these expenses;

j. advertising of services for compensation to assist with or effect the placement of a child for adoption or for care in a foster home by any person or organization except by the Department of Children, Youth and Family Services, or a child-placing agency licensed thereby. Nothing in this paragraph shall prohibit an attorney authorized to practice law in Cherokee Nation from the advertisement of legal services related to the adoption of children; and

k. Advertising for and solicitation of a woman who is pregnant to induce he to place her child upon birth for adoption, except by the Department of Children, Youth and Family Services or an attorney authorized to practice law in Cherokee Nation.

2.a. Except as otherwise provided by this subsection, the violation of any of the subparagraphs in paragraph 1 of this subsection shall constitute a crime punishable pursuant to 21 CNCA § 10.

b. Prospective adoptive parents who violate subparagraph a of paragraph 1 of this subsection, upon conviction thereof, may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

B. 1. No person shall knowingly publish for circulation within the borders of Cherokee Nation an advertisement of any kind in any print, broadcast or electronic medium, including, but not limited to, newspapers, magazines, telephone directories, handbills, radio or television, which violates subparagraph j or k of paragraph 1 of subsection (A) of this section.

2. Any person violating the provisions of this subsection shall, upon conviction thereof, be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

C. The payment or acceptance of costs and expenses listed in the Cherokee Nation Adoption Code shall not be a violation of this section as long as the petitioner or birth parent has complied with the applicable procedure specified therein, and such costs and expenses are approved by the Court.

D. Any person knowingly failing to file an affidavit of all adoption costs and expenses before the final decree of adoption as required by the Cherokee Nation Adoption Code shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

§ 867. Punishment

A. The offense of trafficking in children by any person shall be a crime.

B. Conviction of the crime of trafficking in children, subsequent to a prior conviction for such offense in any form, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. Any person convicted of the offense of trafficking in children shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 868. Partial invalidity

If any provision or section of this act or the application thereof to any person, corporation, organization, association, partnership, or institution shall be held to be invalid or unconstitutional, the remainder of the act and the application of such provision or section to any other person, organization, association, institution, corporation or partnership shall not be affected thereby.

§ 869. Construction of act

Except as otherwise set forth or except in case of conflict between the provisions hereof and other law, the provisions of this act shall be cumulative to existing law.

CHAPTER 34

BIGAMY, INCEST AND SODOMY

§ 881. Bigamy defined

Every person who having been married to another who remains living, marries any other person except in the cases specified in the next section is guilty of bigamy.

§ 882. Exceptions to the rule of bigamy

The last preceding section does not extend:

1. To any person whose husband or wife by a former marriage has been absent for five (5) successive years without being known to such person within that time to be living; nor
2. To any person whose husband or wife by a former marriage has absented himself or herself from

his wife or her husband and has been continually remaining without the United States for a space of five (5) years together; nor

3. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court; nor

4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

§ 883. Punishment of bigamy

Every person convicted of bigamy is guilty of a crime.

§ 884. Person marrying bigamist

Every person who knowingly marries the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, is guilty of a crime.

§ 885. Incest—Penalty

Persons who, being within the degrees of consanguinity within which marriages are by the laws of the Nation declared incestuous and void, intermarry with each other, or commit adultery or fornication with each other, are guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 886. Crime against nature

Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is guilty of a crime punishable pursuant to 21 CNCA 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 887. Crime against nature, what penetration necessary

Any sexual penetration, however slight, is sufficient to complete the crime against nature.

§ 888. Repealed by LA 20–08, eff. January 12, 2009

CHAPTER 35

CHILD STEALING

§ 891. Child stealing—Punishment

Whoever maliciously, forcibly or fraudulently takes or entices any child under the age of eighteen (18) years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child or to transport such child from the jurisdiction of Cherokee Nation or the United States without the consent of the person having lawful charge of such child shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

CHAPTER 36

CRIMES AGAINST RELIGION AND CONSCIENCE

§ 913. Compelling form of belief

Any willful attempt by means of threats or violence to compel any person to adopt, practice or profess any particular form of religious belief, is a crime.

§ 914. Preventing religious act

Every person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a crime.

§ 915. Disturbing religious meeting

Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts or things hereinafter enumerated, is guilty of a crime.

CHAPTER 38

GAMBLING

GENERAL PROVISIONS

SLOT MACHINES AND PUNCH BOARDS

GAMBLING AND COMMERCIAL GAMBLING ACTIVITIES

BETTING, ETC., ON RACES

BINGO

GENERAL PROVISIONS

§ 941. Opening, conducting or carrying on gambling game—Dealing for those engaged in game

Every person who opens, or causes to be opened, or who conducts, whether for hire or not, or carries on either poker, roulette, craps or any banking or percentage, or any gambling game played with dice, cards or any device, for money, checks, credits, or any representatives of value, or who either as owner or employee, whether for hire or not, deals for those engaged in any such game, upon conviction thereof, shall be guilty of a crime.

§ 942. Betting on or playing prohibited game—Punishment

Any person who bets or plays at any of said prohibited games, or who shall bet or play at any game whatsoever, for money, property, checks, credits or other representatives of value with cards, dice or any other device which may be adapted to or used in playing any game of chance or in which chance is a material element, shall be guilty of a crime.

§ 943. Gambling paraphernalia—Disposition

The magistrate to whom anything suitable to be used for gambling purposes, including any vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, or furniture or equipment used in a place conducted in violation of this act is delivered, as provided by law shall, upon the examination of the accused, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him and whether it was actually intended or employed by the accused or others in violation of the provisions of this chapter; and if he finds that it is of a character suitable to be used for gambling purposes, and that it was actually employed or intended to be used by the accused or others in violation of the provisions of this article, he shall so find and cause the same to be delivered to the marshal to await the order of the District Court. Provided, that any of the furniture or equipment susceptible of legitimate use, may be sold under the procedures enumerated in 21 CNCA § 1738(C)(1), and the proceeds thereof placed in the Court Fund of the Nation, and that any money so found by the officers shall be placed in the Court Fund of the Nation.

§ 944. Slot machines—Setting up, operating or conducting—Punishment

Any person who sets up, operates or conducts, or who permits to be set up, operated or conducted in or about his place of business, whether as owner, employee or agent, any slot machine for the purpose of having or allowing the same to be placed by others for money, property, checks, credits or any representative of value shall be deemed guilty of a crime.

§ 945. Use of real estate or buildings for gambling purposes—Punishment

It shall be unlawful for the owner or owners of any real estate buildings, structure or room to use, rent, lease or permit, knowingly, the same to be used for the purposes of violating 21 CNCA § 941. Any person who shall violate the provisions of this section shall be guilty of a crime.

§ 946. Illegal use of building or vessel—Nuisance—Penalty

Any house, room, vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, or place where any of the games prohibited by 21 CNCA § 941 are opened, conducted or carried on, or where persons congregate to play at any such game is a public nuisance and the keepers and managers of any such nuisance, and persons aiding or assisting any such keepers or managers in keeping or managing any such nuisance shall be guilty of a crime.

§ 952. Persons jointly charged—Severance

Persons jointly charged with the violation of any of the provisions of this act shall be tried together, provided the Court for good cause shown may grant a severance.

§ 953. Accomplice testimony—Force of same

Any person charged with a violation of any of the provisions of this chapter may be convicted on the uncorroborated testimony of an accomplice, and the judgment thereon shall not be set aside or reversed by reason of the fact that such conviction was based on the testimony of an accomplice.

§ 956. Permitting gambling in building or on grounds

Every person who shall permit any gaming table, bank, or gaming device prohibited by this chapter, to be set up or used for the purpose of gambling in any house, building, shed, shelter, booth, lot or other premises to him belonging, or by him occupied, or of which he has, at the time, possession or control, shall be, on conviction thereof, adjudged guilty of a crime.

§ 957. Leasing for gambling purposes

Every person who shall knowingly lease or rent to another any house, building or premises for the purpose of setting up or keeping therein, any of the gambling devices prohibited by the preceding provisions of this chapter, is guilty of a crime.

§ 959. Witnesses failing to testify

Every person duly summoned as a witness for the prosecution or defense on any proceedings ordered under this chapter, who neglects or refuses to attend and testify as required, is guilty of a crime.

§ 960. Seizure of apparatus and property and delivery to magistrate

Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this chapter, is equally authorized and enjoined to seize any vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, which have been used for illegal gambling and any table, cards, dice, or other articles or apparatus suitable to be used for gambling purposes found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 961. Testimony, no person excused from giving

No person shall be excused from giving any testimony or evidence upon any investigation or prosecution for violation of this chapter, upon the ground that such testimony would tend to convict him of a crime, but such testimony or evidence shall not be received against him upon any criminal investigation or prosecution, except in a prosecution against him for perjury committed in giving such testimony.

SLOT MACHINES AND PUNCH BOARDS

§ 964. "Slot machine" defined

For the purpose of this act, "**slot machine**" is defined to be:

First: Any machine, instrument, mechanism or device that operates or may be operated or played mechanically, electrically, electronically automatically or manually, and which can be played or operated by any person by inserting in any manner into said machine, instrument, mechanism or device, a coin, chip, token, check, credit, money, representative of value, or a thing of value, and by which play or operation such person will stand to win or lose, whether by skill or chance, or by both, a thing of value; and

Second: Any machine, instrument, mechanism or device that operates or may be played or operated mechanically, electrically, electronically, automatically, or manually, and which can be played or operated by any person by paying to or depositing with any person, or by depositing with or in any cache, receptacle, slot, or place a coin, chip, token, check, credit, money, representative of value, or a thing of value, and by which play or operation such person will stand to win or lose, whether by skill or chance, or by both, a thing of value.

§ 965. "Thing of value" defined

For the purposes of this act, "**a thing of value**" is defined to be any money, coin, currency, check, chip, token, credit, property, tangible or intangible, or any representative of value or any other thing, tangible or intangible except amusement or entertainment, calculated or intended to serve as an inducement for anyone to operate or play any slot machine or punch board.

§ 966. "Punch board" defined

For the purposes of this chapter, "**punch board**" is defined to be any card, board, substance or thing upon or in which is placed or concealed in any manner any number, figure, name, design, character, symbol, picture, substance or thing which may be drawn, uncovered, exposed or removed therefrom by any person paying a thing of value, which number, figure, design, character, symbol, picture, substance or any other thing, when drawn, uncovered, exposed or removed therefrom, will stand the person drawing, uncovering, exposing or removing the same to win or lose a thing of value.

§ 967. Words in singular and plural

Any word or words used in this act in the singular number shall include the plural, and the plural the singular.

§ 968. "Person" defined

For the purposes of this act, "**person**" is defined to include any person, partnership, association, company, stock company, corporation, receiver, trustee, organization or club.

§ 969. Possession, sale, or lease of slot machines or punch boards prohibited

It shall be unlawful for any person to have in his possession any slot machine or punch board, or sell or solicit the sale, or take orders for the sale of, or lease or rent any slot machine or punch board in this Nation, and any person violating the provisions of this section shall be deemed guilty of a crime.

§ 971. Punch board—Acts prohibited—Punishment

Any person who sets up, operates, exposes, conducts, displays or plays, or who permits to be set up, operated, exposed, conducted, displayed or played, in or about any place or in or about any place of business, whether as owner, employee or agent, any punch board for the purpose of having or allowing the same to be played by others for money, property, tangible or intangible, coin, currency, check, chip, token, credit, amusement or any representative of value or a thing of value, shall be deemed guilty of a crime.

§ 978. Bingo and regulated gaming not prohibited

None of the provisions of this chapter, except 21 CNCA § 995.11, shall apply to bingo and gambling regulated or operated by Cherokee Nation under Title 4 of the Code.

GAMBLING AND COMMERCIAL GAMBLING ACTIVITIES

§ 981. Definitions

As used in this chapter:

1. A **"bet"** is a bargain in which the parties agree that, dependent upon chance, or in which one of the parties to the transaction has valid reason to believe that it is dependent upon chance, one stands to win or lose something of value specified in the agreement. A **"bet"** does not include:

a. bona fide business transactions which are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance; or

b. any bingo game or a game of chance with comparable characteristics by or for participants conducted by an authorized organization under the laws of this Nation; or

c. offers of purses, prizes or premiums to the actual participants in public and semipublic events, as follows, to wit: Rodeos, animal shows, expositions, fairs, athletic events, tournaments and other shows and contests where the participants qualify for a monetary prize or other recognition. This subparagraph further excepts an entry fee from the definition of **"a bet"** as applied to enumerated public and semipublic events;

d. any gambling activity regulated or operated by Cherokee Nation provided by law.

2. **"Consideration"** as used in this section means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration. As used in this paragraph, the term **"consideration"** shall not include sums of money paid by or for participants in any bingo game or a game of chance with comparable characteristics as defined by subparagraph b of paragraph 1 of this section and it shall be conclusively presumed that such sums paid by or for said participants were intended by said participants to be for the benefit of the organizations described in subparagraph b of paragraph 1 of this section for the use of such organizations in furthering the purposes of such organizations;

3. A **"gambling device"** is a contrivance designed primarily for gambling purposes which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device; and

4. A **"gambling place"** is any place, room, building, vehicle, tent or location which is used for any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places

is admissible on the issue of whether it is a gambling place.

§ 982. Commercial gambling

A. Commercial gambling is:

1. Operating or receiving all or part of the earnings of a gambling place;
2. Receiving, recording or forwarding bets or offers to bet or, with intent to receive, record or forward bets or offers to bet, possessing facilities to do so;
3. For gain, becoming a custodian of anything of value bet or offered to be bet;
4. Conducting a lottery or with intent to conduct a lottery possessing facilities to do so;
5. Setting up for use or collecting the proceeds of any gambling device; or
6. Alone or with others, owning, controlling, managing or financing a gambling business.

B. Any person convicted of commercial gambling shall be guilty of a crime.

§ 983. Permitting premises to be used for commercial gambling

A. Permitting premises to be used for commercial gambling is intentionally:

1. Granting the use or allowing the continued use of a place as a gambling place; or
2. Permitting another to set up a gambling device for use in a place under the offender's control.

B. Any person permitting premises to be used for commercial gambling shall be guilty of a crime.

§ 985. Possession of a gambling device

A. Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee or otherwise, of any gambling device.

B. Any person possessing a gambling device who knows or has reason to know said devices will be used in making or settling commercial gambling transactions and deals in said gambling devices with the intent to facilitate commercial gambling transactions shall be punished for a crime.

§ 987. Dissemination of gambling information

A. Dissemination of gambling information is the transmitting or receiving, by means of any communications facilities, information to be used in making or settling bets. Provided that nothing herein shall prohibit a licensed radio or television station or newspaper of general circulation from

broadcasting or disseminating to the public reports of odds or results of legally staged sporting events.

B. Any person found guilty of disseminating gambling information shall be guilty of a crime.

§ 988. Conspiracy

A. A conspiracy is any agreement, combination or common plan or scheme by two or more persons, coupled with an overt act in furtherance of such agreement, combination or common plan or scheme, to violate any section of this act.

B. Any person found guilty of conspiracy shall be punished to the same extent as provided for in the section of this act which such person conspired to violate.

BETTING, ETC., ON RACES

§ 991. Betting or letting premises for betting on races

A. Except as provided for in the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq., it shall be unlawful for any person, association, or corporation:

1. to bet or wager upon the result of any trial of speed or power of endurance of animals or beasts; or

2. to occupy any room, shed, tenement or building, or any part thereof, or to occupy any place upon any grounds with books, apparatus, or paraphernalia for the purpose of recording or registering bets or wagers or of selling pools, or making books or mutuals upon the result of any trial of speed or power of endurance of animals or beasts; or

3. being the owner or lessee or occupant of any room, tent, tenement, shed, booth, or building, or part thereof at any place knowingly to permit the same to be used or occupied to keep, exhibit, or employ any device or apparatus for the purpose of recording or registering such bets or wagers or the selling or making of such books, pools or mutuals, or to become the custodian or depository for gain, hire or reward of any money, property or thing of value, bet or wagered or to be wagered or bet upon the result of any trial of speed or power of endurance of animals or beasts; or

4. to receive, register, record, forward or purport or pretend to forward to or for any racetrack within or without this Nation, any money, thing or consideration of value offered for the purpose of being bet or wagered upon the result of any trial of speed or power of endurance of any animal or beast; or

5. to occupy any place, or building or part thereof with books, papers, apparatus, or paraphernalia for the purpose of receiving or pretending to receive or for recording or for registering or for forwarding or pretending or attempting to forward in any manner whatever, any money, thing or consideration of value, bet or wagered or to be bet or wagered by any person or to receive or offer

to receive any money, thing, or consideration of value bet or to be bet upon the result of any trial of speed or power of endurance or any animal or beast; or

6. to aid or assist or abet at any racetrack or other place in any manner in any of the acts forbidden by this section.

B. Any person, association, or corporation convicted of violating the provisions of paragraph 1 of subsection (A) of this section shall be fined not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) and be imprisoned not more than ninety (90) days. Any person, association, or corporation convicted of violating any provision of paragraphs 2, 3, 4, 5 or 6 of subsection (A) of this section shall be guilty of a crime.

C. Any personal property used for the purpose of violating any of the provisions of this section shall be disposed of as provided for in 22 CNCA § 1261.

§ 993. Evidence for prosecution—Accomplices—Immunity for witnesses

A conviction for the violation of any of the provisions of this act may be had upon the unsupported evidence of an accomplice or participant, and such accomplice or participant shall be exempt from prosecution for any offense in this act about which he may be required to testify.

BINGO

§ 995.2. Definitions

As used in this section and 21 CNCA §§ 995.11 through 995.15:

1. **"Bingo"** means a game in which each participant receives one or more cards each of which is marked off into twenty-five (25) squares arranged in five (5) horizontal rows of five (5) squares each and five (5) vertical rows of five (5) squares each, with each square being designated by number, letter or combination of numbers and letters, and the center square designated with the word "free," with no two (2) cards being identical, with the players covering squares as the operator of such game announces a number, letter or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically from a receptacle in which have been placed objects bearing numbers, letters or combinations of numbers and letters corresponding to the system used for designating the squares, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of squares upon the card being used by him or them.

2. **"Rip-off games"** or **"pull-tab games"** means games wherein a participant receives a sealed card or tab, which when opened by the participant, reveals some combination of numbers, letters, or symbols the arrangement of which determines if the participant has won a prize.

§ 995.11. Intoxicating and nonintoxicating beverages prohibited

No licensee shall sell, serve or permit to be consumed any intoxicating and nonintoxicating beverages as defined in the laws of Cherokee Nation in any room or outdoor area where bingo is conducted during the time that it is so conducted.

§ 995.12. License required

No person shall conduct any game of bingo or pull tabs for which a charge is made or to the winner of which any prize is awarded except as regulated or operated by Cherokee Nation pursuant to law.

§ 995.13. Minors

No minor shall be permitted to play bingo for which a charge is made or to the winner of which any prize is awarded unless accompanied by a parent or guardian.

§ 995.15. Penalties

Any violation of 21 CNCA §§ 995.2 through 995.15 is hereby declared to be a public nuisance. Any person violating the provisions of this act, 21 CNCA § 995.2 et seq., except as otherwise provided in this section shall be guilty of a crime.

Any person conducting, playing, or offering to play or conduct any rip-off game or pull-tab game in any place where bingo is conducted, except as otherwise provided in this act, 21 CNCA § 995.2 et seq., shall be guilty of a crime.

§ 995.18. Severability

The provisions of this act are severable and if any part or 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.

CHAPTER 39

CHEROKEE NATION OBSCENITY AND CHILD PORNOGRAPHY ACT

§ 1021. Indecent exposure—Indecent exhibitions—Obscene material or child pornography—Solicitation of minors

A. Every person who willfully and knowingly either:

1. lewdly exposes his person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;
2. procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual

stimulation of the viewer;

3. writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads or otherwise stores or views on a computer, or exhibits any obscene material or child pornography; or

4. makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any other kind of sound recording of any obscene material or child pornography

shall be guilty, upon conviction, of a crime punishable pursuant to 21 CNCA § 10, provided that upon a second conviction for a violation of subparagraph 1 or 2 of subsection (A), such sentence must include a term of imprisonment.

B. Every person who:

1. willfully solicits or aids a minor child to perform; or

2. shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in any act specified in paragraphs 1, 2, 3 or 4 of subsection (A) of this section

shall be guilty, upon conviction, of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. For purposes of this section, "downloading on a computer" means electronically transferring an electronic file from one computer or electronic media to another computer or electronic media.

D. Any person convicted of a second violation of paragraphs 1 or 2 of subsection (A) of this section, or for a first violation of either paragraph 3 or 4 of subsection (A) of this section when the offense involves child pornography, or for a first violation of subsection (B), shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1021.1. Application

A. 21 CNCA §§ 1021 through 1024.4 shall not apply to persons who may possess or distribute obscene matter or child pornography or participate in conduct otherwise proscribed by this act, when such possession, distribution, or conduct occurs in the course of law enforcement activities.

B. The criminal provisions of this title shall not prohibit the Attorney General from seeking civil or injunctive relief to enjoin the production, publication, dissemination, distribution, sale of or participation in any obscene material or child pornography, or the dissemination to minors of

material harmful to minors, or the possession of child pornography.

§ 1021.2. Minors—Child pornography

A. Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography shall be guilty, upon conviction, of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

B. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

§ 1021.3. Guardians, parents, custodians—Consent to participation of minors in child pornography

A. Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any child pornography shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

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

§ 1021.4. Duty to report obscene or pornographic material depicting minors—Penalty

A. Any commercial film and photographic print processor or commercial computer technician who has knowledge of or observes, within the scope of such person's professional capacity or employment, any film, photograph, video tape, negative, or slide, or any computer file, recording, CD-ROM, magnetic disk memory, magnetic tape memory, picture, graphic or image that is intentionally saved, transmitted or organized on hardware or any other media including, but not limited to, CDs, DVDs and thumbdrives, whether digital, analog or other means and whether directly viewable, compressed or encoded depicting or appearing to depict a child under the age of eighteen (18) years engaged in an act of sexual conduct as defined in 21 CNCA § 1024.1 shall immediately, or as soon as possible, report by telephone such instance of suspected child abuse or child pornography to the Cherokee Nation Marshal Service and shall prepare and send a written report of the incident to the Cherokee Nation Marshal Service with an attached copy of such material, within thirty-six (36) hours after receiving the information concerning the incident.

For the purposes of this section:

1. **"Commercial film and photographic print processor"** means any person who develops

exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term shall also include any employee of such a person; and

2. "**Commercial computer technician**" means any person who repairs, installs, or otherwise services any computer including, but not limited to, any component part, device, memory storage or recording mechanism, auxiliary storage, recording or memory capacity, or any other materials relating to operation and maintenance of a computer or computer network or system, for compensation. The term shall also include any employee of such person.

B. Any person who violates the provisions of this section, upon conviction, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. Nothing in this section shall be construed to require or authorize any person to act outside the scope of such person's professional capacity or employment by searching for prohibited materials or media.

§ 1022. Obscene material or child pornography, by whom seized and to whom delivered

Every person who is authorized or enjoined to arrest any person for a violation of 21 CNCA § 1021(A)(3) is equally authorized and enjoined to seize one copy of the obscene material, or all copies of explicit child pornography, found in possession of or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken, provided that when the arrest is made pursuant to a federal warrant, the federal procedures for delivery of such materials shall be followed without violating this section.

§ 1023. Child pornography or obscene material, how disposed of

The magistrate to whom any child pornography, or any obscene material, is delivered pursuant to the 21 CNCA § 1022, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such child pornography or obscene material, and if the magistrate finds it to be obscene material or child pornography the magistrate shall cause the same to be destroyed, or to be delivered to the Attorney General. The magistrate shall issue in writing the factual and legal basis for the determination by the magistrate of the character of the child pornography or obscene material. The Attorney General may transmit the child pornography or obscene material to the United States Attorney's Office for the district wherein a crime occurred upon the written request of said United States Attorney's Office, or may deliver such materials to the Cherokee Nation Marshal Service for storage as evidence pending trial and any appeals.

§ 1024. Attorney General to destroy indecent articles, when

Upon the final conviction of the accused, the Attorney General shall cause any child pornography or obscene material, in respect whereof the accused stands convicted and which remains in the possession or under the control of the Attorney General to be destroyed.

§ 1024.1. Definitions

A. As used in 21 CNCA §§ 1021, 1021.1 through 1021.3, 1022 through 1024, and 1040.8 through 1040.24, "**child pornography**" means and includes any film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, CD-ROM, magnetic disk memory, magnetic tape memory, play or performance wherein a minor under the age of eighteen (18) years is engaged in any act with a person, other than his or her spouse, of sexual intercourse which is normal or perverted, in any act of anal sodomy, in any act of sexual activity with an animal, in any act of sadomasochistic abuse including, but not limited to, flagellation or torture, or the condition of being fettered, bound or otherwise physically restrained in the context of sexual conduct, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual conduct, in any lewd exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, or where the lewd exhibition of the uncovered genitals has the purpose of sexual stimulation of the viewer, or wherein a person under the age of eighteen (18) years observes such acts or exhibitions.

B. As used in 21 CNCA §§ 1021 through 1024.4 and 1040.8 through 1040.24:

1. "**Explicit child pornography**" means material which a law enforcement officer can immediately identify upon first viewing without hesitation as child pornography.

2. "**Obscene material**" means and includes any representation, performance, depiction or description of sexual conduct, whether in any form or medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, CD-ROM, magnetic disk memory, magnetic tape memory or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication, if said items contain the following elements:

a. depictions or descriptions of sexual conduct which are patently offensive as found by the average person applying contemporary community standards;

b. taken as a whole, have as the dominant theme an appeal to prurient interest in sex as found by the average person applying contemporary community standards; and

c. a reasonable person would find the material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

The standard for obscenity applied in this section shall not apply to child pornography.

3. "**Performance**" means and includes any display, live or recorded, in any form or medium.

4. "**Sexual conduct**" means and includes any of the following:

a. acts of sexual intercourse including any intercourse which is normal or perverted, actual or

- simulated;
- b. acts of deviant sexual conduct, including oral and anal sodomy;
 - c. acts of masturbation;
 - d. acts of sadomasochistic abuse including but not limited to:
 - i. flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature; or
 - ii. the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed;
 - e. acts of excretion in a sexual context; or
 - f. acts of exhibiting human genitals or pubic areas.

The types of sexual conduct described in paragraph 4 of this subsection are intended to include situations when, if appropriate to the type of conduct, the conduct is performed alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

§ 1024.2. Purchase, procurement or possession of child pornography—Penalty

It shall be unlawful for any person to buy, procure or possess child pornography in violation of 21 CNCA §§ 1024.1 through 1024.4. Such person shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1024.3. Power to arrest and seizure of obscene material

Every person who is authorized or enjoined to arrest any person for a violation of 21 CNCA §§ 1021, 1021.1 through 1021.3, 1022 through 1024, and 1040.8 through 1040.24 is equally authorized and enjoined to seize an evidentiary copy of any obscene material or child pornography or all copies of explicit child pornography found in the possession of or under the control of the person so arrested and to deliver the obscene material or child pornography to the magistrate before whom the person so arrested is required to be taken, provided that when the arrest is made pursuant to a federal warrant, the federal procedures for delivery of such materials shall be followed without violating this section.

§ 1024.4. Destruction of obscene material upon conviction

Upon final conviction of the accused, any magistrate or the Attorney General shall cause any obscene material or child pornography, in respect whereof the accused stands convicted and which remains in the possession or control of such magistrate or the Attorney General, to be destroyed.

§ 1025. Bawdy house, etc.—Penalty

Every person who keeps any bawdy house, house of ill fame, of assignation, or of prostitution, or any other house or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene or indecent purpose, is guilty of a crime.

§ 1026. Disorderly house

Every person who keeps any disorderly house, or any house of public resort by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, is guilty of a crime.

§ 1027. Letting building for unlawful purposes

Every person who lets any building or portion of any building knowing that it is intended to be used for any purpose declared punishable by this chapter, or who otherwise permits any building or portion of a building to be so used, is guilty of a crime.

§ 1028. Setting up or operating place of prostitution—Ownership—Renting—Procuring—Receiving person for forbidden purpose—Transportation—Receiving proceeds

It shall be unlawful in Cherokee Nation:

1. To keep, set up, maintain, or operate any house, place, building, other structure, or part thereof, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation;
2. To knowingly own any house, place, building, other structure, or part thereof, or vehicle, trailer, or other conveyance used for the purpose of lewdness, assignation, or prostitution, or to let, lease, or rent, or contract to let, lease, or rent any such place, premises, or conveyance, or part thereof, to another with knowledge or reasonable cause to believe that the intention of the lessee or rentee is to use such place, premises, or conveyance for prostitution, lewdness, or assignation;
3. To offer, or to offer to secure, another for the purpose of prostitution, or for any other lewd or indecent act;
4. To receive or to offer or agree to receive any person into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
5. To direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the

purpose of such directing, taking or transporting is prostitution, lewdness or assignation;

6. To knowingly accept, receive, levy, or appropriate any money or other thing of value without consideration from a prostitute or from the proceeds of any woman engaged in prostitution.

§ 1029. Engaging in prostitution, etc.—Soliciting or procuring—Residing or being in place for prohibited purpose—Aiding, abetting or participating

It shall further be unlawful:

1. To engage in prostitution, lewdness, or assignation;
2. To solicit, induce, entice, or procure another to commit an act of lewdness, assignation, or prostitution, with himself or herself;
3. To reside in, enter, or remain in any house, place, building, or other structure, or to enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation;
4. To aid, abet, or participate in the doing of any of the acts herein prohibited.

§ 1030. Prostitution defined—Lewdness defined

The term "**prostitution**" as used in this act shall be construed to include the giving or receiving of the body for sexual intercourse for hire, and shall also be construed to include the giving or receiving of the body for indiscriminate sexual intercourse without hire. The term "**lewdness**" shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

§ 1031. Punishment for violations

Any person violating any of the provisions of this act shall be guilty of a crime; and the Court in which any such conviction is had shall notify the county superintendent of public health of such conviction.

§ 1040.8. Publication, distribution or participation in preparation of any obscene material or presentation—Unsolicited mailings—Penalty

No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, giveaway, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene material or child pornography, as defined in 21 CNCA § 1024.1. In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time such material is deposited in any post

office or delivered to any person with intent that it shall be forwarded. Also, unless preempted by federal law, no unsolicited mail which is harmful to minors pursuant to 21 CNCA § 1040.75 shall be mailed to any person. The party mailing the materials specified in this section may be tried where such material is deposited or delivered, or in which it is received by the person to whom it is addressed. Any person who violates any provision of this section, upon conviction, shall be guilty of a crime punishable pursuant to 21 CNCA § 10. Any person convicted of a violation of this section where the offender is age eighteen (18) or over and the offense involved child pornography shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§§ 1040.9, 1040.10. Repealed by LA 20–08, eff. January 12, 2009

§ 1040.11. Short title

Sections 1021 through 1040.77 of this title shall be known as the "Cherokee Nation Obscenity and Child Pornography Act" and may be referred to by that designation.

§ 1040.13. Acts prohibited

Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this Nation for sale or commercial distribution, or in this Nation prepares, sells, exhibits, commercially distributes, gives away, offers to give away, or has in his possession with intent to sell, to commercially distribute, to exhibit, to give away, or to offer to give away any obscene material or child pornography or gives information stating when, where, how, or from whom, or by what means obscene material or child pornography can be purchased or obtained, upon conviction, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such punishment must include a term of imprisonment. Any person convicted of a violation of this section where the offense involved child pornography shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1040.13a. Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor

A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology, or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. For purposes of this subsection, "**by use of any technology**" means the use of any telephone or cell phone, computer disk (CD), digital video disk (DVD), recording or sound device, CD-ROM, VHS, computer, computer network or system, Internet or World Wide Web address including any blog site or personal web address, e-mail address, Internet Protocol address (IP), text messaging or paging device, any video, audio, photographic or camera device of any computer, computer network or system, cell phone, any other electrical, electronic, computer or mechanical device, or any other device capable of any

transmission of any written or text message, audio or sound message, photographic, video, movie, digital or computer-generated image, or any other communication of any kind by use of an electronic device.

B. A person is guilty of violating the provisions of this section if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited communication, or knowingly buys, sells, receives, exchanges, or disseminates any prohibited communication or any information, notice, statement, website, or advertisement for communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be a minor.

C. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

D. Any violation of the provisions of this section shall be a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. For purposes of this section, each communication shall constitute a separate offense. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

E. For purposes of any criminal prosecution pursuant to any violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of Cherokee Nation by the fact of accessing any computer, cellular phone or other computer-related or satellite-operated device in Cherokee Nation, regardless of the actual jurisdiction where the violator resides.

§ 1040.14. Action for adjudication of obscenity or child pornographic content of mailable matter

A. Whenever the Attorney General has reasonable cause to believe that any person, with knowledge of its contents, is (1) engaged in sending or causing to be sent, bringing or causing to be brought, into Cherokee Nation for sale or commercial distribution, or is (2) in Cherokee Nation preparing, selling, exhibiting or commercially distributing or giving away, or offering to give away, or has in his possession with intent to sell, or commercially distribute or to exhibit or give away or offer to give away, any obscene material or child pornography, the Attorney General may institute an action in the District Court for an adjudication of the obscenity or child pornographic content of the mailable matter.

B. The procedure to be followed shall be that set forth in this act.

§ 1040.15. Petition

The action described in 21 CNCA § 1040.14 shall be commenced by filing with the Court a petition:

1. directed against the matter by name or description;
2. alleging it is obscene material or child pornography;
3. listing the names and addresses, if known, of its author, publisher and any other person sending or causing it to be sent, bringing or causing it to be brought into Cherokee Nation for sale or commercial distribution and of any person in Cherokee Nation preparing, selling, exhibiting or commercially distributing it, or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;
4. seeking an adjudication that it is either obscene material or child pornography, as defined in 21 CNCA § 1024.1;
5. seeking a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into Cherokee Nation for sale or commercial distribution, or in the Nation preparing, selling, exhibiting or commercially distributing it, giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;
6. seeking its surrender, seizure and destruction.

§ 1040.16. Summary examination of material—Dismissal or show cause order

- A. Upon the filing of the petition described in 21 CNCA § 1040.15, the Court shall summarily examine the obscene material or child pornography.
- B. If the Court finds no probable cause to believe it is obscene material or child pornography, the Court shall dismiss the petition.
- C. If the Court finds probable cause to believe it is obscene material or child pornography, the Court shall immediately issue an order or rule to show cause why it should not be adjudicated to be obscene material or child pornography.
- D. The order or rule to show cause shall be:
 1. directed against it by name or description;
 2. if their names and addresses are known, served personally in the manner provided in this act for the service of process or in any manner now or hereafter provided by law, upon its author, publisher, and any other person interested in sending or causing it to be sent, bringing or causing it to be brought, into Cherokee Nation for sale or commercial distribution, and on any person in the

Nation preparing, selling, exhibiting or commercially distributing it or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

3. returnable six (6) days after its service.

§ 1040.17. Answer

A. On or before the return date specified in the order or rule to show cause, the author, publisher, or any person interested in sending or causing to be sent, bringing or causing to be brought, into Cherokee Nation for sale or commercial distribution, or any person in Cherokee Nation preparing, selling, exhibiting or commercially distributing, or giving away or offering to give away, or possessing with intent to sell or commercially distribute or exhibit or give away or offer to give away, the matter may appear and file an answer.

B. The Court may, by order, permit any other person to appear and file an answer as *amicus curiae*. A person granted permission and appearing and filing an answer has all the rights of a party to the proceeding.

C. If no person appears and files an answer on or before the return date specified in the order or rule to show cause, the Court shall enter judgment either:

1. adjudicating the matter not to be obscene material or child pornography, if the Court so finds; or
2. adjudicating it to be obscene material or child pornography, if the Court so finds.

D. Every person appearing and answering shall be entitled, upon request, to a trial of the issues before the Court not less than three (3) days after a joinder of the issues.

§ 1040.18. Trial—Evidence

A. The Court shall conduct the trial in accordance with the rules of civil procedure applicable to the trial of cases by the Court without a jury.

B. The Court shall receive evidence at the trial, including the testimony of experts, pertaining, but not limited, to:

1. whether, to the average person, applying contemporary community standards, the dominant theme of the mailable matter taken as a whole is to prurient interest;
2. the artistic, literary, scientific and educational merits of the mailable matter considered as a whole;
3. the intent of the author and publisher in preparing, writing and publishing the mailable matter;

4. the appeal to prurient interest, or absence thereof, in advertising or other promotion of the mailable matter.

§ 1040.19. Destruction—Injunction

In the event that a judgment is entered adjudicating the matter to be obscene material or child pornography, the Court shall further:

1. order the person or persons having possession of it to surrender it to the Marshal Service for destruction and, in the event that person refuses, order the Marshal to seize and destroy it after all appeals are final;
2. enter a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into Cherokee Nation for sale or commercial distribution, and against any person in Cherokee Nation preparing, selling, exhibiting or commercially distributing it, giving it away or offering to give it away, or having it in his possession with intent to sell or commercially distribute or exhibit or give it away or offer to give it away.

§ 1040.20. Sending or selling of materials with knowledge of judgment

Any matter which, following the entry of a judgment that it is obscene material or child pornography, is sent or caused to be sent, brought or caused to be brought, into Cherokee Nation for sale or commercially distributed, given away or offered to be given away, by any person with knowledge of the judgment, or is in the possession of any such person with intent to sell or commercially distribute or exhibit or give away or offer to give away, is subject to the provisions of 21 CNCA § 1040.13.

§ 1040.21. Contempt

After the entry of a judgment that the matter is obscene material or child pornography, any person who, with knowledge of the judgment or of the order or rule to show cause, sends or causes to be sent, brings or causes to be brought, into Cherokee Nation for sale or commercial distribution, the matter, or who in Cherokee Nation sells, exhibits or commercially distributes it, gives away or offers to give it away, or has it in his possession with intent to sell or commercially distribute or exhibit or give away or offer to give it away, shall be guilty of contempt of court and upon conviction after notice and hearing shall be guilty of a crime punishable pursuant to 21 CNCA § 10.

§ 1040.22. Extradition

In all cases in which a charge or violation of any section or sections of this act is brought against a person who cannot be found in Cherokee Nation, the Principal Chief may demand extradition of such person from the executive authority of the state or tribal jurisdiction in which such person may be found.

§ 1040.23. Presumptions

The possession of two or more of any single article that is obscene material or child pornography, or the possession of a combined total of any five articles that are obscene material or child pornography (except the possession of them for the purpose of return to the person from whom received) shall create a presumption that they are intended for sale or commercial distribution, exhibition or gift, but such presumption shall be rebuttable. The burden of proof that their possession is for the purpose of return to the person from whom received shall be on the possessor.

§ 1040.24. Jurisdiction—Service of process—Fines—Execution against property

In order to protect the citizens and residents of Cherokee Nation against unfit articles and printed or written matter or material which originates outside Cherokee Nation, it is the purpose of this section to subject to the jurisdiction of the Courts of Cherokee Nation those persons who are responsible for the importation of those things into Cherokee Nation.

To that end and in the exercise of its power and right to protect its citizens and residents, it is hereby provided that any person, whether or not a citizen or resident of Cherokee Nation, who sends or causes to be sent into Cherokee Nation for resale in Cherokee Nation any article or printed matter or material, is for the purpose of this act transacting business in the Nation and by that act:

1. submits himself to the jurisdiction of the Courts of Cherokee Nation in any proceeding commenced under 21 CNCA § 1014;
2. constitutes the Secretary of State his agent for service of process in any proceeding commenced under 21 CNCA § 1014; and consents that service of process shall be made by serving a copy upon the Secretary of State or by filing a copy in the Secretary of State's office, and that this service shall be sufficient service provided that, within one (1) day after service, notice of the service and a copy of the process are sent by registered mail by the Attorney General to him at his last-known address and proof of such mailing filed with the clerk of the court within one (1) day after mailing;
3. consents that any fine levied against him under any section of this act may be executed against any of his real property, personal property, tangible or intangible, choses in action or property of any kind or nature, including debts owing to him, which are situated or found in Cherokee Nation.

Service of process upon any person who is subject to the jurisdiction of the Courts of Cherokee Nation, as provided in this section, may also be made by personally serving the summons upon him outside Cherokee Nation with the same force and effect as though summons had been personally served within Cherokee Nation. The service of summons shall be made in like manner as service within Cherokee Nation, by any person over twenty-one (21) years of age not a party to the action. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The Court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

§ 1040.51. Repealed by LA 20–08, eff. January 12, 2009

§ 1040.52. Showing at outdoor theaters of pictures depicting sexual intercourse prohibited under certain conditions—Penalty

A. Every owner or operator of an outdoor theater in Cherokee Nation is guilty of a crime who shows or causes to be shown a motion picture depicting:

1. Any person, whether nude or clad, in an act or simulation of an act of sexual intercourse, unnatural copulation or other sexual activity including the showing of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or

2. Nude or partially denuded figures including less than completely and opaquely covered human genitals, pubic regions, buttock and female breast below a point immediately above the top of the areola and including human male genitals in a discernably turgid state, even if completely and opaquely covered.

B. This section shall be applicable, however, only where the viewing portion of the screen of such theater is situated within the view of any residence or where children under eighteen (18) years of age have an understanding view of the picture.

C. Any prosecution under this section must be preceded by a written complaint from a resident affected by the terms of this section.

D. Upon conviction of a violation of this section such person shall be guilty of a crime punishable pursuant to 21 CNCA § 10.

§ 1040.53. Projectionists, ushers or cashiers excepted from statutes relating to exhibition of obscene motion pictures

The provisions of statutes of Cherokee Nation prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial theater open to the general public shall not apply to a projectionist or assistant projectionist, usher or cashier, provided he has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist, usher or cashier. Provided further, that such person is not acting as manager or director of such theater. The provisions of this act shall not exempt any projectionist or assistant projectionist, usher or cashier from criminal liability for any act unrelated to projection of motion pictures in a commercial theater open to the general public.

§ 1040.54. Seizure and forfeiture of equipment used in certain offenses relating to obscene material or child pornography

A. Any peace officer of Cherokee Nation is authorized to seize any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as

defined in 21 CNCA § 1024.1(B)(1) or child pornography, as defined in 21 CNCA § 1024.1(A). Said equipment may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the Attorney General as petitioner; provided, in the event the Attorney General elects not to file such an action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

B. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and

2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

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

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

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

F. At the hearing the party seeking the forfeiture shall prove by clear and convincing evidence that the equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in 21 CNCA § 1024.1(B)(1) or child pornography, as defined in 21 CNCA § 1024.1(A), with knowledge by the owner of the equipment.

G. The owner or party in interest may prove that the right or interest in the equipment was created without any knowledge or reason to believe that the equipment was being, or was to be, used for the purpose charged.

H. In the event of such proof, the court may order the equipment released to the bona fide or innocent owner or party in interest if the amount due the person is equal to, or in excess of, the value of the equipment as of the date of the seizure.

I. If the amount due to such person is less than the value of the equipment, or if no bona fide claim is established, the equipment shall be forfeited to Cherokee Nation and shall be sold pursuant to the judgment of the Court.

J. Equipment taken or detained pursuant to this section shall not be repleviable, but shall be

deemed to be in the custody of the office of the Attorney General or in the custody of the party seeking the forfeiture. The Attorney General or the party seeking the equipment may release said equipment to the owner of the equipment if it is determined that the owner had no knowledge of the illegal use of the equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the equipment. Equipment which has not been released by the Attorney General or the party seizing the equipment shall be subject to the orders and decrees of the District Court or the official having jurisdiction thereof.

K. The Attorney General or the party seizing such equipment shall not be held civilly liable for having custody of the seized equipment or proceeding with a forfeiture action as provided for in this section.

L. The proceeds of the sale of any equipment not taken or detained by the Cherokee Nation Marshal Service or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of the person's interest in the equipment, when the Court declaring the forfeiture orders a distribution to such person;
2. To the payment of the actual expenses of preserving the equipment; and
3. The balance to the Marshal Service. Monies from said fund may be used to pay costs for the storage of such equipment if such equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor and if such monies are available in said fund.

M. When any equipment is forfeited pursuant to this section, the District Court may order that the equipment seized may be retained by the Marshal Service for its official use.

N. If the Court finds the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in 21 CNCA § 1024.1(B)(1) or child pornography as defined in 21 CNCA § 1024.1(A), the Court shall order the equipment released to the owner.

O. No equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, or by any person other than such owner while such equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

§ 1040.75. Definitions

As used in 21 CNCA §§ 1040.75 through 1040.77:

1. "**CD-ROM**" means a compact disk with read only memory which has the capacity to store

audio, video and written materials and may be used by computer to play or display materials harmful to minors.

2. **"Harmful to minors"** means:

a. that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

i. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and

ii. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

iii. the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors; or

b. any description, exhibition, presentation or representation, in whatever form, of inappropriate violence.

3. **"Inappropriate violence"** means any description or representation, in an interactive video game or computer software, of violence which, taken as a whole, has the following characteristics:

a. the average person eighteen (18) years of age or older applying contemporary community standards would find that the interactive video game or computer software is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

b. the interactive video game or computer software lacks serious literary, scientific, medical, artistic, or political value for minors based on, but not limited to, the following criteria:

i. is glamorized or gratuitous;

ii. is graphic violence used to shock or stimulate;

iii. is graphic violence that is not contextually relevant to the material;

iv. is so pervasive that it serves as the thread holding the plot of the material together;

v. trivializes the serious nature of realistic violence;

vi. does not demonstrate the consequences or effects of realistic violence;

vii. uses brutal weapons designed to inflict the maximum amount of pain and damage;

viii. endorses or glorifies torture or excessive weaponry; or

ix. depicts lead characters who resort to violence freely.

4. "**Knowingly**" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

a. the character and content of any material or performance which is reasonably susceptible of examination by the defendant; and

b. the age of the minor. However, an honest mistake, shall constitute an excuse from liability pursuant to 21 CNCA §§ 1040.75 through 1040.77 if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

5. "**Magnetic disk memory**" means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including but not limited to floppy diskettes.

6. "**Magnetic tape memory**" means a memory system that stores and retrieves binary data on magnetic recording tape.

7. "**Material**" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, CD-ROM disk, magnetic disk memory, magnetic tape memory, downloadable media including but not limited to podcasts, video tape, computer software or video games.

8. "**Minor**" means any unmarried person under the age of eighteen (18) years.

9. "**Nudity**" means the:

a. showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering;

b. showing of the female breast with less than a full opaque covering of any portion of the female breast below the top of the nipple; or

c. depiction of covered male genitals in a discernibly turgid state.

10. "**Performance**" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

11. **"Person"** means any individual, partnership, association, corporation, or other legal entity of any kind.

12. **"Reasonable bona fide attempt"** means an attempt to ascertain the true age of the minor by requiring production of a driver license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

13. **"Sodomasochistic abuse"** means flagellation or torture by or upon a person clothed or naked or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed or naked.

14. **"Sexual conduct"** means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

15. **"Sexual excitement"** means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

§ 1040.76. Material or performances harmful to minors—Prohibited acts

No person, including but not limited to any persons having custody, control or supervision of any commercial establishment, shall knowingly:

1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material. Provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds (2/3) of the material is not exposed to view;

2. Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or

3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

§ 1040.77. Violations—Penalties

Any person convicted of violating any provision of 21 CNCA § 1040.76 shall be fined a sum not exceeding Five Hundred Dollars (\$500.00) for the first or second offense. Any person convicted of a third or subsequent violation of any provision of 21 CNCA § 1040.76 shall be fined a sum not exceeding One Thousand Dollars (\$1,000.00). Each day that any violation of 21 CNCA § 1040.76 occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by 21 CNCA § 1040.76 shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of

this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material as prohibited by 21 CNCA § 1040.76 shall constitute a single offense.

CHAPTER 40

JUNK DEALERS

§ 1048. Storage or accumulation of wrecked or abandoned motor vehicle or part thereof within view of preexisting residence

No person, firm, partnership or corporation shall with malice or without valid business purpose store, accumulate, allow to accumulate, or allow to remain stored or accumulated after receipt of notice as is hereinafter provided, any wrecked or abandoned motor vehicle, or any recyclable or nonrecyclable hulk or part of a motor vehicle within view of any preexisting residence situated outside the territorial limits of any incorporated municipality. Any homeowner aggrieved by any violation of this section may order the removal of any motor vehicle, hulk or part stored in violation hereof upon thirty (30) days' written notice to the owner of the land where such motor vehicle, hulk or part is stored. Upon the failure of the offending party to comply with said order, the aggrieved party may obtain injunctive and mandamus relief for the removal of matter so stored or accumulated from the district court of the county where the residence is situated and, further; shall be entitled to recover reasonable attorneys' fees, court costs and other reasonable expenses of bringing suit.

CHAPTER 42

PANDERING

§ 1081. Offense defined—Punishment

Any person who shall procure an inmate for a house of prostitution, or who, by promise, threats, violence or by any device or scheme shall cause, induce, persuade or encourage a person to become an inmate of a house of prostitution; or shall procure a place as inmate in a house of prostitution for a person; or who shall, by promise, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or who shall, by fraud, or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority procure any person to become an inmate of a house of ill-fame, or to enter any place in which prostitution is encouraged or allowed within this Nation, or to come into this Nation or leave this Nation for the purpose of prostitution, or who shall procure any person, who has not previously practiced prostitution to become an inmate of a house of ill-fame within this Nation, or to come into this nation or leave this nation for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill-fame within this Nation, or to come into this Nation or leave this Nation for the purpose of prostitution, shall be guilty of pandering, and upon conviction for any offense under this chapter shall be guilty of a crime.

§ 1082. Part of offense outside of Nation no defense

It shall not be a defense to a prosecution for any of the acts prohibited in the foregoing section that any part of such act or acts shall have been committed outside this Nation.

§ 1083. Injured party as witness

Any such person, referred to in the foregoing sections, shall be a competent witness in any prosecution under this chapter, to testify for or against the accused as to any transaction or as to any conversation with the accused or by him with another person or persons in her presence, notwithstanding the fact of her having married the accused before or after the violation of any of the provisions of this chapter, whether called as a witness during the existence of the marriage or after its dissolution.

§ 1084. Marriage no defense

The act or state of marriage shall not be a defense to any violation of this chapter.

§ 1085. Restraining person in house of prostitution a crime

Whoever shall by any means keep, hold, detain, or restrain against their will, any person in a house of prostitution or other place where prostitution is practiced or allowed; or whoever shall, directly or indirectly keep, hold, detain or restrain or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means for the purpose of compelling such person, directly or indirectly to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person, shall be guilty of a crime.

§ 1086. Allowing offense on premises—Punishment

Any owner, proprietor, keeper, manager, conductor, or other person, who knowingly permits or suffers the violation of any provision of this article, in any house, building, room, tent, lot or premises under his control or of which he has possession shall be guilty of a crime.

§ 1087. Offering or transporting child for purpose of prostitution—Penalty

A. No person shall:

1. Offer, or offer to secure, a child under eighteen (18) years of age for the purpose of prostitution, or for any other lewd or indecent act, or procure or offer to procure a child for, or a place for a child as an inmate in, a house of prostitution or other place where prostitution is practiced;
2. Receive or offer or agree to receive any child under eighteen (18) years of age into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or

3. Direct, take, or transport, or offer or agree to take or transport, or aid or assist in transporting, any child under eighteen (18) years of age to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;

B. 1. Any person violating the provisions of subsection (A) of this section shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits any violation of this section in any house, building, room, or other premises or any conveyances under his control or of which he has possession shall, upon conviction for the first offense, be guilty of a crime punishable pursuant to 21 CNCA § 10. Upon conviction for a subsequent offense pursuant to this subsection such person shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1088. Child under eighteen years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment

A. No person shall:

1. By promise, threats, violence, or by any device or scheme, including but not limited to the use of any controlled dangerous substance prohibited pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq., cause, induce, persuade, or encourage a child under eighteen (18) years of age to engage or continue to engage in prostitution or to become or remain an inmate of a house of prostitution or other place where prostitution is practiced;

2. Keep, hold, detain, restrain, or compel against his or her will, any child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or other place where prostitution is practiced or allowed;

3. Directly or indirectly keep, hold, detain, restrain, or compel or attempt to keep, hold, detain, restrain, or compel a child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or any place where prostitution is practiced or allowed for the purpose of compelling such child to directly or indirectly pay, liquidate, or cancel any debt, dues, or obligations incurred, or said to have been incurred by such child.

B. 1. Any person violating the provisions of this section, upon conviction, shall be guilty of a crime

punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits a violation of this section in any house, building, room, tent, lot or premises under his control or of which he has possession, upon conviction for the offense, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

CHAPTER 45

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN AND SEDUCTION

§ 1111. Rape defined

A. A person commits the offense of rape if the person intentionally or knowingly:

1. causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

2. causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

3. causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

4. causes the anus of another person, without that person's consent, to contact the mouth, anus, or sexual organ of another person, including the actor; or

5. causes the mouth of another person, without that person's consent, to contact the anus or sexual organ of another person, including the actor; or

6. engages in any of the activities listed in paragraphs 1 through 5 of this subsection with an animal.

B. A rape under subsection (A) of this section is without the consent of the other person:

1. Where the victim is under the age of fourteen (14) years of age; or

2. The victim is age fourteen (14) or older but has not yet attained the age of sixteen (16), except when:

- a. the victim otherwise consents; and
 - b. the accused is not required to register as a sex offender; and
 - c. the accused is less than nineteen (19) years of age or the accused is married to the victim; or
3. Where the actor knows that as a result of mental disease or defect, whether temporary or permanent, the other person is at the time of the act incapable either of appraising the nature of the act or of resisting it; or
 4. Where force or violence is used accompanied by apparent power of execution to the victim or to another person; or
 5. Where the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; or
 6. Where the actor, or someone in privity with the actor, has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; or
 7. Where the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; or
 8. Where the other person has not consented and the actor knows the other person is unaware that the rape is occurring; or
 9. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce such belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape; or
 10. Where the victim is under the legal custody or supervision of a Cherokee Nation, other tribal, state, municipal, other governmental subdivision, or federal agency and engages in sexual intercourse with a Cherokee Nation, other tribal, state, municipal, other governmental subdivision, or federal employee or official in the belief that such intercourse or activity will influence the professional responsibility of the employee or if not submitted to will result in detrimental condition for the victim; or
 11. Where the victim is a student, or under the legal custody, supervision, or authority of any public or private elementary or secondary school, junior high or high school, or public vocational school, or any Cherokee Nation agency and engages in sexual intercourse with a person who is an employee or official of the same school system or Cherokee Nation agency or otherwise exercises power as an official over the school system or Cherokee Nation agency regardless of the ages of

the victim and the accused; or

12. Where the actor is a public servant who coerces the other person to submit or participate; or

13. Where the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor; or

14. Where the actor is a clergyman, or purports to be a clergyman, who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or

15. Where the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other.

C. For purposes of this section:

1. **"Health care services provider"** means:

a. a physician licensed by any government;

b. a chiropractor licensed by any government;

c. a physical therapist licensed by any government;

d. a physician assistant licensed by any government; or

e. a licensed practical nurse, a registered nurse, a vocational nurse, or an advanced practice nurse licensed by any government.

2. **"Mental health services provider"** means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including:

a. a social worker;

b. a chemical dependency counselor;

c. any counselor;

d. any marriage and family therapist;

e. a member of the clergy; or

f. a psychologist or psychiatrist offering psychological services.

D. It is a defense to prosecution under subsection (A) of this section that the conduct consisted of medical care for a child under eighteen (18) years of age and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

E. Any person convicted of committing rape is guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.

F. All references in current statutes to rape in either the first or second degree are hereby deemed references to the crime of rape.

§§ 1111.1, 1112. Repealed by LA 20–08, eff. January 12, 2009

§ 1113. Slight penetration sufficient to complete crime

Any sexual penetration, however slight, is sufficient to complete the crime of rape.

§§ 1114, 1115. Repealed by LA 20–08, eff. January 12, 2009

§ 1116. Punishment for rape in second degree

Rape in the second degree is a crime.

§ 1117. Compelling woman to marry

Every person who takes any woman against her will, and by force, menace or duress, compels her to marry him or to marry any other person, is guilty of a crime.

§ 1118. Intent to compel woman to marry

Every person who takes any woman unlawfully against her will, with the intent to compel her by force, menace or duress to marry him, or to marry any other person, is guilty of a crime.

§ 1119. Abduction of person under eighteen

Every person who takes away or induces to leave any person under the age of eighteen (18) years, from a parent, guardian or other person having the legal charge of the person, without the consent of said parent, guardian, or other person having legal charge, for the purpose of marriage or concubinage, or any crime involving moral turpitude is guilty of a crime punishable pursuant to 21 CNCA § 10.

§ 1123. Lewd or indecent proposals or acts as to child under eighteen

A. It is a crime for any person to knowingly and intentionally:

1. make any oral, written, or electronically or computer-generated lewd or indecent proposal to any child under eighteen (18) years of age, or other individual the person believes to be a child under eighteen (18) years of age, for the child to have unlawful sexual relations or sexual intercourse with any person; or
2. look upon, touch, maul, or feel the body or private parts of any child under eighteen (18) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or
3. ask, invite, entice, or persuade any child under eighteen (18) years of age, or other individual the person believes to be a child under eighteen (18) years of age, to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or
4. in any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under eighteen (18) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or
5. in a lewd or lascivious manner and for the purposes of sexual gratification:
 - a. urinate or defecate upon a child under eighteen (18) years of age;
 - b. ejaculate upon or in the presence of a child under eighteen (18) years of age;
 - c. cause, expose, force or require a child under eighteen (18) years of age to look upon the body or private parts of another person;
 - d. force or require any child under eighteen (18) years of age or other individual the person believes to be a child under eighteen (18) years of age to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by 21 CNCA § 1024.1 and 21 CNCA § 1040.75;
 - e. cause, expose, force or require a child under eighteen (18) years of age or other individual the person believes to be a child under eighteen (18) years of age to look upon sexual acts performed in the presence of the child; or
 - f. force or require a child under eighteen (18) years of age or other individual the person believes to be a child under eighteen (18) years of age to touch or feel the body or private parts of said child or another person, upon conviction, shall be deemed guilty of a crime.

B. The provisions of this section shall apply:

1. Where the victim is under the age of fourteen (14) years of age; or
 2. Where the victim is age fourteen (14) or older but has not yet attained the age of sixteen (16), except when:
 - a. the victim otherwise consents; and
 - b. the accused is not required to register as a sex offender; and
 - c. the accused is less than nineteen (19) years of age or the accused is married to the victim; or
 3. To any person without the victim's consent when the victim is between age sixteen (16) and eighteen (18) years.
- C. Any person convicted of violating this section is guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.
- D. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

§ 1123.1. Sexual battery

- A. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts, in a lewd and lascivious manner, of:
1. a victim under the age of 14 years of age; or
 2. a victim age 14 or older but who has not yet attained the age of 16, except when:
 - a. the victim otherwise consents, and
 - b. the accused is not required to register as a sex offender, and
 - c. the accused is less than 19 years of age or the accused is married to the victim; or
 3. any person without the victim's consent when the victim is over age sixteen (16) years, or
 4. any person who is a student, or under the legal custody, supervision, or authority of any public

or private elementary or secondary school, junior high or high school, or public vocational school, or any Cherokee Nation agency and the accused is a person who is an employee or official of the same school system or Cherokee Nation agency or otherwise exercises power as an official over the school system or Cherokee Nation agency regardless of the ages of the victim and the accused.

B. Any person convicted of violating this section is guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.

C. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

§ 1124. Using computer networks to violate Cherokee Nation statutes

No person shall communicate with, store data in, or retrieve data from a computer system or computer network for the purpose of using such access to violate any of the provisions of Cherokee Nation statutes. Any person convicted of violating the provisions of this section shall be guilty of a crime punishable pursuant to 21 CNCA § 10.

§ 1125. Zone of safety

A. A zone of safety is hereby created around elementary, junior high, and high schools, licensed child care centers, playgrounds, and parks. A person is prohibited from loitering within three hundred (300) feet of any elementary, junior high, or high school, licensed child care facility, playground, or park if the person has been convicted of a crime that requires the person to register pursuant to the Sex Offenders Registration and Notification Act, 57 CNCA § 1 et seq., or the person has been convicted of an offense in another jurisdiction, which offense if committed or attempted in Cherokee Nation, would have been punishable as one or more of the offenses listed in 57 CNCA § 4 and the victim was a child under the age of thirteen (13) years.

B. A person convicted of a violation of subsection (A) of this section shall be guilty of a crime punishable pursuant to 21 CNCA § 10. This proscription of conduct shall not modify or remove any restrictions currently applicable to the person by court order, conditions of probation or as provided by other provision of law.

C. 1. A person shall be exempt from the prohibition of this section regarding a school or a licensed child care facility only under the following circumstances:

a. the person is the custodial parent or legal guardian of a child who is an enrolled student at the school or child care facility; and

b. the person is enrolling, delivering or retrieving such child at the school or child care facility during regular school or facility hours.

2. This exception shall not be construed to modify or remove any restrictions applicable to the person by court order, conditions of probation, or as provided by other provision of law.

D. The provisions of subsection (A) of this section shall not apply to any person receiving treatment at a hospital or other facility certified or licensed by any government to provide medical services.

E. Nothing in this section shall prohibit a person, who is registered as a sex offender pursuant to the Sex Offender Registration and Notification Act, from attending a recognized church or religious denomination for worship; provided, the person has notified the religious leader of his or her status as a registered sex offender and the person has been granted written permission by the religious leader.

CHAPTER 46

DOMESTIC ABUSE

§ 1130. Domestic abuse assault and battery—Definition

Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of the crime of domestic abuse assault and battery.

§ 1131. Domestic abuse assault and battery—Punishment

A. Domestic abuse assault and battery shall be punishable by imprisonment in a penal institution not exceeding one (1) year, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both, at the discretion of the Court.

B. Any person convicted of domestic abuse as defined in this provision, that was committed in the presence of a child shall be punished by imprisonment in a penal institution not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Any person who is convicted of a second or subsequent domestic violence assault and battery offense shall be punished by imprisonment in a penal institution not exceeding three years, or by fine of not more than Five Thousand Dollars (\$5000.00), or both such fine and imprisonment at the discretion of the Court.

D. For every conviction of domestic abuse, the Court shall:

1. specifically order as a condition of a deferred or suspended sentence or probation that a defendant participate in batterer's treatment; or
2. require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse-counseling program approved by the Court. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend and complete the program and be evaluated before and after attendance of the program by a program counselor or a private counselor.

E. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this section. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant (whether or not defendant evaluates as a perpetrator of domestic violence) should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional.

F. The Court shall set review hearings within one hundred twenty (120) days to ensure that the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. The defendant shall be required to be present at the review hearing. Defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court. The victim may attend but is not required to do so.

G. The Court shall set a final review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of Cherokee law. The Court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing.

H. The Court may set interim review, follow-up post-completion review, or other review hearings as the Court determines necessary to assure the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. After the initial review hearing referenced in subsection (F), the Court may waive Defendant's appearance at reviews or compel Defendant's attendance at reviews. The Court may review progress reports on the defendant from individual counseling, domestic abuse counseling, or the treatment program without appearances.

I. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, or is not making progress in treatment, the Court may:

1. order the defendant to further or continue counseling, treatment, or other necessary services; and
2. revoke all or any part of a suspended sentence, deferred sentence, or probation; and
3. subject the defendant to any or all remaining portions of the original sentence.

J. Nothing in this provision shall prohibit the Presiding Judge of the District Court from appointing and compensating a Special Master to hear all or designated cases set for review under this section.

K. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court.

L. **Penalty enhancement**—For the purposes of this section, any former conviction in any jurisdiction for assault and battery against any current or former spouse, any present spouse of a former spouse, parents, any foster parent, any child, any person otherwise related by blood or marriage, any person with whom the defendant is in a dating relationship, any individual with whom the defendant has had a child, any person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for an enhanced penalty under subsection (C) of this section as a second or subsequent offense.

§ 1132. Assault and battery domestic abuse by strangulation—Definition

Any person who commits any assault or assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against a current or former spouse, a present spouse of a former spouse, parent, a foster parent, child, person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant, by means of a form of asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck, shall be guilty of the crime of domestic abuse by strangulation.

§ 1133. Domestic abuse strangulation—Punishment

Upon conviction of domestic abuse by strangulation, defendant shall be punished by incarceration for a period of not less than one (1) year but no more than three (3) years, or by a fine of not more than Five Thousand Dollars (\$5,000.00) plus restitution, or by both such fine and incarceration. Upon a second or subsequent conviction, the defendant shall be punished by imprisonment for a period of not less than three (3) years, or by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment. Provided, the prosecutor may refer such case for federal prosecution on a first offense or a second or subsequent offense.

§ 1134. Stalking

A. Definitions. For purposes of this section:

1. "**Course of conduct**" means a pattern of conduct composed of a series of two (2) or more separate acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

2. "**Emotional distress**" means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling.

3. "**Harasses**" means conduct directed toward a person that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

4. "**Member of the immediate family**" means any spouse, parent, Child, person related within the third degree of consanguinity or affinity or any other person who regularly resides in the household or who has regularly resided in the household within the prior six (6) months.

5. "**Unconsented contact**" means any contact with another individual that is initiated or continued without the consent of the individual, or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Constitutionally protected activity is not included within the meaning of unconsented contact. Unconsented contact includes but is not limited to any of the following:

a. following or appearing within the sight of that individual;

b. approaching or confronting that individual in a public place or on private property;

c. appearing at the work place or residence of that individual;

d. entering onto or remaining on property owned, leased, or occupied by that individual;

e. contacting that individual by telephone;

f. sending mail or electronic communications to that individual; and

g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

B. Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that:

1. would cause a reasonable person or a member of the immediate family of that person as defined in subsection (F) below to feel frightened, intimidated, threatened, harassed, or molested; or

2. actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested, upon conviction, shall be guilty of the crime of stalking which is punishable by a fine of not more than Five Thousand Dollars (\$5,000.00), by imprisonment for not more than one (1) year, or both.

C. Any person who violates the above provisions when any of the following conditions exist at the time of the offense shall be guilty of a separate offense which is punishable by a fine of not more than Five Thousand Dollars (\$5,000.00), by imprisonment for a term not exceeding three (3) years, or both:

1. there is a temporary restraining order, a protective order, emergency ex parte order or an injunction in effect prohibiting the behavior described in this section against the same party, when the person violating such provisions has actual notice of the issuance of such order or injunction;

2. said person is on probation or parole, a condition of which prohibits the behavior described in this section against the same party; or

3. said person, within ten (10) years preceding the violation of this section, completed the execution of sentence or conviction of a crime involving the use or threat of violence against the same party, or against a member of the immediate family of such party.

D. Any person who is convicted of a second act of stalking within ten (10) years of the completion of sentence for a prior conviction under this section shall be punished by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), by imprisonment for a term not exceeding three (3) years, or both.

E. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, shall give rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

CHAPTER 47

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD

HUMAN SKELETAL REMAINS AND BURIAL FURNITURE

§ 1151. Disposal of one's own body

Every person has the right to direct the manner in which his body shall be disposed of after his death, and to direct the manner in which any part of his body which becomes separated therefrom during his lifetime shall be disposed of. The provisions of this chapter do not apply where such person has given directions for the disposal of his body or any part thereof inconsistent with these

provisions.

§ 1152. Duty of burial

Except in the cases in which a right to dissect a dead body is expressly conferred by law, every dead body of a human being must be decently buried within a reasonable time after the death.

§ 1153. Burial in other states

The last section does not affect the right to carry the dead body of a human being through this Nation, or to remove from this Nation the body of a person dying within it, for the purpose of burying the same in another state or territory.

§ 1154. Autopsy—Definition—When allowed

A. Autopsy means a post-mortem dissection of a dead human body in order to determine the cause, seat or nature of disease or injury and includes, but is not limited to, the retention of tissues for evidentiary, identification, diagnostic, scientific and therapeutic purposes.

B. An autopsy may be performed on the dead body of a human being in the following cases:

1st. In cases authorized by positive enactment of the Council;

2nd. Whenever the death occurs under circumstances in which the medical examiner is authorized as provided in Title 63 of the Oklahoma Statutes to conduct such autopsy;

3rd. Whenever consent is given to a licensed physician to conduct an autopsy on the body of a deceased person by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or in the absence of any of the foregoing, a friend, or a person charged by law with the responsibility for burial. If two or more such persons assume custody of the body, the consent of one (1) of them shall be deemed sufficient.

§ 1155. Unlawful dissection a crime

Every person who makes or procures to be made any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a crime.

§ 1156. Remains after dissection

In all cases in which a dissection has been made, the provisions of this chapter requiring the burial of a dead body, and punishing interference with or injuries to a dead body, apply equally to the remains of the body dissected as soon as the lawful purposes of such dissection have been accomplished.

§ 1157. Dead limb or member of body

All provisions of this chapter requiring the burial of a dead body, or punishing interference with or injuries to a dead body, apply equally to any dead limb or member of a human body, separated therefrom during lifetime.

§ 1158. Duty of burial devolves upon whom

The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1st. If the deceased were a married woman, the duty of burial devolves upon her husband.

2nd. If the deceased were not a married woman, but left any kindred, the duty of burial devolves upon any person or persons in the same degree nearest of kin to the deceased, being of adult age, and possessed of sufficient means to defray the necessary expenses.

3rd. If the deceased left no husband, nor kindred, answering to the foregoing description, the duty of burial devolves upon the officer conducting an inquest upon the body of the deceased, if any such inquest is held; if none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

4th. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant, or, if there be no tenant, upon the owner of the premises where the death occurs or the body is found.

§ 1159. Neglect of burial

Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a crime; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

§ 1160. Persons entitled to custody of body

The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it, except that in the cases in which an inquest is required by law to be held upon a dead body, the officer holding the inquest is entitled to its custody until such inquest has been completed.

§ 1161. Unlawful removal of dead body—Violation of or damage to casket or burial vault

A. No person shall intentionally remove the dead body of a human being or any part thereof from the initial site where such dead body is located for any purpose, unless such removal is authorized by a prosecutor or his authorized representative or medical examiner or his authorized representative, or is not required to be investigated pursuant to the provisions of 63 O.S. § 938, said authorization by the prosecutor or medical examiner shall not be required prior to the removal of said body. A prosecutor having jurisdiction may refuse to prosecute a violation of this subsection if the prosecutor determines that circumstances existed which would justify such removal or that such removal was not an act of malice or wantonness.

B. No person shall remove any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it without authority of law, or from malice or wantonness.

C. No person shall willfully or with malicious intent violate or cause damage to the casket or burial vault holding the deceased human remains.

D. Any person convicted of violating any of the provisions of this section shall be guilty of a crime.

§ 1162. Purchasing dead body

Whoever purchases, or who receives, except for the purpose of burial, any dead body of a human being, knowing the same has been removed contrary to the last section is guilty of a crime.

§ 1163. Unlawful interference with places of burial

Every person who opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent either:

1. To remove any dead body of a human being for the purpose of selling the same, or for the purpose of dissection; or
2. To steal the coffin, or any part thereof or anything attached thereto, or connected therewith, or the vestments or other articles buried with the same, is guilty of a crime.

§ 1164. Removal to another burial place

Whenever a cemetery or other place of burial is lawfully authorized to be removed from one place to another, the right and duty to disinter, remove and rebury the remains of bodies there lying buried devolves upon the same persons required to bury the deceased in the order in which they there are named, and if they all fail to act, then upon the lawful custodians of the place of burial so removed. Every omission of such duty is punishable in the same manner as other omissions to perform the duty of making burial.

§ 1165. Arresting or attaching dead body

Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a crime.

§ 1166. Disturbing funerals

Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for the purpose of any funeral, or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial, is guilty of a crime.

§ 1167. Injury to cemetery or tomb

Every person who shall willfully or with malicious intent destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any cemetery or private burying ground, or any fence, railing, or other work for the protection or ornament of any such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento, or memorial, or other structure aforesaid, or of any lot within a cemetery, or shall willfully or with malicious intent destroy, cut, break, or injure any tree, shrub or plant, within the limits thereof, shall be deemed guilty of a crime, and shall, upon conviction thereof, be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the penal institution for a term not to exceed six (6) months, or by both such fine and imprisonment.

HUMAN SKELETAL REMAINS AND BURIAL FURNITURE

§ 1168. Definitions

As used in this section and 21 CNCA §§ 1168.1 to 1168.6:

1. "**Archaeologist**" means the individual of this title appointed by the Principal Chief.
2. "**Burial furniture**" means any items intentionally placed with human remains at the time of burial and shall include but not be limited to burial markers, items of personal adornment, casket and hardware, stone, bone, shell and metal ornaments and elaborately decorated pottery vessels.
3. "**Burial grounds**" means any place where human skeletal remains are buried.
4. "**Historic Preservation Officer**" means the individual of this title appointed by the Principal Chief.
5. "**Human skeletal remains**" means the bony portion of a human body which remains after the

flesh has decomposed.

§ 1168.1. Buying, selling, transporting or bartering for profit of human skeletal remains or associated burial furniture—Crime

Anyone who knowingly buys, sells, transports or barters for profit human skeletal remains or associated burial furniture, previously buried within Cherokee Nation, shall be guilty of a crime.

§ 1168.2. Certain institutions and museums to consult tribal leaders or certain Nation entities before disposition of remains

Accredited educational institutions, or officially designated institutions or museums as provided by 53 O.S. § 361, coming into possession or knowledge of human skeletal remains or associated burial furniture from Cherokee Nation shall consult with tribal leaders, identified by the Principal Chief, regarding the final disposition of said remains prior to any activities related to scientific or educational purposes. Where direct historical ties to existing tribal groups cannot be established, consultation regarding final disposition shall take place with the Oklahoma Historic Preservation Officer, Oklahoma Nation Archaeologist and the Director of the Oklahoma Museum of Natural History.

§ 1168.3. Display of open burial ground, furniture or skeletal remains for profit or commercial enterprise

A. Anyone who knowingly displays an open burial ground, burial furniture or human skeletal remains previously buried in Cherokee Nation for profit or to aid and abet a commercial enterprise or any other form of exploitation that defers final disposition of said remains, shall be guilty of a crime and each day of display shall be a separate offense.

B. Anyone who knowingly displays human skeletal remains previously buried in Cherokee Nation shall be guilty of a crime and each day of display shall be a separate offense.

§ 1168.4. Discovery of remains or furniture—Reporting and notification procedure

A. All persons who encounter or discover human skeletal remains or what they believe may be human skeletal remains or burial furniture thought to be associated with human burials in or on the ground shall immediately cease any activity which may cause further disturbance and shall report the presence and location of such human skeletal remains to an appropriate law enforcement officer. Any person who fails to cease activity is guilty of a crime.

B. Any person who willfully fails to report the presence or discovery of human skeletal remains or what they believe may be human skeletal remains within forty-eight (48) hours to an appropriate Cherokee Nation Marshal shall be guilty of a crime.

C. Any person who knowingly disturbs human skeletal remains or burial furniture other than a law enforcement officer, registered mortician, a representative of the Office of the Chief Medical

Examiner, a professional archaeologist or physical anthropologist, or other officials designated by law in performance of official duties, shall be guilty of a crime.

D. Anyone not covered under subsection (C) of this section who disturbs or permits disturbance of a burial ground with the intent to obtain human skeletal remains or burial furniture shall be guilty of a crime.

E. The law enforcement officer, if there is a reason to believe that the skeletal remains may be human, shall promptly notify the landowner and the Chief Medical Examiner. If remains reported under 21 CNCA §§ 1168.1 through 1168.6 are not associated with or suspected of association with any crime, the Archaeologist and Historic Preservation Officer shall be notified within fifteen (15) days. If review by the Archaeologist and the Historic Preservation Officer of the human skeletal remains and any burial furniture demonstrates or suggests a direct historical relationship to a tribal group, then the Archaeologist shall:

1. Notify the Historic Preservation Officer; and
2. Consult with the tribal leader within fifteen (15) days regarding any proposed treatment or scientific studies and final disposition of the materials.

If said remains have a direct relationship to a tribal group which is not specifically found to be in Cherokee Nation then the Archaeologist and the Historic Preservation Officer shall make reasonable attempts to contact the proper tribal group for a determination of the final disposition of the remains.

§ 1168.5. Designation of repository for remains and furniture for scientific purposes

If the human skeletal remains and any burial furniture are not directly related to a tribal group or if the remains are not claimed by the consulted entity, the Archaeologist and the Historic Preservation Officer with the Director of the Oklahoma Museum of Natural History may designate a repository for curation burial furniture for scientific purposes and burial of human skeleton remains.

§ 1168.6. Penalties

Any person convicted of an offense pursuant to the provisions of 21 CNCA §§ 1168.1 through 1168.6 shall be guilty of a crime.

CHAPTER 47A

GENERAL AND MISCELLANEOUS PROVISIONS

§ 1171. Loitering around residence to watch occupants

A. Every person who hides, waits or otherwise loiters in the vicinity of any private dwelling house,

apartment building, any other place of residence, or in the vicinity of any locker room, dressing room, restroom, or any other place where a person has a right to a reasonable expectation of privacy, with the unlawful and willful intent to watch, gaze, or look upon any person in a clandestine manner, is guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

B. Every person who uses photographic, electronic or video equipment in a clandestine manner for any illegal, illegitimate, prurient, lewd or lascivious purpose with the unlawful and willful intent to view, watch, gaze or look upon any person without the knowledge and consent of such person when the person viewed is in a place where there is a right to a reasonable expectation of privacy, or who publishes or distributes any image obtained from such act, shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1172. Obscene, threatening or harassing telephone calls—Penalty

A. It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either:

1. Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent;
2. Makes a telecommunication or other electronic communication with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person;
3. Makes a telecommunication or other electronic communication, whether or not conversation ensues, with intent to put the party called in fear of physical harm or death;
4. Makes a telecommunication or other electronic communication, whether or not conversation ensues, without disclosing the identity of the person making the call or communication and with intent to annoy, abuse, threaten, or harass any person at the called number or other type of electronic communication identifier;
5. Knowingly permits any telecommunication or other electronic communication from a device under his control to be used for any purpose prohibited by this section; and
6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s) or other type of electronic communication address.

B. As used in this section, "**telecommunication**" and "**electronic communication**" mean any

type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet. The term includes:

1. A communication initiated by electronic mail, instant message, network call, or facsimile machine; and

2. A communication made to a pager.

C. Use of a telephone or other electronic communications facility under this section shall include all use made of such a facility between the points of origin and reception. Any offense under this section is a continuing offense and shall be deemed to have been committed at either the place of origin or the place of reception.

D. Any person who is convicted of the provisions of this section, shall be guilty of a crime punishable pursuant to 21 CNCA § 10.

PART V

CRIMES AGAINST PUBLIC HEALTH AND SAFETY

CHAPTER 48

GENERAL AND MISCELLANEOUS PROVISIONS

DISASTER AREAS

§ 1190. Hazing—Prohibition—Presumption as forced activity—Penalty—Definition

A. No student organization or any person associated with any organization sanctioned or authorized by the governing board of any public or private school or institution of higher education in this nation shall engage or participate in hazing.

B. Any hazing activity described in subsection (F) of this section upon which the initiation or admission into or affiliation with an organization sanctioned or authorized by a public or private school or by any institution of higher education in this nation is directly or indirectly conditioned shall be presumed to be a forced activity, even if the student willingly participates in such activity.

C. A copy of the policy or the rules or regulations of the public or private school or institution of higher education which prohibits hazing shall be given to each student enrolled in the school or institution and shall be deemed to be part of the bylaws of all organizations operating at the public school or the institution of higher education.

D. Any organization sanctioned or authorized by the governing board of a public or private school or of an institution of higher education in this Nation which violates subsection (A) of this section, upon conviction, shall be guilty of a crime, and may be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00) and the forfeit for a period of not less than one (1) year all of the rights and privileges of being an organization organized or operating at the public or private school or at the institution of higher education.

E. Any individual convicted of violating the provisions of subsection (A) of this section shall be guilty of a crime.

F. For purposes of this section:

1. **"Endanger the mental health"** shall include any activity, except those activities authorized by law, which would subject the individual to extreme mental stress, such as prolonged sleep deprivation, forced prolonged exclusion from social contact, forced conduct which could result in extreme embarrassment, or any other forced activity which could adversely affect the mental health or dignity of the individual.

2. **"Endanger the physical health"** shall include but not be limited to any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, alcoholic beverage as defined in 37 O.S. § 506, nonintoxicating beverage as defined in 37 O.S. § 163.2, drug, controlled dangerous substance, or other substance, or any other forced physical activity which could adversely affect the physical health or safety of the individual; and

3. **"Hazing"** means an activity which recklessly or intentionally endangers the mental health or physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating subject to the sanction of the public or private school or of any institution of higher education in this Nation;

§ 1191. Public nuisance a crime

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a crime.

§ 1192. Spread of infectious diseases

Any person who shall inoculate himself or any other person or shall suffer himself to be inoculated with smallpox, syphilis or gonorrhoea and shall spread or cause to be spread to any other persons with intent to or recklessly be responsible for the spread of or prevalence of such infectious disease, shall be guilty of a crime.

§ 1192.1. Engaging in activity with intent or causing another person to be infected with human immunodeficiency virus (HIV)

A. It shall be unlawful for any person to engage in any activity with the intent to infect or cause to be infected any other person with the human immunodeficiency virus (HIV).

B. Any person convicted of violating the provisions of this section shall be guilty of a crime.

§ 1194. Gas tar, throwing into public water

Every person who throws or deposits any gas tar, or refuse of any gas house or factory, into any public waters, river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a crime.

§ 1195. Quarantine regulations, violating

Every person who having been lawfully ordered by any health officer to be detained in quarantine and not having been discharged leaves the quarantine grounds or willfully violates any quarantine law or regulation, is guilty of a crime.

§ 1198. Fires, refusing to aid at or interfering with others' acts

Every person who, at any burning of a building, is guilty of any disobedience to lawful orders of any public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or of any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a crime.

§ 1199. Contagious disease, exposing oneself or another with

Every person who willfully exposes himself or another person, being affected with any contagious disease in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a crime.

§ 1204. Dump near highway a nuisance

Any dump ground for the reception and deposit of garbage, tin cans, rubbish or refuse and other items and matters generally referred to as trash maintained or operated within one hundred (100) yards of any Nation or state highway or any county road, is hereby declared to be a public nuisance.

§ 1205. Dumping near highway unlawful—Establishment of dumping ground by city or town

It shall be unlawful for any person to throw or leave or deposit garbage, tin cans, junk, rubbish or refuse and other items and matters commonly referred to as trash within one hundred (100) yards of any state highway or any county road. Provided, however, that the Nation or any city or town operating or desiring to operate a dump ground within the distance above prescribed may establish

same dump ground when said dump ground is approved by the health officer of the Nation, or by the Oklahoma State Health Commissioner.

§ 1206. Punishment for violations

Any person or any officer of any city or town violating any of the provisions of this act shall upon conviction be fined not more than One Thousand Dollars (\$1,000.00), or be imprisoned in the penal institution for not more than ninety (90) days, or by both such fine and imprisonment.

§ 1207. Operation of boats or water craft while under influence of intoxicating liquor or drugs in careless, wanton or reckless manner—Penalty

It shall be unlawful for any person or persons to operate any boat, motor boat, sail boat, or any other type of water craft on any of the waters of this Nation, except private owned waters, while under the influence of intoxicating liquor, narcotics, or other habit-forming drugs, or to operate any boat, motor boat, sail boat, or any other type of water craft on any of the waters of this Nation, except private owned waters, in a careless, wanton or reckless manner as to endanger the life or property of another. Any person convicted under this section shall be deemed guilty of a crime.

§ 1208. Abandonment of refrigerators and iceboxes in places accessible to children—Penalty

Any person, firm or corporation who abandons or discards, in any place accessible to children, any refrigerator, icebox, or ice chest, of a capacity of one and one-half (1 1/2) cubic feet or more, which has an attached lid or door which may be opened or fastened shut by means of an attached latch, or who, being the owner, lessee, or manager of such place, knowingly permits such abandoned or discarded refrigerator, icebox or ice chest to remain in such condition, shall be deemed negligent as a matter of law and shall be guilty of a crime.

DISASTER AREAS

§ 1209. Disaster areas—Prevention of unauthorized persons from hampering rescue operations

The purpose of this act is to prevent sightseers, thrill-seekers, souvenir hunters and other unauthorized persons from hampering the work of rescue operations in a disaster area.

§ 1210. Definitions

For the purpose of, and when used in this act:

1. "**Authorized person**" shall include all nation, county and municipal police and fire personnel; hospital and ambulance crews; National Guard and Civil Defense personnel ordered into the disaster area by proper authority; federal civil and military personnel on official business; persons who enter the disaster area to maintain or restore facilities for the provision of water, electricity, communications, or transportation to the public; and such other officials as have a valid reason to

enter said disaster area.

2. "**Disaster area**" means the scene or location of a natural or military disaster, an explosion, an aircraft accident, a fire, a railroad accident and a major traffic accident.

§ 1211. Following of emergency vehicles unlawful

It shall be unlawful for the driver of any vehicle other than one on official business to follow any emergency vehicle or to purposely drive to any location on or near a highway where a disaster area exists.

§ 1212. Proceeding to or remaining at disaster area unlawful—Removal of objects

It shall be unlawful for any person except an authorized person to proceed to or to remain at a disaster area for the purpose of being a bystander, spectator, sightseer or souvenir hunter; or for any such person to take or remove from the disaster area, or disturb or move, any material objects, equipment or thing either directly or indirectly relating or pertaining to the disaster.

§ 1213. Penalties

A. It is a crime for any person to violate any of the provisions of this act.

B. Every person convicted of a crime for violating any provision of this act shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than ten (10) days.

§ 1214. Radio or other electronic units capable of receiving on police frequencies—Illegal use defined

A. It shall be unlawful for any person to operate a mobile radio or any other electronic receiving unit capable of receiving transmissions made by any law enforcement agency for illegal purposes, or while in the commission of a crime.

B. Any person convicted of violating this section shall be guilty of a crime.

§ 1215. Intoxicating beverages—Possession by persons under age twenty-one unlawful

It shall be unlawful for any person under the age of twenty-one (21) years to be in the possession of any intoxicating beverage containing more than three and two-tenths percent (3.2%) alcohol by weight while such person is upon any public street, road, or highway or in any public building or place.

§ 1216. Penalties

Any person violating the provisions of 21 CNCA § 1215 shall be guilty of a crime and upon

conviction thereof shall be punished by imprisonment in the penal institution not to exceed thirty (30) days or by payment of a fine not to exceed Five Hundred Dollars (\$500.00) or by both such fine and imprisonment.

§ 1217. Firemen—Interference with performance of duties—Penalty

Any person or persons acting in concert with each other who knowingly and willfully interfere with, molest, or assault firemen in the performance of their duties, or who knowingly and willfully obstruct, interfere with or impede the progress of firemen to reach the destination of a fire, shall be deemed guilty of a crime.

§ 1220. Transporting intoxicating or nonintoxicating beverage except in original unopened container prohibited—Exceptions—Penalty

It shall be unlawful for any person to knowingly transport in any moving vehicle upon a public highway, street or alley any intoxicating or nonintoxicating beverage, as defined by 37 O.S. §§ 163.1 and 163.2, except in the original container which shall not have been opened and from which the original cap or seal shall not have been removed, unless the opened container be in the rear trunk or rear compartment, which shall include the spare tire compartment in a station wagon or panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion. Any person violating the provisions of this act shall be deemed guilty of a crime, and upon conviction shall be punished by a fine of not more than Fifty Dollars (\$50.00).

CHAPTER 49

ANIMALS AND CARCASSES

§ 1221. Contagious diseases among domestic animals

Any person who shall suffer to run at large, or who shall keep in any place where other animals can have access to or become infected by them, any horse, mare, mule, ass, ox, bull, cow, sheep or other domestic animals owned by him, or in his care or possession, and known by him, or good reason to believe such animal to be infected by glanders, farcy, or Texas mange or other infectious or contagious disease, or who shall bring into this nation any diseased cattle, shall be guilty of a crime.

§ 1222. Disposition of animals dying of contagious or infectious diseases

It shall be the duty of the owner of any domestic animal in Cherokee Nation, which may hereafter die of any contagious or infectious disease, either to burn the carcass thereof or bury the same within twenty-four (24) hours after he has notice or knowledge of such fact so that no part of such carcass shall be nearer than two and one-half (2 1/2) feet of the surface of the soil. Provided, that all hogs dying of any disease shall be burned. It shall further be unlawful to bury any such carcass as mentioned in this section in any land along any stream or ravine, where it is liable to become

exposed through erosion of the soil, or where such land is any time subject to overflow. "Owner", as used in this section, shall mean and include any person having domestic animals in his possession, either by reason of ownership, rent, hire, loan, or otherwise, and shall be subject to all the pains and penalties of this chapter.

§ 1223. Leaving carcass in certain places unlawful

It shall be unlawful for any person to leave or deposit, or cause to be deposited or left the carcass of any animal, chicken or other fowl, whether the same shall have died from disease or otherwise, in any well, spring, pond or stream of water; or leave or deposit the same within one-fourth (1/4) of a mile of any occupied dwelling or of any public highway, without burying the same as provided in the preceding section of this act.

§ 1224. Violation of sections regarding carcasses a crime

Every person who violates the two preceding sections, shall be guilty of a crime.

CHAPTER 50

TOBACCO

§ 1241. Furnishing tobacco products to minors—Punishment

Any person who shall furnish to any minor by gift, sale or otherwise any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product shall be guilty of a crime and upon conviction thereof shall be sentenced to pay a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) and be confined in the penal institution not less than ten (10) days nor more than ninety (90) days for each offense.

§ 1242. Refusal of minor to disclose place where and person from whom obtained

Any minor being in possession of cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product and being by any police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product were obtained, who shall refuse to furnish such information, shall be guilty of a crime and upon conviction thereof before the District Court, or any Judge of the District Court, such minor being of the age of sixteen (16) years or upwards shall be sentenced to pay a fine not exceeding Five Dollars (\$5.00) or to undergo an imprisonment in the jail of the proper county not exceeding five (5) days, or both; if such minor shall be under the age of sixteen (16) years, he or she shall be certified by such magistrate or justice to the juvenile court of the county for such action as said Court shall deem proper.

§ 1247. Smoking in certain public areas prohibited—Punishment

A. The possession of lighted tobacco in any form is a public nuisance and dangerous to public health when such possession is in any of the following places used by or open to the public:

1. Elevators;
2. Indoor movie theaters and other indoor theaters;
3. Libraries, art galleries, museums, indoor roller skating rinks of a permanent structure with permanent walls and concert halls; and
4. Buses.

Provided, however, that in indoor movie theaters and other indoor theaters, libraries, art galleries, museums, indoor roller skating rinks of a permanent structure with permanent walls and concert halls, certain areas separated from the principal room or rooms of the facility may be posted as "SMOKING PERMITTED" areas; provided further, that portions of buses may be posted "SMOKING PERMITTED" if such posting is pursuant to authorization by the Executive Branch of Cherokee Nation.

B. There shall be posted prominently in all public places included in this section, a "NO SMOKING" sign or "NO SMOKING" signs in sufficient numbers as to be visible from all sections of the "NO SMOKING" area.

C. "NO SMOKING" signs, as required by this act, shall be no smaller than eight inches (8") by ten inches (10") with lettering no smaller than one inch (1"). The letters shall be of contrasting colors to the sign.

D. Responsibility for posting "NO SMOKING" signs shall be as follows:

1. In privately-owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible.
2. In corporately-owned facilities, the manager and/or supervisor of the facility involved shall be responsible.
3. In publicly-owned facilities, the manager and/or supervisor of the facility shall be responsible.
4. Any person who knowingly violates this act is guilty of a crime, and upon conviction thereof, shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).

PART VI

CRIMES AGAINST PUBLIC PEACE

CHAPTER 53

MANUFACTURING, SELLING AND WEARING WEAPONS

CHEROKEE NATION FIREARMS ACT OF 1971

§ 1272. Carrying weapons—Exceptions

It shall be unlawful for any person to carry upon or about his person, or in his portfolio or purse, any pistol, revolver, dagger, bowie knife, dirk knife, switchblade knife, spring-type knife, sword cane, knife having a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife, blackjack, loaded cane, billy, hand chain, metal knuckles, or any other offensive weapon, except as in this chapter provided. Provided further, that this section shall not prohibit the proper use of guns and knives for hunting, fishing or recreational purposes, nor shall this section be construed to prohibit any use of weapons in a manner otherwise permitted by statute. Any person convicted of violating the foregoing provision shall be guilty of a crime.

§ 1272.1. Carrying weapons or firearms into establishments wherein beer and intoxicating liquor are consumed

It shall be unlawful for any person, except a peace officer, as defined in 21 CNCA § 99, a registered security officer, or the owner or proprietor of the establishment being entered, to carry into or to possess in any establishment where beer or alcoholic beverages are consumed any firearm or any of the weapons designated in 21 CNCA § 1272.

Provided however, nothing in this chapter shall be interpreted to authorize such peace officer or registered security officer in actual physical possession of a weapon to consume beer or alcoholic beverages, except in the authorized line of duty as an undercover officer.

§ 1272.2. Penalties

Any person who intentionally, knowingly or recklessly carries on his person any weapon in violation of 21 CNCA § 1272.1 shall be guilty of a crime.

§ 1273. Selling or giving weapons to minors

It shall be unlawful for any person within this Nation, to sell or give to any minor any of the arms or weapons designated in 21 CNCA § 1272.

§ 1276. Degree of punishment

Any person violating the provisions of any one of the foregoing sections, shall be guilty of a crime.

§ 1277. Public buildings and gatherings

It shall be unlawful for any person, except a peace officer or a registered security officer, to carry into any church or religious assembly, any schoolroom or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ballroom, or to any social party or social gathering, or to any election, or to any political convention, or to any other public assembly, any of the weapons designated in 21 CNCA § 1272.

§ 1278. Intent of persons carrying weapons

It shall be unlawful for any person in this Nation to carry or wear any deadly weapons or dangerous instrument whatsoever, openly or secretly, with the intent or for the avowed purpose of injuring his fellow man.

§ 1279. Pointing weapon at another

It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise.

§ 1280. Punishment

Any person violating the provisions of the three preceding sections, 21 CNCA §§ 1277 to 1279, shall, on conviction, be guilty of a crime.

§ 1283. Convicted felons prohibited from carrying firearms—Exceptions

It shall be unlawful for any person having previously been convicted of any felony in any court of Oklahoma or one of the United States to have in his possession or under his immediate control, or in any vehicle which he is operating, or in which he is riding as a passenger, any pistol, imitation or homemade pistol, machine gun, sawed-off shotgun or rifle, or any other dangerous or deadly firearm which could be easily concealed on the person, in personal effects or in an automobile, provided any person elected or appointed as a peace officer who has previously been convicted of any felony in any court of Oklahoma or one of the United States, and who has received a full and complete pardon from the proper authority and has been subsequently certified by the Council on Law Enforcement Education and Training, pursuant to 70 O.S. § 3311, and is actively employed as a full-time peace officer on the effective date of this act, shall be permitted to possess a weapon specified in this section for the sole purpose of performing duties of a peace officer. For the purposes of this section, "sawed-off shotgun or rifle" shall mean any shotgun or rifle which has been shortened to any length.

§ 1284. Penalty

Any person who violates any provision of this chapter shall be guilty of a crime.

§ 1286. Reckless conduct defined

Reckless conduct as used in this chapter consists of an act which creates a situation of unreasonable risk and probability of death or great bodily harm to another and which demonstrates a conscious disregard for the safety of another.

§ 1287. Use of firearm or other offensive weapon while committing or attempting to commit a crime—Penalties

Any person who, while committing or attempting to commit a crime, possesses a firearm or any other offensive weapon in such commission or attempt, whether the firearm is loaded or not, or who possesses a blank or imitation firearm capable of raising in the mind of one threatened with such device a fear that it is a real firearm, or who possesses an air gun or carbon dioxide or other gas-filled weapon, electronic dart gun, knife, dagger, dirk, switchblade knife, blackjack, ax, loaded cane, billy, hand chain or metal knuckles, in addition to the penalty provided by statute for the crime committed or attempted, upon conviction shall be guilty of a crime for possessing such weapon or device, which shall be a separate offense.

§ 1288. Purchases of firearms, ammunition and equipment in contiguous states by Cherokee Nation residents—Purchases in Cherokee Nation by residents of contiguous states

A. Residents of Cherokee Nation may purchase rifles, shotguns, ammunition, cartridge and shotgun shell handloading components and equipment in a state contiguous to Cherokee Nation, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968, 18 U.S.C. § 921 et seq., and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Cherokee Nation and in the contiguous state in which the purchase is made.

B. Residents of a state contiguous to Cherokee Nation may purchase rifles, shotguns, ammunition, cartridge and shotgun shell handloading components and equipment in Cherokee Nation, provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States Secretary of the Treasury and provided further that such residents conform to the provisions of law applicable to such purchase in Cherokee Nation and in the state in which such persons reside.

CHEROKEE NATION FIREARMS ACT OF 1971

§ 1289.1. Short title

This act shall be known and may be cited as the Cherokee Nation Firearms Act of 1971.

§ 1289.2. Council findings

The Council finds as a matter of public policy and fact that it is necessary for promotion of the safe and lawful use of firearms to curb and prevent crime wherein weapons are used by enacting

legislation having the purpose of control of use of firearms, and of prevention of their use, without unnecessarily denying their lawful use in defense of life, home and property, and their use by the United States or state military organizations and as otherwise provided by law, including their use and transportation for lawful purposes.

§ 1289.3. "Pistol" defined

"Pistol" as used herein shall mean any firearm capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels less than sixteen (16) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include flare guns, underwater fishing guns or blank pistols.

§ 1289.4. "Rifle" defined

"Rifle" as used herein shall mean any firearm capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels more than sixteen (16) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include archery equipment, flare guns or underwater fishing guns. In addition, any rifle capable of firing "shot" but primarily designed to fire single projectiles will be regarded as a "rifle."

§ 1289.5. "Shotgun" defined

"Shotgun" as used herein shall mean any firearm capable of discharging a series of projectiles of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels more than eighteen (18) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include any weapon so designed with a barrel less than eighteen (18) inches in length. In addition, any "shotgun" capable of firing single projectiles but primarily designed to fire multiple projectiles such as "shot" will be regarded as a "shotgun."

§ 1289.6. Conditions under which firearms may be carried

A person shall be permitted to carry shotguns, rifles or pistols, open and not concealed, under the following conditions:

1. When going to, during participation in or coming from hunting animals or fowl, including moving from place to place by vehicle. However, a rifle or shotgun may be carried in a landborne motor vehicle over a public highway or roadway when clip- or magazine-loaded and not chamber-loaded when carried in a locked compartment of the vehicle, such as the trunk of an automobile.
2. When going to, during competition in or practicing or coming from a safety or hunter safety class, target shooting, skeet, trap or other recognized sporting events;
3. When unloaded, going to or coming from a gunsmith;

4. When unloaded, going to or coming from a store for purposes of repair, trade, barter or sale;
5. Going to or coming from a military function of the state military forces to be defined as the Cherokee Nation Army or Air National Guard, federal military reserve and active military forces;
6. Going to or coming from a recognized police function of either a municipal, county or Nation government as functioning police officials;
7. When unloaded, going to or coming from a place of publicly-recognized firearms display such as a "gun show" where the public is invited;
8. When unloaded, going to or coming from a point of private trade for purposes of transferring a firearm to another private citizen in exchange for moneys, payment for services or trade;
9. When going to, coming from and during a performance for entertainment purposes; or
10. For any legitimate purpose not in violation of this code or any legislative enactment regarding the use, ownership and control of firearms.

§ 1289.7. Firearm in motor vehicle

A person may carry or transport in a motor vehicle a rifle, shotgun or pistol, unloaded, at any time.

§ 1289.8. Carrying concealed weapon

It shall be unlawful for any person, except a peace officer as defined in 21 CNCA § 99, or a registered security officer to carry a concealed weapon other than permitted by this chapter.

§ 1289.9. Carrying or using firearms while under influence of intoxicating liquors or drugs

It shall be unlawful to carry or use shotguns, rifles, any other form or explosive or incendiary device, or pistols under any circumstances while under the influence of intoxicating liquors or any hallucinogenic, unlawful or unprescribed drug, nor shall any person be permitted to carry or use shotguns, rifles or pistols when under the influence of any drug prescribed by a licensed physician if the aftereffects of such consumption affect mental, emotional or physical processes to a degree that would result in abnormal behavior.

§ 1289.10. Furnishing firearms to mentally incompetent or insane persons

It shall be unlawful for any person to knowingly transmit, transfer, sell, lend or furnish any shotgun, rifle or pistol to any person who is under an adjudication of mental incompetency, or to any person who is a moron, idiot or is insane.

§ 1289.11. Reckless conduct

It shall be unlawful for any person to engage in reckless conduct while having in his possession any shotgun, rifle, pistol, or any other form of explosive or incendiary device, such actions consisting of creating a situation of unreasonable risk and probability of death or great bodily harm to another, and demonstrating a conscious disregard for the safety of another person.

§ 1289.12. Selling or transferring of firearms to convicted felons, disturbed persons or persons under influence of alcohol or drugs—Displaying notice

It shall be unlawful for any person within this Nation to knowingly sell, trade, give, transmit or otherwise cause the transfer of rifles, shotguns, any other form or explosive or incendiary device, or pistols to any convicted felon, nor shall it be lawful for any person within this Nation to knowingly sell, trade, give, transmit or otherwise cause the transfer of any shotgun, rifle, any other form or explosive or incendiary device, or pistol to any individual who is under the influence of alcohol or drugs or is mentally or emotionally unbalanced or disturbed. All persons who engage in selling, trading or otherwise transferring firearms will display this section prominently in full view at or near the point of normal firearms sale, trade or transfer.

§ 1289.13. Transporting loaded firearm in motor vehicle

Except as otherwise provided, it shall be unlawful to transport a loaded firearm in a landborne motor vehicle over a public highway or roadway. However, a rifle or shotgun may be transported when clip- or magazine-loaded and not chamber-loaded when transported in a locked compartment of the vehicle, such as the trunk of an automobile.

§ 1289.14. Transporting or discharging firearm from boat

Except as herein otherwise provided, it shall be unlawful to transport or discharge a shotgun, rifle or pistol from a boat under power or sail, except for the purposes of hunting animals or fowl, and in compliance with existing Nation and federal laws.

§ 1289.15. Penalties

Any person adjudged guilty of violating the preceding sections shall be guilty of a crime.

§ 1289.16. Pointing firearms

It shall be unlawful for any person to willfully or without lawful cause point a shotgun, rifle or pistol, or any deadly weapon, whether loaded or not, at any person or persons for the purpose of threatening or with the intention of discharging the firearm or with any malice or for any purpose of injuring, either through physical injury or mental or emotional intimidation, or for purposes of whimsy, humor or prank, but not to include the pointing of shotguns, rifles or pistols by law enforcement authorities in the performance of their duties, members of the state military forces in the form of the Oklahoma Army or Air National Guard in the performance of their duties, members of the federal military reserve and active military components in the performance of their

duties, or any federal government law enforcement officer in the performance of his duty, or in the performance of a play on stage, rodeo, television or on film, or in defense of one's person, home or property.

§ 1289.17. Penalty

Any violation of 21 CNCA § 1289.16 or of the provisions of 21 CNCA § 1283, shall constitute a crime.

§ 1289.18. "Sawed-off shotgun" and "sawed-off rifle" defined—Violations—Penalties—Defense to prosecution

A. **"Sawed-off shotgun"** shall mean any firearm capable of discharging a series of projectiles of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels less than eighteen (18) inches in length, and using either gunpowder, gas or any means of rocket propulsion.

B. **"Sawed-off rifle"** shall mean any rifle having a barrel or barrels of less than sixteen (16) inches in length or any weapon made from a rifle (whether by alteration, modification, or otherwise) if such a weapon as modified has an overall length of less than twenty-six (26) inches in length, including the stock portion.

C. Every person who has in his possession or under his immediate control a sawed-off shotgun or a sawed-off rifle, whether concealed or not, shall upon conviction be guilty of a crime for the possession of such device.

D. It is a defense to prosecution under this section, if the approved application form that authorized the making or transfer of the particular firearm to the defendant, which indicates the registration of the firearm to said defendant pursuant to the National Firearms Act, 26 U.S.C. § 5841 et seq., is introduced.

§ 1289.19. "Restricted bullet" and "body armor" defined

As used in this act:

1. **"Restricted bullet"** means a round or elongated missile with a core of less than sixty percent (60%) lead and having a fluorocarbon coating, which is designed to travel at a high velocity and is capable of penetrating body armor; and

2. **"Body armor"** means a vest or shirt of ten (10) plies or more of bullet resistant material as defined by the Office of Development, Testing and Dissemination, a division of the United States Department of Justice.

§ 1289.20. Manufacture, importation or advertisement for sale of restricted bullets—Penalty

A. Except for the purpose of public safety or national security, it shall be unlawful to manufacture, cause to be manufactured, import, advertise for sale or sell within this nation any restricted bullet as defined in 21 CNCA § 1289.19.

B. Any person convicted of violating subsection (A) of this section shall be guilty of a crime.

§ 1289.21. Use or attempted use of restricted bullet and/or body armor—Penalty

A. It shall be unlawful for any person to possess, carry upon his person, use or attempt to use against another person any restricted bullet as defined in 21 CNCA § 1989.19.

B. It shall be unlawful for any person, who has been convicted of, or plead no contest or guilty to, a felony, to wear body armor as defined in 21 CNCA § 1289.19.

C. Any person convicted of violating subsections (A) or (B) of this section shall be guilty of a crime.

§ 1289.22. Exemptions

The prohibition of possessing or using a restricted bullet shall not apply to law enforcement agencies when such bullet is used for testing, training or demonstration.

§ 1289.23. Off-duty peace officers authorized to carry weapons

A. A full-time duly appointed peace officer who is certified by the Council on Law Enforcement Education and Training, pursuant to the provisions of 70 O.S. § 3311, is hereby authorized to carry a weapon certified and approved by his employing agency during periods when he is not on active duty.

B. When an off-duty officer carries a certified weapon, the officer shall be in law enforcement uniform prescribed by the employing agency or when not wearing the prescribed law enforcement uniform shall be required:

1. To have his official peace officers badge, Commission Card and C.L.E.E.T. Certification Card on his person at all times when carrying a weapon certified and approved by the employing agency; and

2. To keep the authorized weapon concealed from view at all times except when the weapon is used within the guidelines, rules and regulations established by the employing agency.

C. Nothing in this section shall be construed to alter or amend the provisions of 21 CNCA § 1272.1 or expand the duties, authority or jurisdiction of any peace officer.

§ 1289.25. Unlawful entry of dwelling—Physical or deadly force against intruder—Affirmative defense and immunity from civil liability

A. The Council hereby recognizes that the citizens of Cherokee Nation have a right to expect absolute safety within their own homes.

B. Any occupant of a dwelling is justified in using any degree of physical force, including but not limited to deadly force, against another person who has made an unlawful entry into that dwelling, and when the occupant has a reasonable belief that such other person might use any physical force, no matter how slight, against any occupant of the dwelling.

C. Any occupant of a dwelling using physical force, including but not limited to deadly force, pursuant to the provisions of subsection (B) of this section, shall have an affirmative defense in any criminal prosecution for an offense arising from the reasonable use of such force and shall be immune from any civil liability for injuries or death resulting from the reasonable use of such force.

CHAPTER 54

MASKS AND DISGUISES; THREATENING LETTERS; UNLAWFUL ORGANIZATIONS

§ 1302. Trespass—Masked person demanding admission to premises

Any person, masked or in disguise, who shall enter upon the premises of another or demand admission into the house or enclosure of another (with intent to inflict bodily injury, or injury to property) shall be deemed guilty of assault with intent to commit a crime and such entrance or demand for admission shall be prima facie evidence of such intent, and upon conviction thereof, such person shall be guilty of a crime.

§ 1303. Assaults while masked or disguised

Any person, while masked or in disguise, who shall assault another with a dangerous weapon, or other instrument of punishment, shall be deemed guilty of a crime.

§ 1304. Letters—Mailing threatening or intimidating letters

Any person who shall send, deliver, mail or otherwise transmit to any person, or persons, in this Nation any letter, document or other written or printed matter, anonymous or otherwise, designed to threaten or intimidate such person or persons, or designed to put him or them in fear of life, bodily harm or the destruction of his or their property, upon conviction shall be guilty of a crime.

CHAPTER 55

OTHER CRIMES AGAINST PUBLIC PEACE

ENTRY OR INTRUSION ON REAL ESTATE

MISCELLANEOUS PROVISIONS

ENTRY OR INTRUSION ON REAL ESTATE

§ 1351. Forcible entry and detainer

Every person guilty of using or procuring, encouraging or assisting another to use any force, or violence in entering upon or detaining any lands or other possessions of another except in the cases and manner allowed by law, is guilty of a crime.

§ 1352. Returning to possession after lawful removal

Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterward, without authority by law, returns to settle or reside upon such lands, is guilty of a crime.

MISCELLANEOUS PROVISIONS

§ 1361. Disturbing lawful meeting

Every person who without authority of law willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than a religious meeting, public meeting of electors, or funeral, is guilty of a crime.

§ 1362. Disturbance by loud or unusual noise or abusive, violent, obscene, profane or threatening language

If any person shall willfully or maliciously disturb, either by day or night, the peace and quiet of any city of the first class, town, village, neighborhood, family or person by loud or unusual noise, or by abusive, violent, obscene or profane language, whether addressed to the party so disturbed or some other person, or by threatening to kill, do bodily harm or injury, destroy property, fight, or by quarreling or challenging to fight, or fighting, or shooting off any firearms, or brandishing the same, or by running any horse at unusual speed along any street, alley, highway or public road, he shall be deemed guilty of a crime, and, on conviction thereof, shall be fined in any sum not to exceed Five Hundred Dollars (\$500.00), or by imprisonment in the penal institution not to exceed thirty (30) days, or by both such fine and imprisonment, at the discretion of the Court or jury trying the same.

§ 1363. Use of language calculated to arouse anger or cause breach of peace

If any person shall make use of any profane, violent, abusive or insulting language toward or about another person, in the presence or hearing, which language, in its common acceptation, is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault, every such person shall be deemed guilty of a breach of the

peace, and, upon conviction thereof, shall be punished by a fine in any sum not to exceed One Hundred Dollars (\$100.00), or by imprisonment in the penal institution not to exceed thirty (30) days, or by both such fine and imprisonment, at the discretion of the Court or jury trying the same.

§ 1364. Discharging firearms in public place

Every person who willfully discharges any species of firearm, air gun or other weapon, or throws any other missile in any public place, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a crime.

§ 1368. Possession of explosives by convicted felons—Penalty

Any person who has been convicted of a crime under the laws of this or any other state or the laws of the United States who, with an unlawful intent, is in possession of any explosives is guilty of a crime.

§ 1377. Projecting object at public event

It shall be unlawful for any person in attendance at an athletic or other public entertainment event to project in any manner an object which could cause bodily harm to another person.

Any person violating the provisions of this section shall be subject to ejection from the event by the officials supervising the event.

A violation of this section shall be a crime.

The provisions of this section shall not apply to the participants in the athletic or other public entertainment event.

PART VII

CRIMES AGAINST PROPERTY

CHAPTER 56

ARSON

§ 1401. Arson in the first degree—Punishment

Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning or destruction of any building or structure or contents thereof, inhabited or occupied by one or more persons, whether the property of himself or another, shall be guilty of a crime.

§ 1402. Arson in the second degree—Punishment

Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance destroys in whole or in part, or cause to be burned or destroyed, or aids, counsels or procures the burning or destruction of any uninhabited or unoccupied building or structure or contents thereof, whether the property of himself or another, shall be guilty of a crime.

§ 1403. Arson in the third degree—Punishment

A. Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning of any property whatsoever, including automobiles, trucks, trailers, motorcycles, boats, standing farm crops, pasture lands, forest lands, or any other property not herein specifically named, such property being worth not less than Fifty Dollars (\$50.00), whether the property of himself or another, shall be guilty of a crime.

B. Any person who willfully and maliciously, and with intent to injure or defraud the insurer, sets fire to or burns or by use of any explosive device or substance destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels, or procures the burning or destruction of any building, property, or other chattels, whether the property of himself or another, which shall at the time be insured against loss or damage by fire or explosion, shall be guilty of a crime.

§ 1404. Arson in the fourth degree—Punishment

A. Any person who willfully and maliciously attempts to set fire to or burn or attempts by use of any explosive device or substance to destroy in whole or in part, or causes to be burned or destroyed, or attempts to counsel or procure the burning or destruction of any building or property mentioned in 21 CNCA § 1401, 21 CNCA § 1402 or 21 CNCA § 1403 shall be guilty of a crime.

B. The placing or distributing of any flammable, explosive or combustible material or substance or any device in any building or property mentioned in 21 CNCA § 1401, 21 CNCA § 1402 or 21 CNCA § 1403, in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn or to procure the setting fire to or burning of same, shall for the purposes of this section constitute an attempt to burn such building or property, and shall be guilty of a crime.

CHAPTER 58

BURGLARY AND HOUSE BREAKING

§ 1431. Burglary in first degree

Every person who breaks into and enters the dwelling house of another, in which there is at the time some human being, with intent to commit some crime therein, either:

1. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window of

such house or the lock or bolts of such door, or the fastening of such window or shutter; or

2. By breaking in any other manner, being armed with a dangerous weapon or being assisted or aided by one or more confederates then actually present; or

3. By unlocking an outer door by means of false keys or by picking the lock thereof, or by lifting a latch or opening a window;

is guilty of burglary in the first degree.

§ 1435. Burglary in second degree—Acts constituting

Every person who breaks and enters any building or any part of any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel or other structure or erection, in which any property is kept, or breaks into or forcibly opens, any coin-operated or vending machine or device with intent to steal any property therein or to commit any crime, is guilty of burglary in the second degree.

§ 1436. Punishment of burglary

Burglary is a crime.

§ 1437. Possession of burglar's implements

Every person who, under circumstances not amounting to a crime has in his possession any dangerous offensive weapon or instrument whatever, or any pick-lock, crow, key, bit, jack, jimmy, nippers, pick, betty or other implement of burglary, with intent to break and enter any building or part of any building, booth, tent, railroad car, vessel or other structure or erection and to commit any crime therein, is guilty of a crime.

§ 1438. Entering buildings or structures with certain intent

Every person who, under circumstances not amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, railroad car, vessel, or other structure or erection with intent to commit any crime, larceny, or malicious mischief, is guilty of a crime.

§ 1439. Dwelling house defined

The term "**dwelling house**," as used in 21 CNCA § 1431, includes every house or edifice, any part of which has usually been occupied by any person lodging therein at night, and any structure joined to and immediately connected with such a house or edifice.

§ 1440. "Night time" defined

The words "**night time**" in this chapter include the period between sunset and sunrise.

§ 1441. Burglary with explosives—Punishment

Any person who enters any building, railway car, vehicle, or structure and there opens or attempts to open any vault, safe, or receptacle used or kept for the secure keeping of money, securities, books of accounts, or other valuable property, papers or documents, without the consent of the owner, by the use of or aid of dynamite, nitroglycerine, gunpowder, or other explosives, or who enters any such building, railway car, vehicle, or structure in which is kept any vault, safe or other receptacle for the safe keeping of money or other valuable property, papers, books or documents, with intent and without the consent of the owner, to open or crack such vault, safe or receptacle by the aid or use of any explosive, shall in either case be deemed guilty of crime.

CHAPTER 59

EMBEZZLEMENT

§ 1451. "Embezzlement" defined

"**Embezzlement**" is the fraudulent appropriation of property by a person to whom it has been entrusted.

§ 1452. Embezzlement by officer, etc., of corporation, etc.

If any person, being an officer, director, trustee, clerk, servant or agent of any association, society or corporation, public or private, fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose he is guilty of embezzlement.

§ 1453. Embezzlement by carrier or other person

If any carrier or other person having under his control personal property for the purpose of transportation for hire, fraudulently appropriates it to any use of purpose inconsistent with the safekeeping of such property and its transportation according to his trust, he is guilty of embezzlement, whether he has broken the packages in which such property is contained, or has otherwise separated the items thereof, or not.

§ 1454. Embezzlement by trustee

If any person being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator or collector, or being otherwise entrusted with or having in his control property for the use of any other person, or for any public or benevolent purpose, fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

§ 1455. Embezzlement by bailee

If any person being entrusted with any property as bailee, or with any power of attorney for the sale or transfer thereof, fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, he is guilty of embezzlement, whether he has broken the package or otherwise determined the bailment or not.

§ 1456. Embezzlement by clerk or servant

If any clerk or servant of any private person or copartnership or corporation, except apprentices and persons within the age of eighteen (18) years, fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of any other person which has come into his control or care by virtue of his employment as such clerk or servant, he is guilty of embezzlement.

§ 1457. Distinct taking not necessary

A distinct act of taking is not necessary to constitute embezzlement, but any fraudulent appropriation, conversion or use of property, coming within the above prohibitions is sufficient.

§ 1458. Evidence of debt subject of embezzlement

Any evidence of debt, negotiable by delivery only, and actually executed, is equally the subject of embezzlement whether it has been delivered or issued as a valid instrument or not.

§ 1459. Property taken under claim of title

Upon any prosecution for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith even though such claim is untenable. But this provision shall not excuse the retention of the property of another, to offset or pay demand held against him.

§ 1460. Intent to restore no defense

The fact that the accused intended to restore the property embezzled is no ground of defense, or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

§ 1461. Mitigation of punishment

Whenever it is made to appear that prior to any information laid before a magistrate charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such is not a ground of defense to the indictment, but it authorizes the court to mitigate punishment in its discretion.

§ 1462. Punishment for embezzlement

Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled, except that every person convicted of embezzlement of any item valued at less than Fifty Dollars (\$50.00) shall be punished for a crime. And where the property embezzled is an evidence of debt or right in action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

§ 1463. Diversion of Nation funds made crime

Any Nation officer, deputy or employee of such nation officer, who shall divert any money appropriated by law from the purpose and object of such appropriation, shall be deemed guilty of a crime.

CHAPTER 60

EXTORTION AND BLACKMAIL

§ 1481. Extortion defined

Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right.

§ 1482. Threats constituting extortion

Fear such as will constitute extortion, may be induced by a threat, either:

- 1st. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or
- 2nd. To accuse him, or any relative of his or member of his family, of any crime; or
- 3rd. To expose, or impute to him, or them, any deformity or disgrace; or
- 4th. To expose any secret affecting him or them.

§ 1483. Punishment for extortion

Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat such as is mentioned in 21 CNCA § 1482 is guilty of a crime.

§ 1484. Extortion under color of official right

Every person who commits any extortion under color of official right, in cases for which a

different punishment is not prescribed by this code, or by some of the statutes, which it specifies as continuing in force, is guilty of a crime.

§ 1485. Obtaining signature by extortion

Every person, who by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action were obtained.

§ 1486. Letters, threatening

Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in 21 CNCA § 1482, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

§ 1487. Attempting to extort money

Every person who unsuccessfully attempts by means of any verbal threat such as is specified in 21 CNCA § 1482 to extort money or other property from another is guilty of a crime.

§ 1488. Blackmail

Blackmail is verbally or by written or printed communication and with intent to extort or gain any thing of value from another or to compel another to do an act against his will:

1. Accusing or threatening to accuse any person of a crime or conduct which would tend to degrade and disgrace the person accused; or
2. Exposing or threatening to expose any fact, report or information concerning any person which would in any way subject such person to the ridicule or contempt of society, coupled with the threat that such accusation or exposure will be communicated to a third person or persons unless the person threatened or some other person pays or delivers to the accuser or some other person some thing of value or does some act against his will. Blackmail is a crime.

CHAPTER 61

FALSE PRETENSES, FALSE PERSONATIONS, CHEATS AND FRAUDS

FRAUDS IN GENERAL

FALSE PERSONATION

FALSE PRETENSES; TRICK OR DECEPTION

FRAUDS IN GENERAL

§ 1500. Real property loans—Securing by false instrument—Penalty

A. It shall be unlawful for any person willfully, knowingly, or fraudulently to make, issue, deliver, use or submit, or to participate in making, issuing, delivering, using or submitting any fictitious, false or fraudulent offer, agreement, contract or other instrument concerning any real property or improvements thereon for the purpose either of inducing or attempting to induce any lender, prospective lender or government agency to make any loan, advance or commitment or of securing any guaranty or insurance in connection therewith.

B. Any person violating the provisions of this act shall be deemed to be guilty of a crime.

§ 1501. Securing credit fraudulently—Penalty

Any person who shall:

1st. Knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself, or any other person, firm or corporation, in whom he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note, for the benefit of either himself or of such person, firm or corporation; or

2nd. Knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself, or such person, firm or corporation in which he is interested, or for whom he is acting, procures, upon the faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in paragraph 1st of this section; or

3rd. Knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay for himself, or such person, firm or corporation, in which he is interested, or for whom he is acting, represents on a later date in writing, that such statement theretofore made, if then again made on said day, would be then true, when in fact, said statement if then made would be false, and procures upon the faith thereof, for the benefit either of himself or of such person, firm or corporation, either or any of the things of benefit mentioned in paragraph 1st of this section;

shall be deemed guilty of a crime and punished by imprisonment for not more than six (6) months or by a fine of not more than Five Hundred Dollars (\$500.00), or both such fine and imprisonment.

§ 1503. Defrauding hotels, inns, restaurants, etc.

Any person who shall obtain food, lodging, services or other accommodations at any hotel, inn, restaurant, boarding house, rooming house, motel or auto camp, with intent to defraud the owner or keeper thereof, if the value of such food, lodging, services or other accommodations is Five Hundred Dollars (\$500.00) or more, upon conviction shall be guilty of a crime. Proof that such lodging, food, services or other accommodations were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that he gave a check on which payment was refused, or that he left the hotel, inn, restaurant, boarding house, rooming house, motel, trailer camp or auto camp, without payment or offering to pay for such food, lodging, services or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, or that he registered under a fictitious name, shall be prima facie proof of the intent to defraud mentioned in this section; but this act shall not apply where there has been an agreement in writing for delay in payment.

§ 1510. Destroying evidence of ownership of wrecked property

Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership, is guilty of a crime.

§ 1518. Misrepresentation of age by false document

It shall be unlawful for any person, for the purpose of violating any statutes of Cherokee Nation, to willfully and knowingly misrepresent his age by presenting a false document purporting to state his true age.

§ 1519. Penalties

Any person violating the provisions of 21 CNCA § 1518 shall be deemed guilty of a crime and upon conviction thereof shall be fined in an amount not to exceed One Hundred Dollars (\$100.00), or shall be confined to the penal institution for a period of not to exceed thirty (30) days, or by both such fine and confinement.

§ 1520. Provisions as cumulative

The provisions of this act shall be cumulative to existing laws.

§ 1524. Falsely holding out as notary or performing notarial act—Penalty

A. No person in this Nation shall hold himself out as a notary public, attach his signature as a notary public, use a notary public seal, or perform any notarial act unless he is authorized pursuant to the provisions of 49 CNCA § 114 to perform such acts.

B. Any person convicted of knowingly and willfully violating any of the provisions of this section shall be guilty of a crime.

FALSE PERSONATION

§ 1531. Marriage by impersonator—Becoming bail or surety—Execution of instrument—Creating liability or benefit

Every person who falsely personates another, and in such assumed character:

1. Marries or pretends to marry, or to sustain the marriage relation toward another, with or without the connivance of such other person; or
2. Becomes bail or surety for any party, in any proceeding whatever, before any court or officer authorized to take such bail or surety; or
3. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or
4. Does any other act whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

is guilty of a crime.

§ 1532. Receiving money or property intended for individual personated

Every person who falsely personates another, and in such assumed character receives any money or property, that knowing it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

§ 1533. Falsely personating officers and others

Every person who falsely personates any public officer, civil or military, or any fireman, or any emergency medical technician or other emergency medical care provider, or any private individual having special authority by law to perform any act affecting the rights or interests of another, or assumes, without authority, any uniform or badge by which such are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, vexed or annoyed, upon conviction, is guilty of a crime.

FALSE PRETENSES; TRICK OR DECEPTION

§ 1541.1. False or bogus checks

A. Any person who, with intent to cheat and defraud, shall obtain or attempt to obtain from any person, firm or corporation any money, property or valuable thing, by making, drawing, uttering or delivering a false or bogus check, draft, or order, as herein defined, and fails to pay the check, draft or order within ten (10) days after receiving actual notice in person or in writing that it has not been paid because of insufficient funds or credit with the drawee, or because it was drawn on a nonexistent or closed account with drawee, shall be guilty of a crime.

B. Actual notice in writing is presumed to have been given when deposited as certified matter in the United States mail, addressed to the person at the address provided upon issuance of the instrument.

C. The requirement of notice shall also be satisfied for written communications which are tendered to the defendant and which the defendant refuses to accept.

§ 1541.2. False or bogus check; notice of complaint; procedure

A. Upon referral of a complaint to the Cherokee Nation's Prosecuting Attorney in the Department of Justice that payment was refused by the drawee/bank for lack of funds, or a closed or nonexistent account, a notice of the complaint shall be sent by certified mail to the defendant, evidenced by return receipt, to the address printed on the check or given at the time of issuance, or to the current residence.

B. The notice shall contain:

1. The date and amount of the check, plus any applicable service charges the payee may have been required to pay a financial institution as the result of having received the false or bogus check;
2. The amount of any fees charged by any financial institution as a result of the check not being honored;
3. The amount of any administrative fees or costs assessed in the collection of said checks;
4. The name of the payee;
5. The name of the drawee/bank;
6. The date before which the defendant must contact the Office of the Prosecuting Attorney concerning the complaint; and
7. A statement of the penalty for obtaining money, merchandise or services by means of a false and bogus check.

C. The Cherokee Nation Justice Department may assess a reasonable fee against individuals whose

checks have been returned under, the above section(s). Such fees must be placed in a specific account, used by the Justice Department to offset the actual costs of collection, including salaries, supplies, and expenses, and must be accounted for in the annual budget process.

§ 1541.3. Repealed by LA 25–02, eff. August 22, 2002

§ 1541.4. "False or bogus check or checks" defined

The term "**false or bogus check or checks**" shall include checks or orders which are not honored on account of insufficient funds of the maker to pay same, or because the check or order was drawn on a closed account or on a nonexistent account when such checks or orders are given in exchange for money or property or in exchange for any benefit or thing of value, as against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and the knowledge of insufficient funds in, or credit with, such bank or other depository; provided, such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with the protest fees, within five (5) days from the date the same is presented for payment; and provided, further, that said check or order is presented for payment within thirty (30) days after same is delivered and accepted.

§ 1541.5. "Credit" defined

The word "**credit**," as used herein, shall be construed to mean an arrangement or understanding with the bank or depository for the payment of such check, draft or order.

§ 1542. Obtaining property or signature under false pretenses

Every person who, with intent to cheat or defraud another, designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property, is guilty of a crime.

§ 1543. Obtaining signature or property for charitable purposes by false pretenses

Every person who designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property for any alleged charitable or benevolent purpose whatever, is guilty of a crime.

§ 1550. Person committing crime in possession or control of firearm with removed, defaced, etc. serial number

A. Any person who, while in the commission or attempted commission of a crime, has in his possession or under his control a firearm, the factory serial number or identification number of which has been removed, defaced, altered, obliterated or mutilated in any manner, upon conviction, shall be guilty of a crime.

B. Any person who removes, defaces, alters, obliterates or mutilates in any manner the factory serial number or identification number of a firearm, or in any manner participates therein, upon conviction, shall be guilty of a crime.

C. 1. Upon a conviction of a violation of this section, the Marshal, the Court Clerk, Sheriff, peace officer or other person having custody of the firearm shall immediately deliver the firearm to the Cherokee Nation Marshal, who shall preserve the firearm pending an order of the Court.

2. At the conclusion of a trial or proceeding for a violation of this section, if a finding is made that the factory serial number or identification number of the firearm has been removed, defaced, altered, obliterated or mutilated, the Court shall issue a written order to the Cherokee Nation Marshal for destruction of the firearm, unless the defendant files a timely motion to preserve the firearm pending appeal. At the conclusion of the appeal, if a finding is made that the factory serial number or identification number of the firearm has been removed, defaced, altered, obliterated or mutilated, the Supreme Court or the Trial Court shall issue a written order to the Marshal for destruction of the firearm.

CHAPTER 63

FORGERY OR COUNTERFEITING

FORGERY IN FIRST DEGREE

FORGERY IN SECOND DEGREE

GENERAL PROVISIONS

FORGERY IN FIRST DEGREE

§ 1561. Wills, deeds and certain other instruments, forgery of

Every person who, with intent to defraud, forges, counterfeits or falsely alters:

1st. Any will or codicil of real or personal property, or any deed or other instrument being or purporting to be the act of another, by which any right or interest in real property is, or purports to be, transferred, conveyed or in any way changed or affected; or

2nd. Any certificate or endorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any officer duly authorized to make such certificate or endorsement; or

3rd. Any certificate of the proof of any deed, will, codicil or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any court or officer duly authorized to make such certificate;

is guilty of forgery in the first degree.

§ 1562. Forgery of public securities

Every person who, with intent to defraud, forges, counterfeits, or falsely alters:

1st. Any certificate or other public security, issued or purporting to have been issued under the authority of this nation, by virtue of any law thereof, by which certificate or other public security, the payment of any money absolutely or upon any contingency is promised, or the receipt of any money or property acknowledged; or

2nd. Any certificate of any share, right or interest in any public stock created by virtue of any law of this nation, issued or purporting to have been issued by any public officer, or any other evidence of any debt or liability, of the people of this nation, either absolute or contingent, issued or purporting to have been issued by any public officer; or

3rd. Any endorsement or other instrument transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest;

is guilty of forgery in the first degree.

FORGERY IN SECOND DEGREE

§ 1571. Public and corporate seals, forgery of

Every person who, with intent to defraud, forges, or counterfeits the great or privy seal of this nation, the seal of any public office authorized by law, the seal of any court of record, including judge of county seals, or the seal of any corporation created by the laws of this Nation, or of any other nation, government or country, or any other public seal authorized or recognized by the laws of this Nation, or of any other nation, government or country, or who falsely makes, forges or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

§ 1572. Records, forgery of

Every person who, with intent to defraud, falsely alters, destroys, corrupts or falsifies:

1. Any record of any will, codicil, conveyance or other instrument, the record of which is, by law, evidence; or

2. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity; or

3. The return of any officer, court or tribunal to any process of any court;

is guilty of forgery in the second degree.

§ 1573. Making false entries in record

Every person who, with intent to defraud, falsely makes, forges or alters, any entry in any book of records, or any instrument purporting to be any record or return specified in 21 CNCA § 1572, and any abstractor, his officer, agent or employee, who, with intent to defraud, falsely makes or alters any abstract entry or copy thereof in any material matter, is guilty of forgery in the second degree.

§ 1585. Forging process of court or title to property, etc.

Every person who, with intent to defraud, falsely marks, alters, forges or counterfeits:

1. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate, or officer of being or purporting to be any pleading, proceeding, bond or undertaking filed or entered in any court, or being or purporting to be any license or authority authorized by any statute; or
2. Any instrument of writing, being or purporting to be the act of another by which any pecuniary demand or obligation is, or purports to be created, increased, discharged or diminished, or by which any rights or property whatever, are, or purport to be, transferred, conveyed, discharged, diminished, or in any manner affected, the punishment of which is not hereinbefore prescribed, by which false marking, altering, forging or counterfeiting, any person may be affected, bound or in any way injured in his person or property;

is guilty of a forgery in the second degree.

§ 1586. Making false entries in public book

Every person who, with intent to defraud, makes any false entry or falsely alters any entry made in any book of accounts kept in the office of the State Auditor and Inspector, or in the office of the Treasurer of this Nation or of any county treasurer, by which any demand or obligation, claim, right or interest either against or in favor of the people of this Nation, or any county or town, or any individual, is or purports to be discharged, diminished, increased, created, or in any manner affected, is guilty of forgery in the second degree.

§ 1593. Falsely obtaining signature

Every person who, by any false representation, artifice or deceit, procures from another his signature to any instrument, the false making of which would be forgery, and which the party signing would not have executed had he known the facts and effect of the instrument, is guilty of forgery in the second degree.

GENERAL PROVISIONS

§ 1621. Punishment for forgery

Forgery is punishable by imprisonment in the penal institution as follows:

Forgery in the first degree or second degree is a crime.

§ 1622. Fraudulently uttering one's signature as that of another of same name

Every person who, with intent to defraud, makes or subscribes any instrument in his own name, intended to create, increase, discharge, defeat or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and utters or passes such instrument, under the pretense that it is the act of another who bears the same name, is guilty of forgery in the same degree as if he had forged the instrument of a person bearing a different name from his own.

§ 1623. Fraudulently uttering one's endorsement as another's

Every person who, with intent to defraud, endorses any negotiable instrument in his own name, and utters or passes such instrument, under the fraudulent pretense that it is endorsed by another person who bears the same name, is guilty of forgery in the same degree as if he had forged the endorsement of a person bearing a different name from his own.

§ 1624. Erasure and obliterations

The total or partial erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property is or is intended to be created, increased, discharged, diminished or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing.

§ 1625. Writing and written defined

Every instrument partly printed and partly written, or wholly printed with a written signature thereto, and every signature of an individual, firm or corporation, or of any officer of such body, and every writing purporting to be such signature, is a writing or a written instrument, within the meaning of the provisions of this chapter.

§ 1627. False or bogus order directing payment of money

Every person who, with intent to cheat or defraud, shall obtain or attempt to obtain from any person any labor or personal services, or the postponement of actual payment due for labor or personal services theretofore performed, by means or use of any false or bogus written, printed or engraved order directing the payment of money, shall be guilty of a crime, and upon conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00), or by imprisonment in the penal institution for not more than six (6) months, or by both such fine and imprisonment.

The term "**false or bogus written, printed or engraved order directing the payment of money,**" in addition to its common meaning, also shall include any check, draft or order on any bank or trust company which is not honored on presentation on account of insufficient funds to the credit of the maker or drawer thereof with which to pay same. The word "**credit,**" as used herein, shall mean any arrangement or understanding with a bank or trust company for the payment by it of any check, draft or money payment order.

As against the maker or drawer of any false or bogus written, printed or engraved order directing the payment of money, and as against any officer or employee of the maker or drawer thereof, who shall authorize or direct the making, drawing, uttering or delivering, or who shall make, draw, utter or deliver any such false or bogus written, printed or engraved order directing the payment of money, to obtain or to attempt to obtain from any person any labor or personal services, or the postponement of actual payment due for labor or personal services, the fact of dishonor or refusal to pay the amount of money specified in said false or bogus order shall be prima facie evidence of intent to cheat or defraud, and of knowledge of insufficient funds to the credit of the maker or drawer, with the drawer specified therein, to pay the same; provided, said fact shall not constitute prima facie evidence as above set forth if the maker or drawer shall pay the amount of such false or bogus order, together with protest fees, within five (5) days from the date the same shall have been presented to the drawer for payment; and provided further, that said fact shall not constitute prima facie evidence as above set forth unless the said false or bogus order be presented to the drawer within thirty (30) days after the same shall have been uttered or delivered.

§ 1627.1. False or bogus orders as payment for labor—Penalties

In addition to the criminal penalties imposed pursuant to the provisions of 21 CNCA § 1627, any person who obtains or attempts to obtain from any person, with the intent to cheat or defraud, any labor or personal services, or the postponement of actual payment due for labor or personal services performed, by means or use of any false or bogus written, printed or engraved order directing the payment of money, shall also be liable to the payee, in addition to the amount owing upon such order, for damages of double the amount so owing, but in no case shall the amount of damages awarded be less than Two Hundred Dollars (\$200.00), plus reasonable attorney fees and court costs. Said damages shall be recoverable in a civil action.

CHAPTER 67

INJURIES TO ANIMALS

DOGFIGHTING

§ 1681. Poisoning cattle

Every person who willfully administers poison to any animal, the property of another, and every person who maliciously exposes any poisonous substance with intent that the same shall be taken by any such animal, is guilty of a crime.

§ 1682. Instigating fights between animals

Every person who maliciously, or for any bet, stake or reward, instigates or encourages any fight between animals or fowls with the exception of dogs, or instigates or encourages any animal with the exception of dogs to attack, bite, wound or worry another, upon conviction, is guilty of a crime.

§ 1683. Keeping places for fighting animals

Every person who keeps any house, pit or other place, to be used in permitting any fight between animals or fowl with the exception of dogs or in any other violation of 21 CNCA § 1682, upon conviction, is guilty of a crime.

§ 1685. Cruelty to animals

Any person who shall willfully or maliciously overdrive, overload, torture, destroy or kill, or cruelly beat or injure, maim or mutilate, any animal in subjugation or captivity, whether wild or tame, and whether belonging to himself or to another, or deprive any such animal of necessary food, drink or shelter; or who shall cause, procure or permit any such animal to be so overdriven, overloaded, tortured, destroyed or killed, or cruelly beaten or injured, maimed or mutilated, or deprived of necessary food, drink or shelter; or who shall willfully set on foot, instigate, engage in, or in any way further any act of cruelty to any animal, or any act tending to produce such cruelty, shall be guilty of a crime.

§ 1686. Abandoned animals—Destroyed how

A. Any person owning or having charge or custody of a maimed, diseased, disabled, or infirm animal who abandons said animal or who allows said animal to lie in a public street, road, or public place one (1) hour after said person receives notice by a duly constituted authority that the animal is disabled or dead, upon conviction, shall be guilty of a crime.

B. Any peace officer, animal control officer, or agent or officer of the Society for the Prevention of Cruelty to Animals or of any humane society duly incorporated for the purpose of the prevention of cruelty to animals may destroy or cause to be destroyed any animal found abandoned and for which no proper care has been given.

C. When any person who is arrested, and who is at the time of such arrest in charge of any animal or of any vehicle drawn by or containing any animal, any peace officer, animal control officer, or agent or officer of said humane societies may take custody of the animal or of the vehicle and its contents, or deliver the animal or the vehicle and its contents into the possession of the police or sheriff of the county or place where such arrest was made, who shall assume the custody thereof. All necessary expenses incurred in taking custody of the animal or of the vehicle and its contents shall be a lien on such property.

D. For the purpose of the provisions of this section and 21 CNCA § 1691, the term abandon means

the voluntary relinquishment of an animal with no intention to retain possession and shall include but shall not be limited to vacating a premises and leaving the animal in or at the premises, or failing to feed the animal or allowing it to stray or wander onto private or public property with the intention of surrendering ownership or custody over said animal.

§ 1688. Animals in transit

Any person who carries or causes to be carried in or upon any vessel or vehicle, or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture is guilty of a crime.

§ 1689. Poisonous drugs, unjustifiable administration of

Any person who unjustifiably administers any poisonous or noxious drug or substance to any animal, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal, whether such animal be the property of himself or another, is guilty of a crime.

§ 1691. Abandoning of domestic animals along streets or highways or in any public place prohibited

Any person who deposits any live dog, cat, or other domestic animal along any private or public roadway, or in any other private or public place with the intention of abandoning the domestic animal upon conviction, shall be guilty of a crime.

§ 1692. Penalty

Any person found guilty of violating the provisions of this act shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or be imprisoned in the penal institution for not more than one (1) year, or both such fine and imprisonment.

DOGFIGHTING

§ 1693. Definitions

As used in this act:

1. **"Equipment used for training or handling a fighting dog"** includes harnesses, treadmills, cages, decoys, pens, houses, feeding apparatuses, training pens and other related devices and equipment.
2. **"Equipment used for transporting a fighting dog"** includes any automobile, or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog to a fight.
3. **"Equipment used to promote or advertise a dogfight"** includes any printing presses or similar equipment, any paper, ink, photography equipment, and related items and equipment

intended to be used to transport same.

4. **"Equipment used to stage a dogfight"** includes, but is not limited to, dogfighting arenas, bleachers, or spectators' stands or other seating, tents, canopies, buildings, fences, cages, speakers, public address systems, portable toilet facilities and related equipment.

5. **"Fighting dog"** includes any dog trained, being trained, intended to be used for training, or intended to be used to attack, bite, wound or worry another dog.

§ 1694. Instigating or encouraging dogfight—Crime

Every person who willfully or for any bet, stake or reward, instigates or encourages any fight between dogs, or instigates or encourages any dog to attack, bite, wound or worry another dog, except in the course of protection of life and property, upon conviction, is guilty of a crime.

§ 1695. Keeping place, equipment or facilities for dogfighting—Crime

Every person who keeps any house, pit or other place, or provides any equipment or facilities to be used in permitting any fight between dogs or in furtherance of any activity described in 21 CNCA § 1693, upon conviction, is guilty of a crime.

§ 1696. Servicing or facilitating dogfight—Crime

Every person who does any act or performs any service in the furtherance of or to facilitate any dogfight, upon conviction, is guilty of a crime. Such activities and services specifically prohibited by this section include, but are not limited to: promotion, refereeing, handling of dogs at a fight, transportation of spectators to or from a dogfight, providing concessions at a dogfight, advertising a dogfight, or serving as a stakes holder of any money wagered on any dogfight.

§ 1697. Owning, possessing, keeping or training dog for fighting—Crime

Every person who owns, possesses, keeps or trains any dog with the intent that such dog shall be engaged in an exhibition of fighting with another dog, upon conviction, shall be guilty of a crime.

§ 1698. Spectators

Every person who is knowingly present as a spectator at any place, building or other site where preparations are being made for an exhibition of dog-fighting with the intent to be present at such preparation or fight, or is knowingly present at such exhibition, upon conviction, shall be guilty of a crime.

§ 1699. Seizure, destruction or forfeiture of dogfighting equipment and facilities

Following the conviction of a person for the offense of keeping a place for fighting dogs, providing facilities for fighting dogs, performing services in the furtherance of dogfighting, training, owning,

possessing, handling fighting dogs, the Court entering the judgment shall order that the machine, device, gambling equipment, training or handling instruments or equipment, transportation equipment, concession equipment, dogfighting equipment and instruments, and fighting dogs used in violation of this act be destroyed or forfeited to the Nation.

§ 1699.2. Exemptions

Nothing in this act shall prohibit any of the following:

1. The use of dogs in hunting as permitted by the Game and Fish Code and by the rules and regulations adopted by the Oklahoma Wildlife Conservation Commission;
2. The use of dogs in the management of livestock by the owner of such livestock or his employees or agents or other persons in lawful custody thereof;
3. The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law; or
4. The raising, breeding, keeping or training of dogs or the use of equipment for the raising, breeding, keeping or training of dogs for sale or show purposes.

CHAPTER 68

LARCENY

§ 1701. Larceny defined

Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof.

§ 1702. Larceny of lost property

One who finds lost property under circumstances which gives him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made such effort to find the owner and restore the property to him as the circumstances render reasonable and just, is guilty of larceny.

§ 1703. Degrees of larceny

Larceny is divided into two degrees; the first of which is termed grand larceny, the second petit larceny.

§ 1704. Grand and petit larceny defined

Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of value exceeding Five Hundred Dollars (\$500.00);
2. When such property, although not of value exceeding Five Hundred Dollars (\$500.00) in value, is taken from the person of another.

Larceny in other cases is petit larceny.

§ 1705. Punishment for grand larceny

Grand larceny is punishable as a crime.

§ 1706. Punishment for petit larceny

Petit larceny shall be punishable by a fine of not less than Ten Dollars (\$10.00) or more than Five Hundred Dollars (\$500.00), or imprisonment in the penal institution not to exceed six (6) months, or by both such fine and imprisonment, at the discretion of the Court.

§ 1707. Grand larceny in house or vessel—Punishment

When it appears upon a trial for grand larceny that the larceny alleged was committed in any dwelling house or vessel, the offender shall be guilty of a crime.

§ 1708. Grand larceny in night time from person—Punishment

When it appears upon such trial, that such larceny was committed by stealing in the night time, from the person of another, the offender shall be guilty of a crime.

§ 1709. Larceny of written instrument—Value

If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereon or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum of which might be recovered in the absence thereof, as the case may be, shall be deemed the value of the thing stolen.

§ 1712. Severed fixture, larceny of

Any fixture or part of realty, the instant it is severed from the realty becomes personal property, and the subject of larceny within the meaning of this article.

§ 1713. Receiving stolen property—Presumption

Every person who buys or receives, in any manner, upon any consideration, any personal property of any value whatsoever that has been stolen, embezzled, obtained by false pretense or robbery,

knowing or having reasonable cause to believe the same to have been stolen, embezzled, obtained by false pretense, or robbery, or who conceals, withholds, or aids in concealing or withholding such property from the owner, is guilty of a crime.

§ 1714. Fraudulent consumption of gas

Every person who, with intent to defraud, makes or causes to be made, any pipe or other instrument or contrivance, and connects the same, or causes it to be connected, with any pipe laid for conducting illuminating gas, so as to conduct gas to a point where the same may be consumed without its passing through the meter providing for registering the quantity consumed, or in any other manner so as to evade paying therefor, and every person who with like intent injures or alters any gas meter, or obstructs its action, is guilty of a crime.

§ 1715. Bringing stolen property into the nation

Every person who steals the property of another in any other nation or state or country, and brings the same into this nation may be convicted and punished in the same manner as if such larceny had been committed in this Nation, and such larceny may be charged to have been committed in any town or city into or through which such stolen property has been brought.

§ 1716. Larceny of domestic animals

Any person in this Nation who shall steal any horse, jackass, jennet, mule, cow, or hog, sheep, or goat, shall be guilty of a crime. The word "**horse**" as used in this act, shall include all animals of the equine species and the word "**cow**" shall include all animals of bovine species.

§ 1717. Dog as personal property

All animals of the dog kind, whether male or female, shall be considered the personal property of the owner thereof, for all purposes.

§ 1718. Larceny of dogs

The taking of personal property of the kind defined in 21 CNCA § 1717, accomplished by fraud or stealth, and with the intent to deprive another thereof, is hereby defined as larceny and punishable in the same manner and to the same degree as in larceny of other descriptions of personal property.

§ 1719. Domestic fowls, larceny of—Receiving stolen fowls

Every person who shall take, steal and carry away any domestic fowl, or fowls, and any person purchasing or receiving such domestic fowl, or fowls, knowing them to have been stolen, shall be guilty of larceny.

§ 1719.1. Larceny of certain fish and game

A. For the purpose of this section:

1. **"Domesticated fish or game"** means all birds, mammals, fish and other aquatic forms and all other animals, regardless of classifications, whether resident, migratory or imported, protected or unprotected, dead or alive, and shall extend to and include every part of any individual species when such domesticated fish or game are not in the wild and are in the possession of a person currently licensed to possess such fish or game; and

2. **"Taking"** means the pursuing, killing, capturing, trapping, snaring and netting of domesticated fish or game or placing, setting, drawing or using any net, trap or other device for taking domesticated fish or game and includes specifically every attempt to take such domesticated fish or game.

B. Any domesticated fish or game shall be considered the personal property of the owner.

C. Any person who shall take any domesticated fish or game, with the intent to deprive the owner of said fish or game, and any person purchasing or receiving such domesticated fish or game knowing them to have been stolen, shall:

1. Upon conviction, if the current market value of said domesticated fish or game is less than Fifty Dollars (\$50.00), be guilty of a crime and shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the penal institution for a period not to exceed sixty (60) days, or by both such fine and imprisonment; or

2. Upon conviction, if the current market value of said domesticated fish or game is more than Fifty Dollars (\$50.00), be guilty of a crime and shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) or imprisonment in the Nation Penitentiary for a term of not more than one (1) year, or by both such fine and imprisonment.

§ 1720. Automobile, aircraft or other motor vehicle

Any person in this Nation who shall steal an aircraft, automobile or other automotive-driven vehicle shall be guilty of a crime.

§ 1721. Tapping pipeline

Any person who shall unlawfully make or cause to be made any connection with or in any way tap or cause to be tapped, or drill or cause to be drilled a hole in any pipe or pipeline or tank laid or used for the conduct or storage of crude oil, naphtha, gas or casinghead gas, or any of the manufactured or natural products thereof, with intent to deprive the owner thereof of any of said crude oil, naphtha, gas, casinghead gas or any of the manufactured or natural products thereof, shall be guilty of a crime, and upon conviction shall be punished by forfeiture of the instrumentality of the crime.

§ 1722. Taking oil, gas, gasoline or any product thereof—When crime

Any person who shall unlawfully take any crude oil or gasoline, or any product thereof, from any pipe, pipeline, tank, tank car, or other receptacle or container and any person who shall unlawfully take or cause to be taken any machinery, drilling mud, equipment or other materials necessary for the drilling or production of oil or gas wells, with intent to deprive the owner or lessee thereof of said crude oil, gas, gasoline, or any product thereof, machinery, drilling mud, equipment or other materials necessary for the drilling or production of oil or gas wells shall be guilty of a crime.

§ 1723. Larceny from the house

Any person entering and stealing any money or other thing of value from any house, railroad car, tent, booth or temporary building shall be guilty of larceny from the house. Larceny from the house is declared to be a crime.

§ 1730. Act as cumulative—Definitions

This act shall be cumulative of all laws of the Nation and any violation hereof may be prosecuted, irrespective of whether or not the acts complained of constitute any or some of the essential elements of other or different offenses against the penal laws of this Nation; and for the purposes of this act the word "**stolen**" or "**steal**" shall mean larceny as defined by 21 CNCA § 1701, and the word "**stolen**" or "**steal**" need not be defined in any indictment, complaint, or information for the prosecution of any offense hereunder.

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

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

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the Clerk of the District Court for the county wherein such property is seized and shall be given all owners and parties in interest.

C. Notice shall be given according to one (1) of the following methods:

1. Upon each owner or party in interest whose right, title, or interest is of record in the Oklahoma Tax Commission or with the county clerk for filings under the Uniform Commercial Code, served

in the manner of service of process in civil cases prescribed by 12 O.S. § 2004;

2. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by 12 O.S. § 2004; or

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

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

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

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

G. At the hearing the Nation shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection (A) of this section with knowledge by the owner of the property.

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

I. In the event of such proof, the Court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Nation and shall be sold pursuant to judgment of the Court, as on sale upon execution, except as otherwise provided for by law.

K. Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the prosecutor of the county wherein the property was seized. The prosecutor shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the prosecutor may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been released by the prosecutor

shall be subject to the orders and decrees of the Court or the official having jurisdiction thereof.

L. The prosecutor shall not be held civilly liable for having custody of the seized property or proceeding with a forfeiture action as provided for in this section.

M. Attorney fees shall not be assessed against the Nation or the prosecutor for any actions or proceeding pursuant to 21 CNCA § 1701 et seq.

N. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual reasonable expenses of preserving the property;

3. To the victim of the crime to compensate said victim for any loss he may have incurred as a result of the act for which such property was forfeited; and

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-third (1/3) to the office of the arresting authorities; one-third (1/3) of said fund to be used and maintained as a revolving fund by the prosecutor for the victim-witness fund, a reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from said fund may be used to pay costs for the storage of such property if such property is ordered released to a bona fide or innocent owner, lien holder, mortgagee, or vendor and if such funds are available in said fund.

O. If the Court finds that the property was not used in the attempt or commission of an act specified in subsection (A) of this section, the Court shall order the property released to the owner as his right, title, or interest appears on record in the Oklahoma Tax Commission as of the seizure.

P. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection (A) of this section. No property shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any nation.

§ 1739. Library theft

A. As used in this section:

1. **"Demand"** means either actual notice to the possessor of any library materials or the mailing of written notice to the possessor at the last address of record which the library facility has for said person, demanding the return of designated library materials. If demand is made by mail it shall be deemed to have been given as of the date the notice is mailed by the library facility.

2. **"Library facility"** means any:

a. public library; or

b. library of an educational, historical or eleemosynary institution, organization, or society; or

c. museum; or

d. repository of public or institutional records.

3. **"Library material"** means any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, record, microform, sound recording, audiovisual materials in any format, magnetic or other tapes, catalog cards or catalog records, electronic data processing records, computer software, artifacts, or other documentary, written or printed materials regardless of physical form or characteristics, belonging or on loan to, or otherwise in the custody of a library facility.

B. Any person shall be guilty, upon conviction, of library theft who willfully:

1. Removes or attempts to remove any library material from the premises of a library facility without authority; or

2. Mutilates, destroys, alters or otherwise damages, in whole or in part, any library materials; or

3. Fails to return any library materials which have been lent to said person by the library facility, within seven (7) days after demand has been made for the return of the library materials.

C. A person convicted of library theft shall be guilty of a crime and shall be subject to the fine and restitution provisions of this subsection but shall not be subject to imprisonment. The punishment for conviction of library theft shall be:

1. If the aggregate value of the library material is Five Hundred Dollars (\$500.00) or less, by fine not exceeding One Thousand Dollars (\$1,000.00), or the offender shall make restitution to the library facility, including payment of all related expenses incurred by the library facility as a result of the actions of the offender, or both such fine and restitution; or

2. If the aggregate value of the library material is greater than Five Hundred Dollars (\$500.00), by fine not exceeding Five Thousand Dollars (\$5,000.00), or the offender shall make restitution to the library facility, including payment of all expenses incurred by the library facility as a result of the

actions of the offender, or both such fine and restitution.

D. Copies of the provisions of this section shall be posted on the premises of each library facility.

CHAPTER 69

MALICIOUS MISCHIEF

§ 1753. Highways, injuries to

Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, is guilty of a crime.

§ 1753.3. Throwing, dropping, depositing, or otherwise placing litter upon highways, roads, or public property—Penalties

A. The operator of a vehicle shall be liable pursuant to subsection (B) of this section for any act of throwing, dropping, depositing, or otherwise placing any litter from his vehicle upon highways, roads, or public property unless any other person in the vehicle admits to or is identified as having committed said act. Any person who admits to or is identified as having committed said act shall be liable for said act.

B. Any person convicted of violating the provisions of subsection (A) of this section shall be subject to the provisions of 21 CNCA § 1761.1.

C. As used in this section, "**litter**" means any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, any substance which may cause a fire, any bottles, cans, trash, garbage, or debris of any kind. As used in this section, "**litter**" shall not include trash, garbage, or debris placed beside a public road for collection by a garbage or collection agency, or deposited upon or within public property designated by the nation or by any of its agencies or political subdivisions as an appropriate place for such deposits if the person making the deposit is authorized to use the property for such purpose.

§ 1753.4. Erection of signs and markers along state and federal highways

The State Highway Department is hereby authorized and directed to cause to be erected upon the property of or rights-of-way of state and federal highways, at locations most appropriate for carrying out the purposes and intent of this act, signs or markers for each prohibited act enumerated herein, of a size not less than thirty (30) inches square with plainly visible wording to inform users of said highways that the acts enumerated herein do constitute a crime and the maximum penalty for violations, and such additional wording as the State Highway Department deems desirable to assist in carrying out the purposes and intent of this act. Any sign or marker so erected or placed shall be placed at a right angle to the roadbed. The location of signs or markers upon the right-of-way shall in no manner interfere with the signs or markers used to designate

route numbers or traffic control markers, signs, signals or devices.

§ 1753.5. Erection of signs and markers along county roads

The boards of county commissioners are hereby authorized to erect signs or markers, as provided herein, upon the property of or right-of-way of county roads within their respective jurisdictions.

§ 1753.6. Enforcement

The State Highway Patrol, the sheriffs of the several counties, and all other peace officers in this Nation shall have the authority and it shall be their duty to enforce the provisions of 21 CNCA § 1753.3.

§ 1753.7. Exceptions

The provisions of this act shall not apply to:

1. Flaming or glowing substances which by law may be placed upon highway rights-of-way for the purposes of highway safety; or
2. Trash, garbage or debris placed beside a public road for collection by an established garbage or collection agency.

§ 1753.8. Defacing, stealing or possessing road signs or markers—Penalties

Any person who defaces, steals or possesses any road sign or marker posted by any city, state, county, or Cherokee Nation shall be deemed guilty of a crime and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars (\$100.00), or by imprisonment in the penal institution for a term of not more than thirty (30) days, or by both such fine and imprisonment.

§ 1754. Obstructing highways—Punishment—Damages

Every person who shall knowingly and willfully obstruct or plow up, or cause to be obstructed or plowed up, any public highway or public street of any town, except by order of the road supervisors for the purpose of working the same, or injure any bridge on the public highway, shall be deemed guilty of a crime, and upon conviction shall be punished by fine not exceeding One Thousand Dollars (\$1,000.00), and shall be liable for all damages to person or property by reason of the same.

§ 1757. Telephone and telegraph lines—Injuries—Removal or obstruction—Interception of messages

Any person who maliciously, or without legal authority, removes, injures, or obstructs any line of telephone or telegraph, or any part thereof, or appurtenances or apparatus therewith connected, or

severs any wires thereof, or fraudulently or without legal authority, intercepts any message, communication or conversation in its passage over such wires, or who fraudulently or without legal authority connects to any telephone or telegraph line or wire any instrument or other apparatus capable of being used in intercepting messages, communications or conversations, is guilty of a crime and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00), or imprisonment in the penal institution not exceeding one (1) year, or by both such fine and imprisonment.

§ 1758. Irrigation ditches, canals, water lines or conduits—Interference with

It shall be unlawful for any person to divert any of the waters from any irrigation ditch, canal, waterline or conduit, in this Nation, or to interfere in any manner whatever with any irrigation ditch, canal, water line or conduit, without first having obtained the permission of the owner of such ditch, canal, waterline or conduit, or of the person or persons lawfully in charge thereof.

§ 1759. Penalty

Any person violating any of the provisions of 21 CNCA § 1758 shall be deemed guilty of a crime.

§ 1760. Malicious injury or destruction of property generally—Punishment—Damages

A. Every person who maliciously injures, defaces or destroys any real or personal property not his own, in cases other than such as are specified in 21 CNCA § 1761 and following sections, is guilty of a crime.

B. In addition to the punishment prescribed in subsection (A) of this section, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof.

§ 1761. Following sections do not restrict 21 CNCA § 1760

The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of 21 CNCA § 1760.

§ 1761.1. Dumping, etc. of trash on public or private property prohibited—Penalties

A. Any person who deliberately places, throws, drops, deposits or discards any garbage, trash, waste, rubbish, refuse, debris or other deleterious substance on any public property or on any private property of another without consent shall be guilty of a crime.

B. Any person convicted of violating the provisions of subsection (A) of this section shall be punished by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the penal institution for not more than thirty (30) days, or by both such fine and imprisonment.

C. In addition to the penalty prescribed by subsection (B) of this section, the Court may direct the person to make restitution to the property owner affected; to remove and properly dispose of the garbage, trash, waste, refuse or debris from the property; to pick up, remove and properly dispose of garbage, trash, waste, rubbish, refuse, debris and other nonhazardous deleterious substances from public property; or any combination of the foregoing which the Court, in its discretion, deems appropriate. The dates, times and locations of such activities shall be scheduled by the marshal pursuant to the order of the Court in such a manner as not to interfere with the employment or family responsibilities of the person.

D. In addition to the penalty prescribed in subsection (B) and the restitution prescribed in subsection (C), the Court may order the defendant to pay into the reward fund as prescribed in 22 CNCA § 1334 an amount not to exceed One Thousand Dollars (\$1,000.00).

E. Any full-time peace officer in this Nation including but not limited to the Marshal, state highway patrol, county sheriffs and deputies, municipal law enforcement department, and any other employee of this Nation having peace officer authority upon investigation of the disposal of any substance in violation of this section which contains three or more items bearing a common address in a form which tends to identify the latest owner of the items shall create a rebuttable presumption that all competent persons residing at such address committed the unlawful act. The discovery or use of such evidence shall not be sufficient to qualify for the reward provided in 22 CNCA § 1334.

F. Any person convicted of violating the provisions of subsection (A) of this section with any flaming or glowing substance, or any substance which may cause a fire shall be punished by a fine of not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than sixty (60) days, or by both such fine and imprisonment. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation. Damages shall be recoverable in any court of competent jurisdiction.

G. During a burn ban declared by the Principal Chief, any person convicted of violating the provisions of subsection (A) of this section with any flaming or glowing substances, or any substance which may cause a fire shall be punished by a fine of not less than Four Thousand Dollars (\$4,000.00) nor more than Ten Thousand Dollars (\$10,000.00) or by imprisonment for not more than one hundred twenty (120) days, or by both such fine and imprisonment. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation. Damages shall be recoverable in any court of competent jurisdiction.

§ 1761.2. Illegal dumping on tribal land prohibited—Penalties

A. It shall be a crime for any person to dump, deposit, throw or in any manner leave or abandon any liquid or solid waste, including trash, ashes or incinerator residue, street refuse, dead animals,

demolition waste, construction waste, solid or semi-solid or semi-solid commercial and industrial waste, hazardous waste, explosives, pathological waste, chemical waste, herbicides, pesticides, or any scrap materials on property owned by or held in trust for Cherokee Nation without the written permission of Cherokee Nation.

B. Any party in violation of this statute shall be subject to any provision for fines and/or other punishment as provided by Cherokee Nation, state or federal law.

§ 1762. Mining claims—Unlawful to tear down legal notice or deface any record

Any person who shall willfully or maliciously tear down or deface any legal notice posted on any mining claim, or take up or destroy any stakes or monument used for marking such mining claims, or who shall willfully or maliciously throw or place any dirt, water, brush, stones or other foreign substance into any mining shaft or tunnel belonging to or claimed by another, or who shall willfully or maliciously alter, erase, deface or destroy any record kept by any legally-elected mining recorder shall be deemed guilty of a crime and shall upon conviction thereof be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00), or by imprisonment for not less than ten (10) days nor more than six (6) months or by both such fine and imprisonment.

§ 1765. House of worship or contents, injuring

Every person who willfully breaks, defaces, or otherwise injures any house or place of worship including traditional stomp grounds, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of a crime.

§ 1767.1. Bombs and explosives—Foul, poisonous, offensive or injurious substances—Telephone threats

A. Any person who shall willfully and maliciously commit any of the following acts shall be deemed guilty of a crime:

1. Any person who places in, upon, under, against, or near to any building, car, aircraft, motor or other vehicle, vessel or structure, any gunpowder, dynamite, bomb, any explosive substance, or incendiary device, with unlawful intent to destroy, throw down, or injure, in whole or in part, such property of another, or conspires, aids, counsels, or procures the destruction of any building or structure, public or private, or any car, aircraft, motor or other vehicle, vessel or structure, shall be guilty of a crime; or

2. Any person who places in, upon, under, against or near to any building, car, aircraft, motor or other vehicle, vessel or structure, any gunpowder, dynamite, bomb, or any explosive substance with intent to destroy, throw down or injure the whole or any part thereof, under circumstances that, if such intent were accomplished, human life or safety would be endangered thereby, shall be guilty of a crime; or

3. Every person who maliciously, by the explosion of gunpowder, dynamite or any explosive substance, destroys, throws down, or injures any property of another, or by which explosion an injury is caused to the person of another, shall be guilty of a crime; or

4. Any person or group of persons who shall willfully manufacture, sell, transport, or possess a bomb or any explosive including an incendiary device or the component parts of an explosive or incendiary device with knowledge or intent that it will be used to unlawfully kill, injure or intimidate any person, or unlawfully damage any real or personal property, is guilty of a crime; or

5. Any person who shall place in, upon, under, against or near to any building, car, aircraft, motor or other vehicle, vessel or structure, any foul, poisonous, offensive or injurious substance or compound, with intent to wrongfully injure, molest or coerce another or to injure or damage the property of another, shall be guilty of a crime; or

6. Any person or group of persons who maliciously injures, damages or attempts to damage by an explosive, including an incendiary device, any person, persons, or property, whether real or personal, is guilty of a crime; or

7. Any person who uses the telephone or other instrument to willfully make any threat or maliciously convey information known to be false, concerning an attempt or alleged attempt to kill, injure or intimidate any person or unlawfully damage any real or personal property by means of an explosive, including an incendiary device, shall be guilty of a crime.

B. Nothing contained herein shall be construed to apply to, or repeal any laws pertaining to, the acts of mischief of juveniles involving noninjurious firecrackers or devices commonly called "stink bombs."

§ 1767.2. Violations of preceding section

Any person violating any of the provisions of 21 CNCA § 1767.1 shall be deemed guilty of a crime.

§ 1767.3. Definitions

As used in 21 CNCA § 1767.1:

1. "**Component parts**" means separate parts which if assembled would form an explosive device. Component parts of an "**incendiary device**" shall consist of an inflammable material, a breakable container and a source of ignition.

2. "**Explosive**" or "**explosives**" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, i.e., with substantial instantaneous release of gas and heat, unless such compound, mixture or device is otherwise specifically classified by the United States Department of Transportation. The term "**explosives**" shall include all material

which is classified as explosives by the United States Department of Transportation.

3. **"Incendiary device"** means any chemical compound, mixture or device, the primary purpose of which is to ignite on impact or as a result of chemical reaction such as a **"molotov cocktail"** or **"firebomb"** which is ignited on impact, causing a mechanical reaction of the container's breaking and permitting the inflammable matter to spread or splatter and is ignited from the burning wick or hyperbolic reaction of chemicals.

2. **"Person"** means any individual, firm, copartnership, corporation, company, association, joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.

§ 1767.4. Tracing of telephone calls—Immunity

Any telephone company, its officers, agents or employees, when acting upon any request by the state or any governing body of a political subdivision thereof, which shall expressly include school districts, shall make reasonable effort to identify the telephone from which any telephone communication claimed to be prohibited by this act is being or has been made. If identification of such telephone is made, the telephone company, its officers, agents or employees shall provide to state law enforcement officials the location of such telephone. Any telephone company, its officers, agents or employees, in acting pursuant to this section of this act, shall be immune from any civil or criminal action or liability under this or any other state or local act, rule, regulation or ordinance.

§ 1768. Malicious injury to freehold—Carrying away earth, soil or stone

Every person who willfully commits any trespass by either:

1. Cutting down or destroying any kind of wood or timber, standing or growing upon the lands of another; or, driving or riding through, into, or across any cultivated hedge or tree row, or any grove of ornamental trees or orchard of fruit trees growing upon the land of another, or in any other manner injuring the same; or

2. Carrying away any kind of wood or timber that has been cut down, and is lying on such lands; or

3. Maliciously severing from the freehold any produce thereof, or anything attached thereto; or

4. Digging, taking, or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner, or legal occupant thereof, any earth, soil or stone, being a part of the freehold, or severed therefrom at some previous time, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property; or

5. Digging, taking, or carrying away from any land in any incorporated city or town of this state, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue, without the license of the mayor and common council or other governing body of such city or town, or owner of the fee thereof, any earth, soil or stone under

such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property;

is guilty of a crime.

§ 1770. Standing crops, injuring

Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this chapter or by some other statute, is guilty of a crime.

§ 1771. Injuring fruit, melons or flowers in the day time

Every person who maliciously or mischievously enters in the day time, the enclosure, or goes upon the premises of another, with the intent to knock off, pick, destroy, or carry away, or having lawfully entered or gone upon does afterward wrongfully knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, shall be punished by a fine not exceeding One Hundred Dollars (\$100.00) and not less than Five Dollars (\$5.00), or by imprisonment in the penal institution not exceeding thirty (30) days.

§ 1772. Injuring fruit, melons or flowers in the night time

Every person who shall maliciously or mischievously enter the enclosure, or go upon the premises of another in the night time, and knock off, pick, destroy, or carry away, any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, or having entered the enclosure or gone upon the premises of another, in the night time, with the intent to knock off, pick, destroy, or carry away any fruit or flowers, as aforesaid, be actually found thereon, shall, on conviction thereof, be punished by fine not exceeding One Hundred (\$100.00) and not less than Ten Dollars (\$10.00), or by imprisonment in the penal institution not exceeding thirty (30) days.

§ 1773. Injuring fruit or ornamental trees

Every person who shall maliciously or mischievously, bruise, break or pull up, cut down, carry away, destroy, or in anywise injure any fruit or ornamental tree, shrub, vine or material for hedge, being, growing, or standing on the land of another, shall be punished by fine not exceeding One Hundred (\$100.00) and not less than Ten Dollars (\$10.00), or by imprisonment in the penal institution not exceeding thirty (30) days.

§ 1774. Removing or altering landmarks

Every person who either:

1. Maliciously removes any monuments of stone, wood, or other material, erected for the purpose

of designating any point in the boundary of any lot or tract of land; or

2. Maliciously defaces or alters the marks upon any tree, post or other monument, made for the purpose of designating any point, course, or line in any such boundary; or

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

is guilty of a crime.

§ 1775. Piers or dams, interfering with

Every person who, without authority of law, interferes with any pier, booms or dams, lawfully erected or maintained upon any waters within this Nation, or hoists any gate in or about said dams, is guilty of a crime.

§ 1776. Destroying dam

Every person who maliciously destroys any dam or structure erected to create hydraulic power, or any embankment necessary for the support thereof, or maliciously makes, or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a crime.

§ 1777. Piles, removing or injuring

Every person who maliciously draws up or removes or cuts or otherwise injures any piles fixed in the ground and used for securing any bank or dam of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, dock, quay, jetty or lock, is guilty of a crime.

§ 1778. Train signal light, removing or masking—False light or signal

Every person who unlawfully masks, alters or removes any light or signal, or willfully exhibits any false light or signal, with intent to bring any locomotive or any railway car or train of cars into danger, is guilty of a crime.

§ 1779. Injuring written instruments the false making of which would be forgery

Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument being the property of another, the false making of which would be forgery, is punishable in the same manner as the forgery of such instrument is made punishable.

§ 1782. Messages—Disclosing contents of

Any person who shall disclose the contents of any telegraphic dispatch or telephone message or communication, or any part thereof, addressed to or which he knows to be intended for another person without the permission of such person, except upon the lawful order of a Court, or the

Judge thereof, with intent to cause injury, damage or disgrace to such other person, or which does in fact cause injury, damage or disgrace to such other person, shall be guilty of a crime, and upon conviction thereof shall be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the penal institution not less than thirty (30) days, nor more than one (1) year, or by both such imprisonment and fine. Provided, that nothing herein shall apply to public officers in the discharge of their duties.

§ 1784. Works of art or ornamental improvements, injuring

Every person who willfully injures, disfigures or destroys, not being the owner thereof, any monument work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, growing therein, whether situated upon private ground, or on any street, sidewalk or public park or place, is guilty of a crime.

§ 1785. Works of literature or art in public place, injuring

Every person who maliciously cuts, tears, disfigures, soils, obliterates, breaks or destroys any book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen or other work of literature or art, or object of curiosity deposited in any public library, gallery, museum, collection, fair or exhibition, is guilty of a crime.

§ 1786. Injuries to pipes and wires

Every person who willfully breaks, digs up or obstructs any pipes or mains for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, or injures, cuts, breaks down or destroys any electric light wires, poles or appurtenances, or any telephone or telegraph wires, cable or appurtenances, is guilty of a crime.

§ 1787. Automobile or motor vehicle, loitering in, injuring or molesting

From and after the passage of this act, it shall be unlawful for any person or persons to loiter in or upon any automobile or motor vehicle, or to deface or injure such automobile or motor vehicle, or to molest, drive, or attempt to drive any automobile, for joyriding or any other purpose, or to manipulate or meddle with any machinery or appliances thereof without the consent of the owner of such automobile or motor vehicle.

§ 1788. Penalty

Any person violating 21 CNCA § 1787 shall be deemed guilty of a crime.

§ 1789. Caves or caverns, injuring

A. It shall be unlawful for any person to willfully or knowingly break, break off, crack, carve upon, write or otherwise mark upon, or in any manner destroy, mutilate, deface, mar or harm any natural

material found in any cave or cavern located on any public lands or other lands owned by the United States, Cherokee Nation or, on private property without the prior written consent of the owner; to kill, harm or disturb any plant or animal life found in any cave or cavern, and, whether inside or outside a cave, any fish of the genera chologaster, typhlicthys or amblyopsis (commonly known as cavefish, springfish or blindfish), any salamander of the genus typhlotriton (commonly known as the Ozark blind, grotto or spring grotto salamander), or the species eurycea lucifuga (commonly known as cave salamander); provided, nothing in this chapter shall be construed as prohibiting the commercial mining of bat guano or the destruction of any predatory terrestrial mammal or poisonous snake seeking shelter within a cave if such destruction is not otherwise unlawful.

B. Any person who deliberately places, throws, drops, deposits or discards any garbage, trash, waste, rubbish, refuse, debris or other deleterious substance in or near any cave, cavern or natural subterranean drainage system shall be subject to the provisions of 21 CNCA § 1751.

§ 1790. Penalties

Any person violating any provision of this act shall be punished by a fine not exceeding Five Thousand Dollars (\$5,000.00) or by imprisonment for not exceeding twelve (12) months, or by both such fine and imprisonment.

CHAPTER 70

OTHER OFFENSES AGAINST PROPERTY RIGHTS

SERIAL NUMBERS ON FARM MACHINERY

REPORTING OF FIRES

TELEPHONE SOLICITATION

ELECTRONIC SOLICITATION

COMPUTER CRIMES ACT

§ 1835. Trespass on posted property after being forbidden or without permission— Exemptions—Penalty—Entry into pecan grove without consent

A. Whoever shall willfully or maliciously enter the garden, yard, pasture or field of another after being expressly forbidden to do so or without permission by the owner or lawful occupant thereof when such property is posted shall be deemed guilty of trespass and upon conviction thereof shall be fined in any sum not to exceed Two Hundred Fifty Dollars (\$250.00); provided, that this provision shall not apply to registered land surveyors and registered professional engineers for the purpose of land surveying in the performance of their professional services; and, provided further, that anyone who willfully or maliciously enters any such garden, yard, pasture or field, and therein

commits or attempts to commit waste, theft, or damage shall be deemed guilty of a crime and upon conviction thereof shall be fined in any sum not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by confinement in the penal institution for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment. For purposes of this section, "**posted**" means exhibiting signs to read as follows: "PROPERTY RESTRICTED"; "POSTED-KEEP OUT"; "KEEP OUT"; "NO TRESPASSING"; or similar signs which are displayed. Property that is fenced or not fenced must have such signs placed conspicuously and at all places where entry to the property is normally expected.

B. Whoever shall willfully enter the pecan grove of another without the prior consent of the owner or occupant thereof to so do shall be deemed guilty of trespass and upon conviction thereof shall be fined in any sum not to exceed Twenty-five Dollars (\$25.00); provided, that anyone who willfully enters any such pecan grove and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of a crime and upon conviction thereof shall be fined in any sum not more than Five Hundred Dollars (\$500.00), or by confinement in the penal institution for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

§ 1835.1. Entry or presence upon premises of place of business of persons convicted of certain crimes

A. Every person, partnership, corporation or other legal entity engaged in any public business, trade, or profession of any kind wherein merchandise, goods or services are offered for sale may forbid the entry or presence of any person upon the premises of the place of business, if the person has been convicted of a crime involving entry only or criminal acts occurring upon any real property owned, leased, or under the control of such person, partnership, corporation or other legal entity. Such crimes shall include, but are not limited to, shoplifting, vandalism, and disturbing the peace while upon the premises of any place of business of the person, partnership, corporation, or other legal entity.

B. In order to exercise the authority conferred by subsection (A) of this section, the owner or an agent of the owner of a public business, trade, or profession must notify the person whom the owner or agent desires to prohibit from such owner's place of business.

C. No person shall willfully enter or remain upon the premises after being expressly forbidden to do so in the manner provided for in this section. Any person convicted of violating the provisions of this section, upon conviction, shall be guilty of trespass and shall be punished by a fine of not more than Two Hundred Fifty Dollars (\$250.00) or by confinement in the penal institution for a term of not more than thirty (30) days, or by both such fine and imprisonment.

D. The provisions of this section shall not preclude any other remedy allowed by law.

SERIAL NUMBERS ON FARM MACHINERY

§ 1841. Destruction, removal, altering, covering or defacing

No person, firm, association or corporation shall destroy, remove, alter, cover or deface the manufacturer's serial number from any tractor, combine, corn picker, corn sheller or hay baler, or any other piece of farm machinery having a retail value of more than Twenty-five Dollars (\$25.00) upon which the manufacturer has placed a serial number; nor shall any person, firm, corporation or association, sell, offer for sale, or lease, or otherwise dispose of any such equipment on which the serial numbers have been destroyed, removed, altered, covered or defaced.

§ 1842. Exception to application of act

The provisions of 21 CNCA § 1841 shall not apply to any machine or part thereof now owned and used by a bona fide farmer who has had such equipment in his possession prior to the effective date of this act.

§ 1843. Violations—Punishment

Any person violating the provisions of 21 CNCA § 1841, shall, upon conviction thereof, be fined not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not less than thirty (30) days nor more than one (1) year, or both, for each offense.

REPORTING OF FIRES

§ 1851. False reporting

It shall be unlawful for any person to report, or cause to be reported, directly or indirectly, the existence of a fire to a fire department, fire station or other agency charged with the responsibility of extinguishing fires, unless such person knows or reasonably believes that such fire is in existence.

§ 1852. Posting of act

The fire chief or principal officer of every fire department shall post, or cause to be posted, a copy of this act at every fire alarm box or place specially designed for the reporting of fires in his jurisdiction.

§ 1853. Penalty

Any person violating any of the provisions of this section or 21 CNCA § 1851 or 1852 shall be guilty of a crime.

TELEPHONE SOLICITATION

§ 1861. Information to be furnished by solicitor—Calls exempt—Penalties

A. The name and organizational or business affiliation of every person who by telephone engages in the solicitation or sale of any item, tangible or intangible, shall, by such person, be given to the

person answering such telephone call. Such information shall be given immediately and prior to any solicitation or sales presentation. The telephone number of the person placing the call must be given upon request of the party being called. The person in whose name the telephone is registered is responsible for his agents and employees conforming with the provisions of this section and 21 CNCA § 1862. This section and 21 CNCA § 1862 do not apply to calls between persons known to each other and to religious groups, or nonprofit organizations within their own membership, and political activities.

B. No person may solicit contributions by telephone for a charitable non-profit organization unless that organization has complied with the provisions of the Oklahoma Solicitation of Charitable Contributions Act, 18 O.S. § 552.1 et seq. Such person may charge a reasonable fee for his services, which shall not exceed ten percent (10%) of the net receipts of the solicitation; provided, however, that in the event the fee charged is based upon a predetermined flat fee, then this provision shall not apply. Provided, further, that all sums shall be paid directly to the nonprofit organization.

C. Violation of this act by a person, business or organization shall constitute a crime. A third and subsequent conviction under this act shall constitute a crime.

ELECTRONIC SOLICITATION

§ 1862. Commercial solicitation by facsimile device—Definitions

As used in this section and 21 CNCA § 1863:

1. "**Commercial solicitation**" means an unsolicited electronic or telephonic transmission to a facsimile device to encourage the purchase of goods, realty, services or to advertise availability of such goods, realty or services. Commercial solicitation shall not include an electronic or telephonic transmission to a facsimile device:

- a. made in the course of prior negotiations;
- b. made to a party with whom there was a prior business relationship or an existing relationship;
- c. made in the course of a follow up to a sales call, sales lead or other business-related contact; or
- d. made after normal business hours and two pages or less in length.

2. "**Facsimile device**" means a machine capable of receiving and reproducing facsimiles of text or images transmitted electronically or telephonically through telecommunication lines connecting to the machine.

§ 1863. Commercial solicitation by facsimile device—Penalties

A. A person shall not intentionally make an electronic or telephonic transmission to a facsimile

device located in this nation by means of any connection with a telephone network for the purpose of transmitting a commercial solicitation, as defined by 21 CNCA § 1862. Each commercial solicitation prohibited by this act shall be a separate violation.

B. Any person violating the provisions of this act shall upon conviction be guilty of a crime punishable by a fine of not less than Five Hundred Dollars (\$500.00) or more than One Thousand Dollars (\$1,000.00) for each separate violation.

C. A person violating the provisions of this act shall be deemed to have committed the violation either at the place where the electronic or telephonic transmission is made or at the place where the transmission is received.

COMPUTER CRIMES ACT

§ 1951. Short title

This act shall be known and may be cited as the Cherokee Nation Computer Crimes Act.

§ 1952. Definitions

As used in the Cherokee Nation Computer Crimes Act:

1. "**Access**" means to approach, gain entry to, instruct, communicate with, store data in, retrieve data from or otherwise use the logical, arithmetical, memory or other resources of a computer, computer system or computer network;
2. "**Computer**" means an electronic device which performs work using programmed instruction having one or more of the capabilities of storage, logic, arithmetic or communication. The term includes input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network;
3. "**Computer network**" means the interconnection of terminals by communication modes with a computer, or a complex consisting of two or more interconnected computers;
4. "**Computer program**" means a set or series of instructions or statements and related data which when executed in actual or modified form directs or is intended to direct the functioning of a computer system in a manner designed to perform certain operations;
5. "**Computer software**" means one or more computer programs, procedures and associated documentation used in the operation of a computer system;
6. "**Computer system**" means a set of related, connected or unconnected, computer equipment, devices including support devices, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control and software. "**Computer**

system" does not include calculators which are not programmable and are not capable of being connected to or used to access other computers, computer networks, computer systems or support devices;

7. **"Data"** means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device;

8. **"Property"** means any tangible or intangible item of value and includes, but is not limited to, financial instruments, geophysical data or the interpretation of that data, information, computer software, computer programs, electronically-produced data and computer-produced or stored data, supporting documentation, computer software in either machine or human readable form, electronic impulses, confidential, copyrighted or proprietary information, private identification codes or numbers which permit access to a computer by authorized computer users or generate billings to consumers for purchase of goods and services, including but not limited to credit card transactions and telecommunications services or permit electronic fund transfers and any other tangible or intangible item of value;

9. **"Services"** includes, but is not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work;

10. **"Supporting documentation"** includes, but is not limited to, all documentation in any form used in the construction, design, classification, implementation, use or modification of computer software, computer programs or data; and

11. **"Victim expenditure"** means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program or data was or was not altered, deleted, disrupted, damaged or destroyed by the access.

§ 1953. Prohibited acts

A. It shall be unlawful to:

1. Willfully, and without authorization, gain or attempt to gain access to and damage, modify, alter, delete, destroy, copy, make use of, disclose or take possession of a computer, computer system, computer network or any other property;

2. Use a computer, computer system, computer network or any other property as hereinbefore defined for the purpose of devising or executing a scheme or artifice with the intent to defraud, deceive, extort or for the purpose of controlling or obtaining money, property, services or other thing of value by means of a false or fraudulent pretense or representation;

3. Willfully exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network or any other property;

4. Willfully and without authorization, gain or attempt to gain access to a computer, computer system, computer network or any other property;

5. Willfully and without authorization use or cause to be used computer services;

6. Willfully and without authorization disrupt or cause the disruption of computer services or deny or cause the denial of access or other computer services to an authorized user of a computer, computer system or computer network;

7. Willfully and without authorization provide or assist in providing a means of accessing a computer, computer system or computer network in violation of this section;

B. Any person convicted of violating paragraphs 1, 2, 3, 6 or 7 of subsection (A) of this section shall be guilty of a crime.

C. Any person convicted of violating paragraphs 4 or 5 of subsection (A) of this section shall be guilty of a crime.

§ 1954. Certain acts as prima facie evidence of violation of act

Proof that any person has accessed, damaged, disrupted, deleted, modified, altered, destroyed, caused to be accessed, copied, disclosed or taken possession of a computer, computer system, computer network or any other property, or has attempted to perform any of these enumerated acts without authorization or exceeding the limits of authorization, shall be prima facie evidence of the willful violation of the Cherokee Nation Computer Crimes Act.

§ 1955. Penalties—Civil actions

In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program or data may bring a civil action against any person convicted of a violation of the Cherokee Nation Computer Crimes Act for compensatory damages, including any victim expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program or data was or was not altered, damaged, deleted, disrupted or destroyed by the access. In any action brought pursuant to this subsection the Court may award reasonable attorneys fees to the prevailing party.

§ 1957. Access of computer, computer system or computer network in one jurisdiction from another jurisdiction—Bringing of action

For purposes of bringing a civil or a criminal action under the Cherokee Nation Computer Crimes Act, a person who causes, by any means, the access of a computer, computer system or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system or computer network in each jurisdiction.

§ 1958. Access to computers, computer systems and computer networks prohibited for certain purposes—Penalty

No person shall communicate with, store data in, or retrieve data from a computer system or computer network for the purpose of using such access to violate any of the provisions of the Cherokee Nation Code.

Any person convicted of violating the provisions of this section shall be guilty of a crime.

PART VIII

CONTROLLED DANGEROUS SUBSTANCES

CHAPTER 75

UNIFORM CONTROLLED DANGEROUS SUBSTANCES ACT

ARTICLE I. DEFINITIONS

§ 2101. Definitions

As used in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.:

1. "**Administer**" means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or research subject by:

a. A practitioner (or, in his presence, by his authorized agent); or

b. The patient or research subject at the direction and in the presence of the practitioner.

2. "**Agent**" means a peace officer appointed by and who acts in behalf of Cherokee Nation or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or contract carrier, public warehouseman or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act.

3. "**Bureau of Narcotics and Dangerous Drugs**" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice.

4. "**Coca leaves**" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine.

5. "**Commissioner**" or "**Director**" means the Director of the Oklahoma State Bureau of Narcotics

and Dangerous Drugs Control.

6. "**Control**" means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act.

7. "**Controlled dangerous substance**" means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act.

8. "**Counterfeit substance**" means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

9. "**Deliver**" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance whether or not there is an agency relationship.

10. "**Dispense**" means to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding, necessary to prepare the substance for such distribution. "**Dispenser**" is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject.

11. "**Distribute**" means to deliver other than by administering or dispensing a controlled dangerous substance.

12. "**Distributor**" means a person who distributes.

13. "**Drug**" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and articles intended for use as a component of any article specified in the paragraph; but does not include devices or their components, parts or accessories.

14. "**Drug-dependent person**" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

15. "**Drug paraphernalia**" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing

into the human body, a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act. It includes, but is not limited to:

- a. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;
- b. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances;
- c. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance;
- d. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances;
- e. Scales and balances used or intended for use in weighing or measuring controlled dangerous substances;
- f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances;
- g. Separation gins and sifters used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining, marihuana;
- h. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances;
- i. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances;
- j. Containers and other objects used or intended for use in parenterally injecting controlled substances into the human body;
- k. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body;
- l. Objects used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:
 - i. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,
 - ii. Water pipes,

- iii. Carburetion tubes and devices,
- iv. Smoking and carburetion masks,
- v. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand,
- vi. Miniature cocaine spoons and cocaine vials,
- vii. Chamber pipes,
- viii. Carburetor pipes,
- ix. Electric pipes,
- x. Air-driven pipes,
- xi. Chillums,
- xii. Bongs,
- xiii. Ice pipes or chillers.

Provided however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco.

16. "**Hazardous material**" means materials, whether solid, liquid or gas; which are toxic to human, animal, aquatic or plant life, and the disposal of which materials is controlled by Nation or federal guidelines.

17. "**Imitation controlled substance**" means a substance that is not a controlled dangerous substance, which by dosage unit appearance, color, shape, size, markings or by representations made would lead a reasonable person to believe that the substance is a controlled dangerous substance. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance", the court or authority concerned should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is an imitation controlled substance:

- a. Statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect;
- b. Statements made to the recipient that the substance may be resold for inordinate profit;
- c. Whether the substance is packaged in a manner normally used for illicit controlled substances;

d. Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;

e. Prior convictions, if any, of an owner, or any other person in control of the object, under Nation, state, or federal law related to controlled substances or fraud;

f. The proximity of the substance to controlled dangerous substances.

18. "**Immediate precursor**" means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture.

19. "**Indian**" means any person who is a citizen or is eligible for citizenship in a federally-recognized Indian tribe, band or nation.

20. "**Indian country**" means that area defined by 18 U.S.C. § 1151.

21. "**Isomer**" means the optical isomer, except as used in 21 CNCA § 2204(C) and 21 CNCA § 2206(A)(4), "**isomer**" means the optical, positional or geometric isomer. As used in 21 CNCA § 2206(A)(4), the term "**isomer**" means the optical or geometric isomer.

22. "**Laboratory**" means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances for scientific and medical purposes and for purposes of instruction.

23. "**Manufacture**" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

24. "**Marihuana**" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

25. "**Medical purposes**" means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition not in violation

of any state or federal law and not for the purpose of physiological or psychological dependence or other abuse.

26. "**Narcotic drug**" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium, coca leaves and opiates;

b. A compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates;

c. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

d. Ecgonine, its derivatives, their salts, isomers and salts of isomers;

e. A substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

27. "**Nation**" means Cherokee Nation.

28. "**Opiate**" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (detromethorphan). It does include its racemic and levorotatory forms.

29. "**Opium poppy**" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

30. "**Peace officer**" means a police officer, marshal, deputy marshal, sheriff, deputy sheriff, prosecuting attorney's investigator, investigator from the Office of the Attorney General, or any other person elected or appointed by law to enforce any of the criminal laws of this Nation or of the United States.

31. "**Person**" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

32. "**Poppy straw**" means all parts, except the seeds, of the opium poppy, after mowing.

33. "**Practitioner**" means:

a. A physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed,

registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this Nation; or

b. A pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this Nation.

34. "**Production**" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance.

35. "**Synthetic controlled substance**" means a substance that is not a controlled dangerous substance, but a substance that produces a like or similar physiological or psychological effect on the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse. The court or authority concerned with establishing that the substance is a synthetic controlled substance should consider, in addition to all other factors, the following factors as related to "**representations made**" in determining whether the substance is a synthetic controlled substance:

a. Statements made by an owner or by any other person in control of the substance concerning the nature of the substance, its use or effects;

b. Statements made to the recipient that the substance may be resold for an inordinate profit;

c. Prior convictions, if any, of an owner or any person in control of the substance, under Nation or federal law related to controlled dangerous substances;

d. The proximity of the substance to any controlled dangerous substance.

36. "**Tetrahydrocannabinols**" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marihuana.

37. "**Tribal citizen**" means any person who is a citizen or is eligible for citizenship in Cherokee Nation.

38. "**Ultimate user**" means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

§ 2101.1. Drug paraphernalia—Factors used in determining

In determining whether an object is "drug paraphernalia", a court shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use.

2. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Dangerous Substances Act.
3. The proximity of the object to controlled dangerous substances.
4. The existence of any residue of controlled dangerous substances on the object.
5. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who intend to use the object to facilitate a violation of the Uniform Controlled Dangerous Substances Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is drug paraphernalia.
6. Instructions, oral or written, provided with the object which either state directly or imply that the object is to be used for the consumption of controlled substances.
7. Descriptive materials accompanying the object which explain or depict its use as an object for the consumption of controlled substances.
8. The manner in which the object is displayed for sale.
9. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
10. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
11. The existence and scope of legitimate uses for the object in the community.
12. Expert testimony concerning its use.

§ 2103.1. Investigations—Subpoena power

A. In the investigation by any Cherokee Nation peace officer pursuant to the provisions of the Uniform Controlled Dangerous Substances Act with respect to controlled substances, the officer, if recommended and approved by the Prosecuting Attorney of Cherokee Nation District Court, may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records, including books, papers, documents, and other tangible things which are determined to be relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in the Nation to a designated location at the seat of government. Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of this Nation.

B. The witness shall have the option of complying with said subpoena by:

1. Appearing and/or producing documents, as requested; or
2. Notifying the Marshal office, in writing, of refusal to appear or produce documents, within ten (10) days of the date of service.

C. A subpoena issued pursuant to this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

D. In the case of contumacy by or refusal to obey a subpoena issued to any person, the aid of the District Court of Cherokee Nation may be invoked. The court may issue an order requiring the subpoenaed person to appear and to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the Court may be punished by the Court as an indirect contempt thereof.

E. The District Court of Cherokee Nation wherein the subpoena is served may quash a subpoena issued pursuant to this section, upon a motion to quash the subpoena filed with the Court by the party to whom the subpoena is issued.

§ 2107. Narcotics Revolving Fund

There is hereby created in the National Treasury a revolving fund for the control of narcotics and dangerous drugs to be designated the "Narcotics Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies received from the sale of surplus and confiscated property, fees and receipts collected pursuant to the Oklahoma Open Records Act, gifts, bequests, devises, contributions or grants, public or private, including federal law or regulation, registration fees and receipts relating to prescription pads and receipts from any other source. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended for the control of narcotics and dangerous drugs.

ARTICLE II. STANDARDS AND SCHEDULES

§ 2201. Future "controlled dangerous substances" included

Any substances, not listed in the following schedules, which are subsequently determined to be "controlled dangerous substances" and included in 63 O.S. § 2-201 et seq. are included as controlled dangerous substances in this title.

§ 2202. Nomenclature in schedules

The schedules provided by this act include the controlled dangerous substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

§ 2203. Schedule I characteristics

Schedule I includes substances with the following characteristics:

1. High potential for abuse;
2. No accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision.

§ 2204. Schedule I

The controlled substances listed in this section are included in Schedule I.

1. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- a. Acetylmethadol,
- b. Allylprodine,
- c. Alphacetylmethadol,
- d. Alphameprodine,
- e. Alphamethadol,
- f. Benzethidine,
- g. Betacetylmethadol,
- h. Betameprodine,
- i. Betamethadol,
- j. Betaprodine,
- k. Clonitazene,
- l. Dextromoramide,

m. Dextrorphan (except its methyl ether),
n. Diampromide,
o. Diethylthiambutene,
p. Dimenoxadol,
q. Dimepheptanol,
r. Dimethylthiambutene,
s. Dioxaphetyl butyrate,
t. Dipipanone,
u. Ethylmethylthiambutene,
v. Etonitazene,
w. Etoxidine,
x. Furethidine,
y. Hydroxypethidine,
z. Ketobemidone,
aa. Levomoramide,
bb. Levophenacilmorphan,
cc. Morpheridine,
dd. Noracymethadol,
ee. Norlevorphanol,
ff. Normethadone,
gg. Norpipanone,
hh. Phenadoxone,

- ii. Phenampromide,
- jj. Phenomorphan,
- kk. Phenoperidine,
- ll. Pir tramide,
- mm. Proheptazine,
- nn. Properidine,
- oo. Racemoramide,
- pp. Trimeperidine.

2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- a. Acetorphine,
- b. Acetyldihydrocodeine,
- c. Benzylmorphine,
- d. Codeine methylbromide,
- e. Codeine-N-Oxide,
- f. Cyprenorphine,
- g. Desomorphine,
- h. Dihydromorphine,
- i. Etorphine,
- j. Heroin,
- k. Hydromorphanol,
- l. Methyldesorphine,
- m. Methylhydromorphine,

- n. Morphine methylbromide,
- o. Morphine methylsulfonate,
- p. Morphine–N–oxide,
- q. Myrophine,
- r. Nicocodeine,
- s. Nicomorphine,
- t. Normorphine,
- u. Phoclodine,
- v. Thebacon.

3. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. 3, 4–methylenedioxy amphetamine,
- b. 5–methoxy–3, 4–methylenedioxy amphetamine,
- c. 3, 4, 5–trimethoxy amphetamine,
- d. Bufotenine,
- e. Diethyltryptamine,
- f. Dimethyltryptamine,
- g. 4–methyl–2, 5–dimethoxyamphetamine,
- h. Ibogaine,
- i. Lysergic acid diethylamide,
- j. Marihuana,
- k. Mescaline,

- l. N-ethyl-3-piperidyl benzilate,
- m. N-methyl-3-piperidyl benzilate,
- n. Psilocybin,
- o. Psilocyn,
- p. 2, 5 dimethoxyamphetamine,
- q. 4 bromo-2, 5-dimethoxyamphetamine,
- r. 4 methoxyamphetamine,
- s. Cyclohexamine,
- t. Thiphen analog of phencyclidine, also known as 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-thienyl analog of phencyclidine; TCP, TCP,
- u. Phencyclidine (PCP),
- v. Pyrrolidine analog for phencyclidine, also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:

- a. Fenethylamine,
- b. Mephedrone,
- c. N-ethylamphetamine,
- d. Methamphetamine.

§ 2205. Schedule II characteristics

Schedule II includes substances with the following characteristics:

- 1. High potential for abuse;
- 2. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions;

3. The abuse of the substance may lead to severe psychic or physical dependence.

§ 2206. Schedule II

The controlled substances listed in this section are included in Schedule II.

1. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1, but not including the isoquinoline alkaloids of opium;

c. Opium poppy and poppy straw;

d. Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.

2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Alphaprodine,

b. Anileridine,

c. Bezitramide,

d. Dihydrocodeine,

e. Diphenoxylate,

f. Fentanyl,

g. Isomethadone,

h. Levomethorphan,

- i. Levorphanol,
- j. Metazocine,
- k. Methadone,
- l. Methadone–Intermediate, 4–cyano–2–dimethylamino–4, 4–diphenyl butane,
- m. Moramide–Intermediate, 2–methyl–3–morpholino–1,1–diphenyl-propane-carboxylic acid,
- n. Pethidine. Meperidine,
- o. Pethidine–Intermediate–A, 4–cyano-1-methyl–4–phenylpiperidine,
- p. Pethidine–Intermediate–B, ethyl–4–phenylpiperidine–4–carboxylate,
- q. Pethidine–Intermediate–C,1-methyl–4–phenylpiperidine–4–carboxylic acid,
- r. Phenazocine,
- s. Piminodine,
- t. Racemethorphan,
- u. Racemorphan,
- v. Etorphine hydrochloride salt only,
- w. Alfentanil hydrochloride.

3. Any substance which contains any quantity of:

- a. Methamphetamine, including its salts, isomers, and salts of isomers,
- b. Amphetamine, its salts, optical isomers, and salts of its optical isomers.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:

- a. Phenmetrazine and its salts,
- b. Methylphenidate,
- c. Amobarbital,

- d. Pentobarbital,
- e. Secobarbital,
- f. Tetrahydrocannabinols.

§ 2207. Schedule III characteristics

Schedule III includes substances with the following characteristics:

- 1. A potential for abuse less than the substances listed in Schedules I and II;
- 2. Currently accepted medical use in treatment in the United States; and
- 3. Abuse may lead to moderate or low physical dependence or high psychological dependence.

§ 2208. Schedule III

The controlled substances listed in this section are included in Schedule III.

1. Unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances or any other substance having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

- a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid unless specifically excepted or unless listed in another schedule,
- b. Chlorhexadol,
- c. Glutethimide,
- d. Lysergic acid,
- e. Lysergic acid amide,
- f. Methyprylon,
- g. Sulfondiethylmethane,
- h. Sulfonethylmethane,
- i. Sulfonmethane,
- j. Benzphetamine and its salts,

k. Chlorphentermine and its salts,

l. Clortermine,

m. Mazindol,

n. Phendimetrazine,

o. Phenylacetone (P2P),

p. 1-Phenycyclohexylamine,

q. 1-Piperidinocyclohexanecarbo nitrile (PCC).

2. Nalorphine.

3. Unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

a. Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium,

b. Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

c. Not more than three hundred (300) milligrams of dihydrocodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium,

d. Not more than three hundred (300) milligrams of dihydrocodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

e. Not more than one and eight-tenths (1.8) grams of dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

f. Not more than three hundred (300) milligrams of ethylmorphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts,

g. Not more than five hundred (500) milligrams of opium per one hundred (100)milliliters or per

one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

h. Not more than fifty (50) milligrams of morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

§ 2209. Schedule IV characteristics

Schedule IV includes substances with the following characteristics:

1. Low potential for abuse relative to substances listed in Schedule III;
2. Currently accepted medical use in treatment in use in the United States; and
3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule III.

§ 2210. Schedule IV

The controlled substances listed in this section are included in Schedule IV.

1. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

- a. Chloral betaine,
- b. Chloral hydrate,
- c. Ethchlorvynol,
- d. Ethinamate,
- e. Meprobamate,
- f. Paraldehyde,
- g. Petrichloral,
- h. Diethylpropion,
- i. Phentermine,
- j. Pemoline,

k. Chlordiazepoxide,

l. Chlordiazepoxide and its salts, but not including chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens,

m. Diazepam,

n. Oxazepam,

o. Clorazepate,

p. Flurazepam and its salts,

q. Clonazepam,

r. Barbital,

s. Mebutamate,

t. Methohexital,

u. Methylphenobarbital,

v. Phenobarbital,

w. Fenfluramine,

x. Pentazocine,

y. Dextropropoxyphene,

z. Butorphanol,

aa. Alprazolam,

bb. Halazepam,

cc. Lorazepam,

dd. Prazepam,

ee. Temazepam,

ff. Triazolam,

gg. Methandrostenolone,

hh. Stanozolol,

ii. Ethylestrenol,

jj. Nandrolene phenpropionate,

kk. Nandrolone deconoate,

ll. Testosterone propionate,

mm. Chorionic gonadotropin.

2. In addition to the anabolic steroids listed in paragraphs gg through mm of subdivision 1 of this section, "anabolic steroids" shall include any salt, optical and geometric isomers, and salts of isomers, compound, or derivative which is a chemical analog to any of the substances listed in paragraphs gg through mm of subdivision 1 of this section.

§ 2211. Schedule V characteristics

Schedule V includes substances with the following characteristics:

1. Low potential for abuse relative to the controlled substances listed in Schedule IV;
2. Currently accepted medical use in treatment in the United States; and
3. Limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

§ 2212. Schedule V

The controlled substances listed in this section are included in Schedule V.

Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
2. Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,

3. Not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
4. Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit,
5. Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams.

ARTICLE IV. OFFENSES AND PENALTIES

TRAFFICKING IN ILLEGAL DRUGS ACT

§ 2401. Prohibited acts A—Penalties

A. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person:

1. To distribute, dispense, or solicit the use of or use the services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance;
2. To create, distribute, or possess with intent to distribute, a counterfeit controlled dangerous substance; or
3. To distribute any imitation controlled substance as defined by 21 CNCA § 2101, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services.

B. Any person who violates the provisions of this section with respect to:

1. A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a crime;
2. Any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a crime;
3. A substance classified in Schedule V, upon conviction, shall be guilty of a crime;
4. An imitation controlled substance as defined by 21 CNCA § 2101, upon conviction, shall be guilty of a crime and shall be sentenced to a term of imprisonment for a period of not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00). A person convicted of a second or subsequent violation of the provisions of this paragraph shall be sentenced to a term of imprisonment for not more than three (3) years and a fine of not more than Five Thousand Dollars

(\$5,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment; or

5. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance. Any person convicted of violating the provisions of this paragraph is guilty of a crime.

C. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or by distributing a controlled dangerous substance to a person under eighteen (18) years of age is punishable by twice the fine and by twice the imprisonment otherwise authorized.

D. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, upon conviction, is guilty of a crime.

E. Any person convicted of any offense described in this section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to 21 CNCA § 2107.

§ 2401A. School property—Distribution, dispensing or possession of controlled dangerous substance or Imitation with intent to distribute

A. It shall be unlawful for any person to distribute, dispense, or possess with intent to distribute a controlled dangerous substance or imitation controlled dangerous substance, as defined by 21 CNCA § 2101, while on any school property used for school purposes which is owned by any private school, public school district, or vocational-technical school district, or within one thousand (1,000) feet of any such school property or while on any school bus owned or operated by any private school, public school district. Any person convicted of violating this section shall be guilty of a crime.

B. It shall be no defense to a prosecution for a violation of this section that the violator of this section was unaware that the prohibited conduct took place while on or within one thousand (1,000) feet of any school property.

C. A conviction arising under this section shall not merge with a conviction pursuant to 21 CNCA § 2401.

§ 2402. Prohibited acts B—Penalties

A. 1. It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by 21 CNCA § 2101 et seq.

2. It shall be unlawful for any person to purchase any preparation excepted from the provisions of 21 CNCA § 2101 et seq. pursuant to 21 CNCA § 2313 in an amount or within a time interval other than that permitted by 21 CNCA § 2313.

B. Any person who violates this section with respect to:

1. Any Schedule I or II substance, except marihuana or a substance included in subsection (D) of 21 CNCA § 2206, is guilty of a crime.

2. Any Schedule III, IV or V substance, marihuana, a substance included in 21 CNCA § 2206(D), or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act is guilty of a crime.

§ 2403. Prohibited acts C—Penalties

A. Any person found guilty of larceny, burglary or theft of controlled dangerous substances is guilty of a crime.

B. Any person found guilty of robbery or attempted robbery of controlled dangerous substances from a practitioner, manufacturer, distributor or agent thereof as defined in 21 CNCA § 2101 is guilty of a crime.

§ 2404. Prohibited acts D—Penalties

A. It shall be unlawful for any person:

1. To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or this act;

2. To refuse any entry into any premises or inspection authorized by this act; or,

3. To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled dangerous substances in violation of this act for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this act.

B. Any person who violates this section is punishable by a civil fine of not more than One Thousand Dollars (\$1,000.00) unless the violation is prosecuted by an information which alleges that the violation was committed knowingly or intentionally, and the trier of fact specifically finds that the violation was committed knowingly or intentionally.

§ 2405. Prohibited acts E—Penalties

A. No person shall use tincture of opium, tincture of opium camphorated, or any derivative thereof, by the hypodermic method, either with or without a medical prescription therefor.

B. No person shall use or possess drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of 21 CNCA § 2101 et seq., except those persons holding an unrevoked license in the professions of podiatry, dentistry, medicine, nursing, optometry, osteopathy, veterinary medicine, or pharmacy.

C. No person shall deliver, possess or manufacture drug paraphernalia knowing it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.

D. Any person eighteen (18) years of age or over who violates subsection (C) of this section by delivering drug paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior shall, upon conviction, be guilty of a crime.

E. Any person who violates subsections (A), (B) or (C) of this section is guilty of a crime.

§ 2407. Prohibited acts G—Penalties

A. No person shall obtain or attempt to obtain any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act pursuant to 21 CNCA § 2313 in a manner inconsistent with the provisions of 21 CNCA § 2313(B)(1), or a controlled dangerous substance or procure or attempt to procure the administration of a controlled dangerous substance:

1. by fraud, deceit, misrepresentation, or subterfuge;
2. by the forgery or alteration of a prescription or of any written order;
3. by the concealment of a material fact; or
4. by the use of a false name or the giving of a false address.

B. Information communicated to a physician in an effort unlawfully to procure a controlled dangerous substance, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

C. Any person who violates this section is guilty of a crime.

§ 2407.1. Certain substances causing intoxication, distortion or disturbances of auditory, visual, muscular or mental processes prohibited—Exemptions—Penalties

A. For the purpose of inducing intoxication or distortion or disturbance of the auditory, visual, muscular, or mental process, no person shall ingest, use, or possess any compound, liquid, or chemical which contains butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or mixtures containing butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or any of their esters, isomers, or analogues, or any other similar compound.

B. No person shall possess, buy, sell, or otherwise transfer any substance specified in subsection (A) of this section for the purpose of inducing or aiding any other person to inhale or ingest such substance or otherwise violate the provisions of this section.

C. The provisions of subsections (A) and (B) of this section shall not apply to:

1. The possession and use of a substance specified in subsection (A) of this section which is used as part of the care or treatment by a licensed physician of a disease, condition or injury or pursuant to a prescription of a licensed physician; and

2. The possession of a substance specified in subsection (A) of this section which is used as part of a known manufacturing process or industrial operation when the possessor has obtained a permit from the Oklahoma State Department of Health or the federal government.

D. Any person convicted of violating any provision of subsection (A) or (B) of this section shall be guilty of a crime punishable by imprisonment of not more than ninety (90) days or by the imposition of a fine not to exceed Five Hundred Dollars (\$500.00), or by both such imprisonment and fine. Each violation shall be considered a separate offense.

§ 2408. Endeavor and conspiracy

Any person who offers, solicits, attempts, endeavors, or conspires to commit any offense defined in 21 CNCA § 2101 et seq. shall be subject to the penalty prescribed for the offense, the commission of which was the object of the endeavor or conspiracy.

§ 2409. Additional penalties

Any penalty imposed for violation of this article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

§ 2410. Conditional discharge for possession as first offense

Whenever any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant,

depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled dangerous substance under 21 CNCA § 2402, the Court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require including the requirement that such person cooperate in a treatment and rehabilitation program of a state-supported or state-approved facility, if available. Upon violation of a term or condition, the Court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the Court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

Any expunged arrest or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire or any other public or private purpose; provided, that, any such plea of guilty or finding of guilt shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant.

§ 2411. General penalty clause

Any person who violates any provision of this act not subject to a specific penalty provision is guilty of a crime punishable by confinement for not more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or both.

§ 2412. Second or subsequent offenses

An offense shall be considered a second or subsequent offense under this act, if, prior to his conviction of the offense, the offender has at any time been convicted of an offense or offenses under this act, under any statute of the United States, or of any nation or state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs, as defined by this act.

§ 2413. Bar to prosecution

If a violation of this act is a violation of a federal law or the law of another state or Indian nation, a conviction or acquittal under federal law or the law of another state or nation for the same act is a bar to prosecution in this Nation.

§ 2413.1. Gasoline or paint sniffing illegal

A. It shall be a crime for any person to sniff or inhale gasoline or any other motor fuel or any paint, thinner, glue or cleaner or substance which provides and intoxicating vapor with the intent to become intoxicated.

B. It shall be a crime for any person to distribute to any person gasoline or any other motor fuel or

any paint, thinner, glue, cleaner or substance which provides and intoxicating vapor knowing or having reasonable cause to believe the person receiving the substance will use the substance for the purpose of inhaling the intoxicating vapor with the intent to become intoxicated.

C. It shall be a crime for any person to fail to report local law enforcement, the act of any person who inhales gasoline or any other motor fuel or any paint, thinner, cleaner, glue or substance which provides an intoxicating vapor for the purpose of intoxication.

TRAFFICKING IN ILLEGAL DRUGS ACT

§ 2414. Short title

This act shall be known and may be cited as the Trafficking in Illegal Drugs Act.

§ 2415. Application—Fines and penalties

A. The provisions of the Trafficking in Illegal Drugs Act, 21 CNCA § 2414 et seq., shall apply to persons convicted of violations with respect to the following substances:

1. Marihuana,
2. Cocaine or coca leaves,
3. Heroin,
4. Amphetamine or methamphetamine,
5. Lysergic acid diethylamide (LSD),
6. Phencyclidine (PCP),
7. Cocaine base, commonly known as "crack" or "rock".

B. Except as otherwise authorized by the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq., it shall be unlawful for any person to:

1. Knowingly distribute, manufacture, bring into this Nation or possess a controlled substance specified in subsection (A) of this section in the quantities specified in subsection (C) of this section; or
2. Possess any controlled substance with the intent to manufacture a controlled substance specified in subsection (A) of this section in quantities specified in subsection (C) of this section; or
3. Use or solicit the use of services of a person less than eighteen (18) years of age to distribute or manufacture a controlled dangerous substance specified in subsection (A) of this title in quantities

specified in subsection (C) of this section.

Violation of this section shall be known as "trafficking in illegal drugs".

Any person who commits the conduct described in paragraph 1, 2 or 3 of this subsection and represents the quantity of the controlled substance to be an amount described in subsection (C) of this section shall be deemed guilty of a crime.

C. In the case of a violation of the provisions of subsection (B) of this section, involving:

1. Marihuana: twenty-five (25) pounds or more of a mixture or substance containing a detectable amount of marihuana, such violation shall be a crime;
2. Cocaine or coca leaves: twenty-eight (28) grams or more of a mixture or substance containing a detectable amount of cocaine or coca leaves, such violation shall be a crime;
3. Heroin: ten (10) grams or more of a mixture or substance containing a detectable amount of heroin, such violation shall be a crime;
4. Amphetamine or methamphetamine: twenty (20) grams or more of a mixture or substance containing a detectable amount of amphetamines or methamphetamine, such violation shall be a crime;
5. Lysergic acid diethylamide (LSD): one (1) gram or more of a substance containing a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD), such violation shall be a crime;
6. Phencyclidine (PCP): one (1) ounce or more of a substance containing a mixture or substance containing a detectable amount of phencyclidine (PCP), such violation shall be a crime;
7. Cocaine base: five (5) grams or more of a mixture or substance described in paragraph 2 of this subsection which contains cocaine base, such violation shall be a crime.

D. Any person who violates the provisions of this section with respect to a controlled substance specified in subsection (A) of this section in a quantity specified in subsection (C) shall be deemed guilty of a crime.

§ 2416. Apportionment of fines

The fines collected pursuant to 21 CNCA § 2415 shall be apportioned as follows:

1. Forty percent (40%) shall be distributed to the revolving fund established pursuant to the provisions of 21 CNCA § 2107 to be used for the enforcement of the Uniform Controlled Dangerous Substances Act;

2. Forty percent (40%) shall be distributed to the Drug Abuse Education Revolving Fund to be used for drug abuse education programs within the Nation;
3. Twenty percent (20%) shall be distributed to the Court Fund.

§ 2417. Drug Abuse Education Revolving Fund

There is hereby created in the National Treasury a revolving fund to be designated the "Drug Abuse Education Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fines collected pursuant to the Trafficking in Illegal Drugs Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the ____ for drug abuse education programs.

§ 2418. Distributing controlled substance within 1,000 feet of educational facilities, recreation centers or public parks—Penalties

A. Any person who violates 21 CNCA § 2401 by distributing a controlled substance to an individual, in or on, or within one thousand (1,000) feet of the real property comprising a public or private elementary or secondary school, public vocational school, public or private college or university, recreation center or public park, including state parks and recreation areas, shall be guilty of a crime.

B. It shall not be a defense to prosecution for a violation of this section that the violator was unaware that the prohibited conduct took place:

1. While on or within one thousand (1,000) feet of any school property; or
2. While on recreation center grounds or on public park grounds, including state parks and recreation areas.

§ 2419. Use of minors in transportation, sale, etc. of controlled dangerous substances—Penalties

A. It shall be unlawful for any individual eighteen (18) or more years of age to solicit, employ, hire, or use an individual under eighteen (18) years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled dangerous substance.

B. A person who violates subsection (A) of this section shall be guilty of a crime.

C. It shall not be a defense to this section that a person did not know the age of an individual.

ARTICLE V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

§ 2501. Powers of enforcement personnel

Any peace officer may:

1. Carry firearms;
2. Execute search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this Nation;
3. Make an arrest without warrant of any person he has probable cause for believing has committed a crime under this act or a violation of 21 CNCA § 2402;
4. Make seizures of property pursuant to the provisions of this act;
5. Perform such other lawful duties as are required to carry out the provisions of this act.

§ 2502. Inspections

A. Prescriptions, orders, and records, required by this act, and stock of substances specified in this act shall be open for inspection only to specifically designated or assigned Nation officers, whose duty it is to enforce the laws of this Nation relating to controlled dangerous substances. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

B. Any peace officer or agency charged with administration of this act is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

1. For purposes of this act only, "**controlled premises**" means:

- a. Places where persons registered or exempted from registration requirements under this act are required to keep records; and
- b. Places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled dangerous substance.

2. This section shall not be construed to prevent the inspection of books and records pursuant to the provisions of this act; nor shall this section be construed to prevent entries and administrative inspections at reasonable times without a warrant:

- a. With the consent of the owner, operator, or agent in charge of the controlled premises;
- b. In situations presenting imminent danger to health or safety;

c. In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

d. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

e. In all other situations where a warrant is not constitutionally required.

3. Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to:

a. Financial data;

b. Sales data other than shipment data; or

c. Pricing data.

§ 2503. Property subject to forfeiture

A. The following shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act;

2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act;

3. All property which is used, or intended for use, as a container for property described in paragraphs 1 and 2 of this subsection;

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in 21 CNCA § 2101, or in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when such property is unlawfully possessed by an occupant thereof, except that:

a. No conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act; and

b. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state or Indian nation or tribe;

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act;

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act;

7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under this act. The burden of proof is upon claimants of the property to rebut this presumption;

8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner.

B. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

C. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of 21 CNCA § 2415.

D. All items forfeited in this section shall be forfeited under the procedures established in 21 CNCA § 2506. Whenever any item is forfeited pursuant to this section the Cherokee Nation District Court shall order that such item, money, or monies derived from the sale of such item be deposited by the law enforcement agency which seized the item in the revolving fund provided for in 21 CNCA § 2107; provided, such item, money or monies derived from the sale of such item

forfeited due to nonpayment of a fine imposed pursuant to the provisions of 21 CNCA § 2415 shall be apportioned as provided in 21 CNCA § 2416. Items, money or monies seized pursuant to subsections (A) and (B) of this section shall not be applied or considered toward satisfaction of the fine imposed by 21 CNCA § 2415. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of 21 CNCA § 2505.

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

§ 2503.1. Transactions involving proceeds derived from illegal drug activity prohibited—Penalties

A. It is unlawful for any person knowingly or intentionally to receive or acquire proceeds and to conceal such proceeds, or engage in transactions involving proceeds, known to be derived from any violation of this act. The subsection does not apply to any transaction between an individual and the counsel of the individual necessary to preserve the right to representation of the individual, as guaranteed by the Cherokee Nation Constitution and by the Sixth Amendment of the United States Constitution. However, this exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of this act.

B. It is unlawful for any person knowingly or intentionally to give, sell, transfer, trade, invest, conceal, transport, or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any violation of this act.

C. It is unlawful for any person knowingly or intentionally to direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of this act.

D. It is unlawful for any person knowingly or intentionally to conduct a financial transaction involving proceeds derived from a violation of this act, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds known to be derived from a violation of this act, or to avoid a transaction reporting requirement under Nation or federal law.

E. Any person convicted of violating any of the provisions of this section is guilty of a crime.

§ 2503.2. Assessment for violation of act

A. Every person convicted of a violation of this act, must be assessed for each offense a sum of not less than Five Hundred Dollars (\$500.00) nor more than Three Thousand Dollars (\$3,000.00). The assessment is in addition to and not in lieu of any fines, restitution costs, other assessments, or forfeitures authorized or required by law.

B. The assessment provided for in this section must be collected as provided for collection of restitution costs and probation and parole fees and must be forwarded to the Drug Abuse Education Revolving Fund. Expenditures may be made only for drug abuse education and prevention.

§ 2504. Seizure of property

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

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

§ 2505. Summary forfeiture of certain substances

A. All controlled substances in Schedule I of this act and all controlled substances in Schedules II, III, IV, and V that are not in properly labeled containers in accordance with this act that are possessed, transferred, sold, or offered for sale in violation of this act are deemed contraband and shall be seized and summarily forfeited.

B. All hazardous materials and all property contaminated with hazardous materials described in 21 CNCA § 2503(A)(2), used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance, shall be summarily forfeited to the Nation and submitted to the Oklahoma State Bureau of Investigation for prompt destruction in accordance with Nation and federal law.

C. Species of plant from which controlled substances in Schedule I or II of this act, may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growth, may be seized by peace officers, summarily forfeited, and, in lieu of the eradication procedures contained in 21 CNCA § 2509, promptly cut and burned where seized.

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

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

1. Any property described in 21 CNCA § 2503(A)(4) or (6). Such property shall be held as evidence until a forfeiture has been declared or release ordered;
2. Any property described in 21 CNCA § 2503(B); or
3. Any property described in 21 CNCA § 2503(C).

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

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

1. Upon each owner or party in interest whose right, title or interest is of record in the Cherokee Nation Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;
2. Upon each owner or party in interest whose name and address is known to the Prosecuting Attorney of the Cherokee Nation District Court, by mailing a copy of the notice by registered mail to the last-known address; or
3. Upon all other owners or interested parties, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the Nation.

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

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

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

G. At a hearing in a proceeding against property described in 21 CNCA § 2503(A)(4) or (6) or (B) or (C), the requirements set forth in said paragraph or subsection, respectively, shall be satisfied by the Nation by a preponderance of the evidence.

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

I. In the event of such proof, the Court shall order the property released to the bona fide or innocent owner, lien holder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Nation and sold under judgment of the court, as on sale upon execution, except as otherwise provided for in 21 CNCA § 2503.

K. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Office of the Prosecuting Attorney of the Cherokee Nation District Court, subject only to the orders and decrees of the Court or the official having jurisdiction thereof.

L. The proceeds of the sale of any property not taken or detained by Cherokee Nation shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;
2. To the payment of the actual expenses of preserving the property; and
3. The balance to the Narcotics Revolving Fund.

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

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

§ 2507. Itemization and submission for destruction

Any peace officer of this Nation seizing any of the property described in 21 CNCA § 2503(1) or (2) shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or state or federal law enforcement agency. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the Court, law enforcement agency or person having custody of the same to the Oklahoma State Bureau of Investigation to be destroyed as provided in 21 CNCA § 2508. The property shall be accompanied with a written inventory on forms to be furnished by the Oklahoma State Bureau of Investigation.

§ 2508. Destruction of seized property

A. Except as otherwise provided, all property described in 21 CNCA § 2503(A)(1) and (2) which is seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act shall be destroyed. The destruction shall be done by or at the direction of the Oklahoma State Bureau of Investigation, who shall have the discretion prior to destruction to preserve samples of the substance for testing. Any such property submitted to the Oklahoma State Bureau of Investigation which it deems to be of use for investigative, training, educational, or analytical purposes may be retained by the Oklahoma State Bureau of Investigation in lieu of destruction.

B. All other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of a Cherokee Nation peace officer or the Prosecuting Attorney of the Cherokee Nation District Court may be disposed of by order of the District Court of Cherokee Nation when no longer needed in connection with any litigation. If the owner of the property is unknown to the Marshal service or Prosecuting Attorney of the Cherokee Nation District Court, the Marshal service shall hold the property for at least two (2) years prior to filing a petition for disposal with the District Court except for laboratory equipment which may be forfeited when no longer needed in connection with litigation, unless the property is perishable. The Prosecuting Attorney of the Cherokee Nation District Court shall file a petition in the District Court requesting the authority to conduct a sale of the property or to convert title of the property to Cherokee Nation for donation in accordance with subsection (F) of this section. The Prosecuting Attorney shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Marshal service or Prosecuting Attorney, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property, except laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner at least ten (10) days prior to the date of the hearing. Notice of a hearing on a petition for forfeiture or sale of laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the Uniform Controlled Dangerous Substances Act shall not be required. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the Nation, one such place being the Cherokee Nation Courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the Court may enter an order authorizing the Prosecuting Attorney of Cherokee Nation to donate the property pursuant to subsection (F) of this section or to sell the property to the highest bidder after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the Nation. The Prosecuting Attorney shall make a return of the sale and, when confirmed by the Court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be used for the purpose of purchasing controlled dangerous substances to be used as evidence in narcotic cases and fees for informers, or employees and other associated expenses necessary to apprehend and convict violators of the laws of Cherokee Nation regulating controlled dangerous substances. These funds shall be transferred to the Narcotics Revolving Fund. A return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be used for

the purpose of purchasing controlled dangerous substances to be used as evidence in narcotic cases and fees for informers, or employees and other associated expenses necessary to apprehend and convict violators of the laws of the Cherokee Nation regulating controlled dangerous substances. These funds shall be transferred to the Narcotics Revolving Fund.

C. Any property, including but not limited to uncontaminated laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, upon a Court order, may be donated for classroom or laboratory use by the Marshal Service or the Prosecuting Attorney of Cherokee Nation District Court to any public secondary school or vocational-technical school in this Nation or the State of Oklahoma.

§ 2509. Eradication

A. All species of plants from which controlled dangerous substances in Schedules I and II may be derived are hereby declared inimical to health and welfare of the public, and the intent of the Council is to control and eradicate these species of the plants in Cherokee Nation.

B. It shall be unlawful for any person to cultivate or produce, or to knowingly permit the cultivation, production, or wild growing of any species of such plants, on any lands owned or controlled by such person, and it is hereby declared the duty of every such person to destroy all such plants found growing on lands owned or controlled by him.

C. 1. Whenever any peace officer of the Nation shall receive information that any species of any such plants has been found growing on any private lands in Cherokee Nation, he shall notify the Marshal office; within five (5) days of receipt of such notice, the Marshal office shall notify the owner or person in possession of such lands that such plants have been found growing on the said lands and that the same must be destroyed within fifteen (15) days; when the fifteen (15) days have elapsed, the reporting peace officer shall cause an investigation to be made of the aforesaid lands, and if any such plants be found growing thereon, the Marshal office shall cause the same to be destroyed by cutting and burning the same.

2. Whenever any such plants are destroyed by order of the Marshals as provided herein, the cost of the same shall, if the work or labor be furnished by the marshals, be taxed against the lands whereon the work was performed, and shall be a lien upon such land in all manner and respects as a lien of judgment.

D. Knowingly violating the provisions of subsection (B) of this section is hereby declared, as to the owner, or person in possession of such lands, to be a crime.

E. In lieu of the eradication procedures provided for in subsections (B) and (C) of this section, all species of plants from which controlled dangerous substances in Schedules I and II of the Uniform Controlled Dangerous Substances Act may be derived, may be disposed of pursuant to the provisions of 21 CNCA § 2505(C).

§ 2510. Defenses—Descriptions

A. An exemption or exception set forth in this act shall constitute an affirmative defense. Such affirmative defense shall be in accordance with the presentation of an alibi defense prescribed in 22 CNCA § 585.

B. In any prosecution for a violation of any of the provisions of this act relating to a controlled dangerous substance named in any of the schedules set out in the act, it shall be sufficient in any information to allege a general description of the controlled dangerous substance and the schedule wherein listed without other specific description. Upon a trial under such information, it shall be sufficient to prove that the controlled dangerous substance is one listed within a particular Schedule without further identification.

ARTICLE VI. MISCELLANEOUS

§ 2603. Uniformity of interpretation

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states and nations which enact it.

§ 2604. Short title

This act shall be known and may be cited as the Uniform Controlled Dangerous Substances Act.

§ 2606. Severability

The provisions of this act are severable and if any part or 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.

§ 2608. Headings

Article and section headings contained in this act shall not affect the interpretation of the meaning or intent of any provisions of this act.

TITLE 22

CRIMINAL PROCEDURE

CHAPTER 1

GENERAL PROVISIONS

§ 1. Title of code

This title shall be known as the Code of Criminal Procedure of Cherokee Nation.

§ 2. Information necessary, except when

Every public offense must be prosecuted by information except where proceedings are had for the removal of civil officers of this Nation.

§ 3. Code not retroactive

No part of this code is retroactive unless expressly so declared.

§ 4. Construction of words

Unless when otherwise provided, words used in this code in the present tense include the future as well as the present. Words used in the masculine comprehend as well the feminine and neuter. The singular number includes the plural, and the plural the singular. And the word person includes a corporation as well as a natural person.

§ 5. Writing includes printing

The term writing includes printing.

§ 6. Oath includes affirmation

The term oath includes an affirmation.

§ 7. Signature includes what

The term signature includes a mark when the person cannot write, his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient.

§ 8. Application of statutes

This title applies to criminal actions and to all other proceedings in criminal cases which are herein provided for.

§ 9. Common law prevails, when

The procedure, practice and pleadings in the Courts of record of this Nation, in criminal actions or in matters of criminal nature, not specifically provided for in this code, shall be in accordance with the procedure, practice and pleadings of the common law.

§ 10. Criminal action defined

The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

§ 11. Prosecution by Nation against person charged

A criminal action is prosecuted in the name of Cherokee Nation as a party, against the person charged with the offense.

§ 12. Party defendant

The party prosecuted in a criminal action is designated in this title as the defendant.

§ 13. Right to speedy trial, counsel and witnesses

In a criminal action the defendant is entitled:

1. To a speedy and public trial.
2. To be allowed counsel, as in civil actions, or to appear and defend in person and with counsel; and
3. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the Court.

§ 14. Former jeopardy

No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted, except as hereinafter provided for new trials.

§ 15. Testimony against one's self—Restraint during trial and prior to conviction

No person can be compelled in a criminal action to be witness against himself; nor can a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge, and in no event shall he be tried before a jury while in chains or shackles.

§ 16. Jury trial—Exceptions

No person can be convicted of a public offense, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon final judgment for or against him upon a demurrer to the information.

§ 17. Custody and distribution of proceeds from sale of rights arising from criminal act

A. Every person who has been charged, convicted, has pled guilty or has pled nolo contendere to any crime hereinafter referred to as defendant who contracts to reenact such crime by the use of any movie, book, newspaper, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of his thoughts, opinions or emotions regarding such crime, shall pay to the district court wherein the charges were filed any money or thing of value contracted to be paid to the defendant. The District Court shall deposit such monies in an escrow account for the benefit of and payable to any victim or his legal representative of crimes committed by the defendant.

B. Payments from the account shall be made to the defendant upon an order of the Judge of the District Court wherein the charges were filed upon showing that the money or thing of value shall be used for the exclusive purpose of retaining legal representation for the defendant at any stage of the proceedings arising out of a criminal charge, and that the defendant would otherwise be unable to afford adequate representation.

C. Payments from the account shall be used to satisfy any judgment rendered in favor of a victim or his legal representative, provided said victim brings a civil action, in a court of competent jurisdiction, to recover money against the defendant or his legal representatives within five (5) years of the filing of the charges against the defendant. If no victim or legal representative of a victim has filed suit within five (5) years from the filing of the charges, any money remaining in the account shall be paid over to the Victims' Compensation Revolving Fund. Upon disposition of charges favorable to the defendant, money in the account shall be paid over to the defendant.

D. The District Court wherein the charges were filed shall, once every six (6) months for five (5) years from the date the money is deposited with the Court, publish a notice in at least one newspaper of general circulation in each county of the Nation in accordance with the provisions on publication of notices found in 25 O.S. § 101 et seq., notifying any eligible victim or legal representative of an eligible victim that monies are available to satisfy judgments pursuant to this section.

§ 18. Expungement of records—Persons authorized

Persons authorized to file a motion for expungement, as provided herein, must be within one of the following categories:

1. The person has been acquitted;
2. The person was arrested and no charges are filed or charges are dismissed within one (1) year of the arrest; or
3. The statute of limitations on the offense had expired and no charges were filed.

For purposes of this act, "expungement" shall mean the sealing of criminal records.

CHAPTER 2

PREVENTION OF PUBLIC OFFENSES

GENERAL PROVISIONS

VICTIM OF RAPE, FORCIBLE SODOMY, OR DOMESTIC ABUSE

PROTECTION FROM DOMESTIC ABUSE ACT

RESISTANCE TO EXECUTION OF PROCESS

GENERAL PROVISIONS

§ 31. Who may resist

Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured.
2. By other parties.

§ 32. Resistance by party to be injured

Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person or his family, or some member thereof.
2. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

§ 33. Resistance by other person

Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

§ 34. Intervention by officers

Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace.
2. By forming a police, and by requiring their attendance in exposed places.
3. By suppressing riots.

§ 35. Persons assisting officers

When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

§ 36. Civil and criminal immunity for private citizens aiding police officers

Private citizens aiding a police officer, or other officers of the law in the performance of their duties as police officers or officers of the law, shall have the same civil and criminal immunity as such officer, as a result of any act or commission for aiding or attempting to aid a police officer or other officer of the law, when such officer is in imminent danger of loss of life or grave bodily injury or when such officer requests such assistance and when such action was taken under emergency conditions and in good faith.

§ 36.1. Police dog handlers—Civil liability

Any dog handler as defined by 21 CNCA § 648 who uses a police dog in the line of duty in accordance with the policies or standards established by the law enforcement agency for which he is employed shall not be civilly liable for any damages arising from the use of said dog.

§ 37.1. Off-duty law enforcement officers—Powers and duties—Liability

An "off-duty" law enforcement officer in official uniform in attendance at a public function, event or assemblage of people shall have the same powers and obligations as when he is "on-duty".

Nothing herein shall impose liability upon the governmental entity, by whom the law enforcement officer is employed, for actions of the said officer in the course of his employment by a nongovernmental entity.

§ 39. Benefits for citizens who aid

Any citizen who shall be aiding in the maintaining of law and order shall likewise be entitled to the benefits of this act.

VICTIM OF RAPE, FORCIBLE SODOMY, OR DOMESTIC ABUSE

§ 40. Definitions

As used in 22 CNCA §§ 40.1 through 40.5:

1. "**Domestic abuse**" means the occurrence of one or more of the following acts between family or household members:

- a. causing or attempting to cause physical harm; or
- b. threatening another with physical harm.

2. **"Family or household members"** means spouses, ex-spouses, parents, children, persons otherwise related by blood or marriage or persons living in the same household or who formerly shared the same residence. This shall include the elderly and handicapped;

3. **"Forcible sodomy"** means the act of forcing another person to engage in the detestable and abominable crime against nature pursuant to 21 CNCA §§ 886 and 887;

4. **"Rape"** means an act of sexual intercourse accomplished with a person pursuant to 21 CNCA §§ 1111, 1111.1 and 1114.

§ 40.1. Victim of rape or forcible sodomy—Notice of rights

Upon the preliminary investigation of any rape or forcible sodomy, it shall be the duty of the officer who interviews the victim of the rape or forcible sodomy to inform the victim of the twenty-four-hour statewide telephone communication service established by the State of Oklahoma and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of the crime of rape or forcible sodomy, you have certain rights. These rights are as follows:

"1. The right to request that charges be pressed against your assailant;

"2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;

"3. The right to be informed of financial assistance and other social services as a result of being a victim, including information on how to apply for the assistance and services; and

"4. The right to a free medical examination for the procurement of evidence to aid in the prosecution of your assailant."

The written notice shall also include the telephone number of the twenty-four-hour telephone communication service established by the State of Oklahoma.

§ 40.2. Victim of domestic abuse—Notice of rights

Upon the preliminary investigation of any crime involving domestic abuse, it shall be the duty of the first peace officer who interviews the victim of the domestic abuse to inform the victim of the twenty-four-hour statewide telephone communication service established by the State of Oklahoma and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of domestic abuse, you have certain rights. These rights are as follows:

"1. The right to request that charges be pressed against your assailant;

"2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available; and

"3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services."

§ 40.3. Victims not to be discouraged from pressing charges—Warrantless arrest of certain persons

A. A peace officer shall not discourage a victim of rape, forcible sodomy or domestic abuse from pressing charges against the assailant of the victim.

B. A peace officer may arrest without a warrant a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined in Chapter 46 of Title 21, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

§ 40.5. Short title

Sections 40.2 through 40.6 of this Title shall be known and may be cited as the Domestic Abuse Reporting Act.

§ 40.6. Record of reported incidents of domestic abuse—Reports

A. It shall be the duty of every law enforcement agency to keep a record of each reported incident of domestic abuse as provided in subsection (B) of this section and to submit a monthly report of such incidents as provided in subsection (C) of this section.

B. The record of each reported incident of domestic abuse shall:

1. Show the type of crime involved in the domestic abuse;
2. Show the day of the week the incident occurred; and
3. Show the time of day the incident occurred.

C. A monthly report of the recorded incidents of domestic abuse shall be submitted to the Cherokee Nation Marshal and the Director of the Oklahoma State Bureau of Investigation on

forms provided by the State Bureau of Investigation for such purpose.

PROTECTION FROM DOMESTIC ABUSE ACT

§ 60. Short title

This act shall be known and may be cited as the Protection from Domestic Abuse Act.

§ 60.1. Definitions

As used in this act and in the Domestic Abuse Reporting Act:

1. **"Domestic abuse"** means the occurrence of one or more of the following acts between family or household members:

a. causing or attempting to cause serious physical harm; or

b. threatening another with imminent serious physical harm; and

c. includes but is not limited to: Assault, as defined by 21 CNCA § 641; battery, as defined by 21 CNCA § 642; rape, as defined by 21 CNCA § 1111; and aggravated assault and battery, pursuant to 21 CNCA § 646.

2. **"Family or household members"** means spouses, former spouses, parents, children, persons otherwise related by blood or marriage, or persons living in the same household or who formerly lived in the same household. This shall include the elderly and handicapped.

§ 60.2. Protective order—Petition: form; filing fee; preparation

A. A victim of domestic abuse, or any adult household member on behalf of any other family or household member who is a minor or incompetent, may seek relief under the provisions of this act by filing a petition for protective order with the District Court.

B. The petition forms shall be provided by the Clerk of the Court and shall be in substantially the following form:

IN THE DISTRICT COURT IN AND FOR THE CHEROKEE NATION

_____)	
Plaintiff)	
)	
vs.)	Case No. _____
)	
_____)	
Defendant)	

PETITION FOR PROTECTIVE ORDER

Plaintiff, being sworn, states: (Check one or more)

The defendant caused or attempted to cause serious physical harm to _____.

The defendant threatened _____ with imminent serious physical harm.

2. The incident causing the filing of this petition occurred on or about _____.

(date)

(Describe what happened:)

3. The victim and the defendant are related as follows:

(check one)

married

divorced

parent and child

persons related by blood

persons related by marriage

persons living in the same household

persons formerly living in the same household

4. (Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent)

The plaintiff and the victim are related as follows:

married

divorced

parent and child

persons related by blood

persons related by marriage

persons living in the same household

persons formerly living in the same household

5. (Check A or B)

(A) The victim is in immediate and present danger of abuse from the defendant and an emergency ex parte order is necessary to protect the victim from serious harm. The plaintiff requests the following relief in the emergency ex parte order: (check one or more)

order the defendant not to abuse or injure the victim.

order the defendant not to visit, assault, molest, harass or otherwise interfere with the victim.

order the defendant not to threaten the victim.

order the defendant to leave the residence located at _____ on or before _____.

(describe other relief that plaintiff requests)

(B) _____ The plaintiff does not request an emergency ex parte order.

6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (check one or more)

_____ order the defendant not to abuse or injure the victim.

_____ order the defendant not to visit, assault, molest, harass or otherwise interfere with the victim.

_____ order the defendant not to threaten the victim.

_____ order the defendant to leave the residence located at _____ on or before _____

_____ (describe other relief that plaintiff requests)

_____ order the defendant to pay attorney fees of the plaintiff in the sum of _____ on or before _____.

_____ order the defendant to pay the court costs of this action in the sum of _____ on or before _____.

7. Victim is a resident of the county wherein this petition is filed.

8. Plaintiff has stated the truth, the whole truth and nothing but the truth in this petition.

The filing or nonfiling of criminal charges and the prosecution of the case shall not be determined by a person who is protected by this order, but shall be determined by the Prosecutor. No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this order. During the time in which this order is valid, every provision of this order is in full force and effect unless a Court changes the order. This order shall be in effect for three (3) years unless extended, modified, vacated or rescinded by the Court. A violation of this order is punishable by a fine of up to Five Thousand Dollars (\$5,000.00) or imprisonment of not more than one (1) year, or both such fine and imprisonment. Possession of a firearm or ammunition by a defendant while this order is in effect may subject the defendant to further prosecution for violation of Cherokee Nation law even if this order does not elsewhere specifically prohibit the defendant from possessing a firearm or ammunition.

Plaintiff

Witness my hand and seal,
affixed on the ___ day of _____, 20 ___.

Court Clerk, Deputy Court Clerk, or Notary Public

C. No filing fee shall be charged the plaintiff at the time the petition is filed. The Court may assess court costs and filing fees to either party at the hearing on the petition.

D. The plaintiff shall prepare the petition as set forth above or, at the request of the plaintiff, the Clerk of the Court or the victim-witness coordinator shall prepare or assist the plaintiff in preparing the same.

§ 60.3. Emergency ex parte order—Hearing

If a plaintiff requests an emergency ex parte order pursuant to 22 CNCA § 60.2, the Court shall hold an ex parte hearing on the same day the petition is filed. The Court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the

victim from immediate and present danger of domestic abuse. The emergency ex parte order shall be in effect until after the full hearing is conducted. An emergency ex parte order authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
3. An order to the defendant not to threaten the victim; or
4. An order to the defendant to leave the residence.

§ 60.4. Service of process—Ex parte orders—Hearing—Protective orders—Period of relief

A. A copy of the petition, notice of hearing and a copy of any ex parte order issued by the Court shall be served upon the defendant in the same manner as a summons. Ex parte orders shall be given priority for service by the sheriff's office and can be served twenty-four (24) hours a day.

B. Within ten (10) days of the filing of the petition the Court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

C. At the hearing, the Court may grant any protective order to bring about the cessation of domestic abuse against the victim.

D. Protective orders authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
3. An order to the defendant not to threaten the victim;
4. An order to the defendant to leave the residence;
5. An order awarding attorney fees; and
6. An order awarding court costs.

E. When necessary to protect the victim and when authorized by the Court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, marshal, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by 21 CNCA § 99.

F. Any protective order issued pursuant to subsection (C) of this section shall not be for a fixed period but shall be continuous until modified or rescinded upon motion by either party or if the Court approves any consent agreement entered into by the plaintiff and defendant. No order issued under the Protection from Domestic Abuse Act shall in any manner affect title to real property.

§ 60.5. Copies of ex parte or final protective orders to be sent to appropriate law enforcement agencies

Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the Clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff.

§ 60.6. Violation of ex parte or final protective order—Penalty

A. Except as otherwise provided by this section any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a crime and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the penal institution of not more than one (1) year, or both.

B. Any person who after a previous conviction of a violation of a protective order is convicted of a second or subsequent offense pursuant to the provisions of this section shall be deemed guilty of a crime and shall be punished by a term of imprisonment in the penal institution of not less than ten (10) days and not more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine of not less than Five Hundred Dollars (\$500.00) and not more than One Thousand Dollars (\$1,000.00).

C. 1. Any person who has been served with an ex parte or final protective order who violates said protective order and without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall upon conviction be guilty of a crime and shall be punished by a term of imprisonment in the county jail for not less than ten (10) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).

2. In determining the term of imprisonment required by this section, the jury or Sentencing Judge shall consider the degree of physical injury or physical impairment to the victim.

3. The provisions of this subsection shall not affect the applicability of 21 CNCA § 644, 21 CNCA § 645, 21 CNCA § 647 and 21 CNCA § 652.

D. The minimum sentence of imprisonment issued pursuant to the provisions of subsections (B) and (C) of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the Court may subject any remaining penalty under the jurisdiction of the Court to the statutory provisions for suspended sentences, deferred sentences or

probation.

E. In addition to any other penalty specified by this section, the Court may require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim.

F. Ex parte and final protective orders shall include notice of these penalties.

§ 60.7. Statewide validity of orders

All orders issued pursuant to the provisions of the Domestic Abuse Act shall have statewide validity, unless specifically modified or terminated by a Judge of the District Court.

RESISTANCE TO EXECUTION OF PROCESS

§ 93. Refusal to assist officer a misdemeanor

Every person commanded by a public officer to assist him in the execution of a process, who, without lawful cause, refuses or neglects to obey the commands, is guilty of a misdemeanor.

CHAPTER 3

JURISDICTION AND COMMITMENT

JURISDICTION AND VENUE

LIMITATIONS

MAGISTRATES

ARREST AND TAKING BEFORE MAGISTRATE

WARRANTS AND TAKING BEFORE MAGISTRATE

EXAMINATION AND COMMITMENT

JURISDICTION AND VENUE

§ 121. Offenses commenced outside and consummated within the Nation

When the commission of a public offense, commenced without this Nation, is consummated within its boundaries, the defendant is liable to punishment therefor in this Nation, though he were out of the Nation at the time of the commission of the offense charged if he consummated it in this Nation through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and in such case, the jurisdiction is in the Nation.

§ 126. Kidnapping, enticing away children and similar offenses, jurisdiction

The jurisdiction of an information:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this Nation, or to be sent out of the Nation; or
2. For decoying or taking or enticing away a child under the age of twelve (12) years, with intent to detain and conceal it from its parents, guardian, or other person having lawful charge of the child; or
3. For the inveigling, enticing, or taking away person under the age of twenty-one (21) years for the purpose of prostitution; or
4. For taking away any person under the age of sixteen (16) years from her father, mother, guardian or other person having the legal charge of her person without their consent either for the purpose of concubinage or prostitution;

is in Cherokee Nation if the offense is committed within Cherokee Nation or the person upon whom the offense was committed, may, in the commission of the offense, have been brought within Cherokee Nation, or if an act done by the defendant in instigating, procuring, promoting, aiding or in being an accessory to the commission of the offense, or in abetting the parties concerned therein was performed within Cherokee Nation.

§ 129. Accessory, jurisdiction in case of

In the case of an accessory in the commission of a public offense, the jurisdiction is where the offense of the accessory was committed, notwithstanding the principal offense was committed in another jurisdiction.

§ 130. Conviction or acquittal outside Nation a bar

When an act charged as a public offense is within the jurisdiction of another territory, state or nation, as well as this Nation, a conviction or acquittal thereof in the former is a bar to a prosecution therefore in this Nation.

§ 133. Stealing property in another jurisdiction—Receiving such stolen property

The jurisdiction of a prosecution for stealing in a state, or other territory, the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this Nation, is in the Nation.

§ 134. Murder or manslaughter, jurisdiction in certain cases

The jurisdiction of a prosecution for murder or manslaughter, when the injury which caused the death was inflicted in one jurisdiction, and the party injured dies in another jurisdiction, or out of the Nation, is in the jurisdiction where the injury was inflicted.

§ 135. Principal not present, jurisdiction

The jurisdiction of a prosecution against a principal in the commission of a public offense, when such principal is not present at the commission of the public offense, is in the same jurisdiction as it would be under this chapter, if he were so present and aiding and abetting therein.

LIMITATIONS

§ 151. No limitation of prosecution for murder

There is no limitation of the time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

§ 152. Limitations in general

A. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets or property of the Cherokee Nation or other subdivision thereof, or of any misappropriation of public money, bonds, securities, assets or property of the Cherokee Nation or other subdivision thereof, falsification of public records of the Cherokee Nation or other subdivision thereof, and conspiracy to defraud the Cherokee Nation or other subdivision thereof in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime; provided, however, prosecutions for the crimes of embezzlement or misappropriation of public money, bonds, securities, assets or property of any school district, including those relating to student activity funds, or the crime of falsification of public records of any independent school district, the crime of lewd or indecent proposals or acts against children, pursuant to 21 CNCA § 1123, the crimes of involving minors in pornography, pursuant to 21 CNCA § 1021.2 and 21 CNCA § 1021.3, the crime of sodomy, the crime of criminal conspiracy, or the crime of embezzlement, pursuant to 21 CNCA §§ 1451 through 1462, shall be commenced within five (5) years after the discovery of the crime.

B. Prosecutions for criminal violations of any Cherokee Nation tax laws shall be commenced within five (5) years after the commission of such violation.

C. Prosecutions for the crime of rape or forcible sodomy, sodomy, lewd or indecent proposals or acts against children, and the involvement of minors in pornography pursuant to 21 CNCA § 886, 21 CNCA § 888, 21 CNCA § 1111, 21 CNCA § 1111.1, 21 CNCA § 1113, 21 CNCA § 1114 or 21 CNCA § 1123, shall be commenced within seven (7) years after the discovery of the crime.

D. Prosecution for the crime of false or bogus check, 21 CNCA § 1541.1 and 21 CNCA § 1541.2, shall be commenced within five (5) years after the commission of such offense.

E. In all other cases a prosecution for a public offense must be commenced within three (3) years after its commission.

F. As used in subsection (C) of this section, "**discovery**" means the date that a physical or sexually related crime involving a victim under the age of eighteen (18) years of age is reported to a law enforcement agency, up to and including one (1) year from the eighteenth birthday of the child.

§ 153. Absence from Nation, limitation does not run

If when the offense is committed the defendant be out of the Nation, the prosecution may be commenced within the term herein limited after his coming within the nation, and no time during which the defendant is not an inhabitant of or usually resident within the Nation, is part of the limitation.

MAGISTRATES

§ 161. Magistrate defined

A Magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

§ 162. Who are Magistrates

The following persons are Magistrates:

First. Justices of the Supreme Court;

Second. Judges of the District Court, including Associate District Judges, Special Judges and Magistrates.

ARREST AND TAKING BEFORE MAGISTRATE

§ 171. Complaint—Issuance of warrant of arrest

When a complaint, verified by oath or affirmation, is laid before a Magistrate, of the commission of a public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, issue a warrant of arrest.

§ 172. Form of warrant

A warrant of arrest is an order in writing, in the name of the Nation, signed by a Magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

Cherokee Nation

To any marshal, sheriff, constable, marshal or policeman in this Nation:

Complaint upon oath having been this day made before me that the crime of (designating it) has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible Magistrate.

Dated at this day of 20

E. F., Judge (or as the case may be.)

WARRANTS AND TAKING BEFORE MAGISTRATE

§ 173. Requisites of warrant

The warrant must specify the name of the defendant, or, if it is unknown to the Magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the Magistrate has authority to issue the warrant, and the time of issuing it, and the county, city, or town where it is issued, and if the offense charged is bailable, shall fix the amount of bail and an endorsement shall be made on the warrant, to the following effect: "The defendant is to be admitted to bail in the sum of \$_____" and be signed by the Magistrate with his name of office.

§ 174. Warrant directed to whom

The warrant must be directed to and executed by a peace officer.

§ 178. Proceedings when bail is taken

On taking bail, the Magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the Clerk of the Court at which the defendant is required to appear.

§ 179. When bail is not given

If, on the admission of the defendant to bail, bail be not forthwith given, the officer must take the defendant before the Magistrate who issued the warrant, or some other Magistrate, as provided in the next section.

§ 180. Magistrate absent—Taking defendant before another

When, by the preceding sections of this chapter, the defendant is required to be taken before the Magistrate who issued the warrant, he may, if the Magistrate be absent or unable to act, be taken

before the nearest or most accessible Magistrate in the Nation. The officer must, at the same time, deliver to the Magistrate the warrant, with the return endorsed and subscribed by him.

§ 181. Delay in taking before Magistrate not permitted

The defendant must, in all cases, be taken before the Magistrate without unnecessary delay.

§ 186. Arrest defined

Arrest is the taking of a person into custody, that he may be held to answer for a public offense.

§ 187. Arrest made by whom

An arrest may be either:

1. By a peace officer, under warrant;
2. By a peace officer without a warrant; or
3. By a private person.

§ 188. Aid to officer

Every person must aid an officer in the execution of a warrant, if the officer require his aid.

§ 189. Arrest, when made

If the offense charged is a crime which under the laws of the State of Oklahoma would be a felony, the arrest may be made on any day, and at any time of the day or night. If it is a crime which under the laws of the State of Oklahoma would be a misdemeanor, the arrest may be made only during the hours of six o'clock a.m. to ten o'clock p.m., inclusive, except as otherwise may be directed by the Magistrate endorsed upon the warrant. Provided, an arrest on a warrant which charges a criminal offense may be made at any time of the day or night if the defendant is in a public place or on a public roadway.

§ 190. Arrest, how made

An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

§ 191. Restraint which is permissible

The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

§ 192. Officer must show warrant

The officer must inform the defendant that he acts under the authority of the warrant, and must also show the warrant within a reasonable time under the circumstances, if requested.

§ 193. Resistance, means to overcome

If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

§ 194. Officer may break open door or window, when

The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

§ 195. Officer's breaking door or window to liberate himself or another arrester

An officer may break open an outer or inner door or window of a dwelling house for the purposes of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

§ 196. Arrest without warrant by officer

A peace officer may, without a warrant, arrest a person:

1. For a public offense, committed or attempted in his presence;
2. When the person arrested has committed a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, although not in his presence;
3. When a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it;
4. On a charge, made upon reasonable cause, of the commission of a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, by the party arrested;
5. When he has probable cause to believe that the party was driving or in actual physical control of a motor vehicle involved in an accident upon the public highways, streets or turnpikes and was under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.; or

6. Anywhere, including his place of residence, if the peace officer has probable cause to believe the person within the preceding four (4) hours has committed an act of domestic abuse as defined by 22 CNCA § 60.1, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

§ 197. Arrest without warrant, breaking door or window

To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he be refused admittance.

§ 198. Nighttime, arrest of suspected criminal

He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, and is justified in making the arrest though it afterward appear that the felony had not been committed.

§ 199. Authority must be stated on arrest without warrant, when

When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in actual commission of a public offense, or is pursued immediately after an escape.

§ 200. Arrest by bystander—Officer may take defendant before Magistrate

He may take before a Magistrate, a person, who being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

§ 201. Offense committed in presence of Magistrate

When a public offense is committed in the presence of a Magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

§ 202. Arrest by private person

A private person may arrest another:

1. For a public offense committed or attempted in his presence.
2. When the person arrested has committed a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony although not in his presence.

3. When the person has committed a crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

§ 203. Private person must inform person of cause of arrest

He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in actual commission of the offense or when he is arrested on pursuit immediately after its commission.

§ 204. Private person may break door or window

If the person to be arrested have committed crime under the laws of Cherokee Nation which if committed under the laws of the State of Oklahoma would be a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling house, for the purpose of making the arrest.

§ 205. Private person making arrest must take defendant to Magistrate or officer

A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a Magistrate or deliver him to a peace officer.

§ 206. Disarming person arrested

Any person making an arrest must take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the Magistrate before whom he is taken.

§ 207. Pursuit and arrest of escaped prisoner

If a person arrested escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the Nation.

§ 208. Breaking door or window to arrest person escaping

To take the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a dwelling house.

§ 209. Citation to appear—Issuance—Summons—Failure to appear

A. A law enforcement officer who has arrested a person on a criminal charge, without a warrant, which if committed under the laws of the State of Oklahoma would be a misdemeanor, may issue a citation to such person to appear in Court.

B. In issuing a citation hereunder the officer shall proceed as follows:

1. He shall prepare a written citation to appear in Court, containing the name and address of the cited person and the offense charged, and stating when the person shall appear in Court. Unless the person requests an earlier date, the time specified in the citation to appear shall be at least five (5) days after the issuance of the citation.

2. One (1) copy of the citation to appear shall be delivered to the person cited, and such person shall sign a duplicate written citation which shall be retained by the officer.

3. The officer shall thereupon release the cited person from any custody.

4. As soon as practicable, the officer shall file one (1) copy of the citation with the Court specified therein and shall deliver one (1) copy to the Prosecuting Attorney.

C. In any case in which the judicial officer finds sufficient grounds for issuing a warrant, he may issue a summons commanding the defendant to appear in lieu of a warrant.

D. If a person summoned fails to appear in response to the summons, a warrant for his arrest shall issue, and any person who willfully fails to appear in response to a summons is guilty of a crime.

§ 221. Fresh pursuit

A. Any member of a duly-organized tribal, state, county, or municipal peace unit of a jurisdiction of the United States who enters Indian Country in fresh pursuit, and continues within Indian Country in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such state, or to have committed a misdemeanor in the presence of the arresting officer shall have the same authority to arrest and hold such person in custody, as has any member of any duly-organized state, county, or municipal peace unit of Cherokee Nation, to arrest and hold in custody a person on the ground that he is believed to have committed a felony or has committed a misdemeanor in the presence of the arresting officer in Cherokee Nation.

B. If an arrest is made in Indian Country by an officer of a state in accordance with the provisions of 22 CNCA § 221(A) he shall without unnecessary delay take the person arrested before a Magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the Magistrate determines that the arrest was lawful he shall commit the person arrested to the custody of the arresting officer.

C. Section 221 of this Title shall not be construed so as to make unlawful any arrest in Oklahoma which would otherwise be lawful.

D. The term "**fresh pursuit**" as used in this act shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. It shall also include misdemeanors which are committed in the presence of the arresting officer. "**Fresh pursuit**" as

used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

§ 222. Exception

Section 221 of this Title shall not apply where the crime or offense charged is a lawful act under Cherokee Nation law.

§ 231. Crimes—Warrant for arrest—Complaint submitted to Prosecuting Attorney—Cost bond

In all criminal cases, before a warrant shall issue for the arrest of the defendant the complaint must be submitted to the Prosecuting Attorney, or drawn by him and endorsed as follows: "I have examined the facts in this case and recommend that a warrant do issue," and then filed with the Court.

§ 232. Form of cost bond

The bond may be substantially in the following form:

Cherokee Nation, against (naming the defendant). I, (naming the principal) as principal and as surety bind ourselves to pay all costs in this cause if the defendant is acquitted. Signed this day of, 20

The surety must qualify before the bond is approved.

§ 233. Judgment on bond

In all cases where bonds have been given under the provisions of this chapter, and the maker thereof shall be liable thereon, by the conviction or acquittal of the defendant, the Court shall, at the time of rendering judgment for or against the defendant, render such judgment as may be proper on the bond, and issue execution thereon, as in cases of a civil judgment.

EXAMINATION AND COMMITMENT

§ 251. Magistrate must inform defendant of charge and rights

When the defendant is brought before a Magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the Magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and also of his right to waive an examination before any further proceedings are had.

§ 252. Defendant allowed counsel—Messages to counsel—Change of venue

He must also allow to the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer

to take a message to such counsel in the county or city as the defendant may name. The officer must, without delay, perform that duty, and shall receive fees therefor as upon a service of a subpoena.

§ 270. Witnesses to give undertaking

On holding the defendant to answer, the Magistrate may take from each of the material witnesses examined before him on the part of the Nation, a written undertaking, without surety, to the effect that he will appear and testify at the Court to which the complaint and deposition, if any are to be sent or that he will forfeit such sum as the Magistrate may fix and determine.

§ 271. Sureties may be required for witness

When the Magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify, unless security be required, he may order the witness to enter into a written undertaking, with such sureties and in such sum as he may deem proper, for his appearance, as specified in the last section.

§ 273. Witness not giving undertaking committed, when

If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the Magistrate must commit him to the penal institution until he comply, or is legally discharged.

§ 274. Subsequent security may be demanded—Arrest of witness

When, however, any material witness on the part of the people has been discharged on his undertaking, without surety, if afterwards, on the sworn application of the Prosecuting Attorney or other person on behalf of the Nation, made to the Magistrate or to any Judge, it satisfactorily appears that the presence of such witness or any other person on the part of the people is material or necessary on the trial in Court, such Magistrate or Judge may compel such witness, or any other material witness on the part of the Nation, to give an undertaking with sureties, to appear on the said trial and give his testimony therein; and, for that purpose, the said Magistrate or Judge may issue a warrant against such person, under his hand, with or without seal, directed to a sheriff, marshal or other officer, to arrest such person and bring him before such Magistrate or Judge.

§ 275. Arrested witness may be confined

In case the person so arrested shall neglect or refuse to give said undertaking in the manner required by said Magistrate or Judge, he may issue a warrant of commitment against such person, which shall be delivered to said marshal, sheriff or other officer, whose duty it shall be to convey such person to the penal institution mentioned in said warrant, and the said person shall remain in confinement until he shall be removed to the grand jury and to the Court, for the purpose of giving his testimony, or until he shall have given the undertaking required by said Magistrate or Judge.

§ 277. Deaf-mute charged with commission of offense—Right to interpreter

Every deaf-mute person who is charged with the commission of a criminal offense shall be entitled to the assistance and services of a qualified interpreter. Prior to questioning upon arrest and all subsequent proceedings, the Court shall procure a qualified interpreter to assist such person in communications with officers of the Court.

§ 278. Arrest of deaf-mute—Interpreter—Evidence

When a deaf-mute is arrested he shall be entitled to the assistance of an interpreter. Evidence by the Nation relating to any statement made by a deaf-mute to a law enforcement officer shall be limited solely to statements offered, elicited, or made in the presence of a qualified interpreter.

§ 279. Qualified interpreter

For the purposes of this act, a qualified interpreter shall mean one who is readily able to translate simultaneously in either direction the manual system or lip reading and spoken English, and a deaf-mute means a person who has a physical handicap which prevents him from fully hearing or speaking. A qualified interpreter shall be furnished, or recommended, by the principal administrative officer of the Oklahoma School for the Deaf upon direction of any District Court of this Nation.

§ 280. Per diem and mileage

Payment of per diem and mileage of a qualified interpreter, at the rate and basis provided by law for Nation employees, in attending the Court which he is requested by the Judge thereof to attend for the purposes of assisting and serving a deaf-mute is authorized upon approval of the claim therefor against the Court Fund of the county by the District Judge.

CHAPTER 4

PROCEEDINGS AFTER COMMITMENT

GENERAL PROVISIONS

REQUISITES AND SUFFICIENCY OF INDICTMENT OR INFORMATION

INDICTMENTS AND INFORMATIONS FOR PARTICULAR OFFENSES

PARTIES PROSECUTED

JOINDER OF OFFENSES AND OF DEFENDANTS

GENERAL PROVISIONS

§ 301. Manner of prosecution of offenses

Every crime must be prosecuted by information in the District Court.

§ 303. Subscription, endorsement and verification of information—Excusing endorsement

The Prosecuting Attorney shall subscribe his name to informations filed in the District Court and endorse thereon the names and last-known addresses of all the witnesses known to him at the time of filing the same. Thereafter, he shall also endorse thereon the names and last-known addresses of such other witnesses as may afterwards become known to him, if they are intended to be called as witnesses at trial, at such time as the Court may by rule prescribe. All informations shall be verified by the oath of the Prosecuting Attorney, complainant or some other person.

Upon filing of a verified application by the Prosecuting Attorney, notice to defense counsel, and hearing establishing need for witness protection or preservation of the integrity of evidence, the District Court may excuse witness endorsement, or some part thereof. Such proceedings shall be conducted in camera, and the record shall be sealed and filed in the office of the District Court Clerk, and shall not be opened except by order of the District Court.

§ 304. Information may be amended

An information may be amended in matter of substance or form at any time before the defendant pleads, without leave, and may be amended after plea on order of the Court where the same can be done without material prejudice to the right of the defendant; no amendment shall cause any delay of the trial, unless for good cause shown by affidavit.

§ 387. Forms and rules of pleading

All forms of pleading in criminal actions, and rules by which the sufficiency of pleadings is to be determined are those prescribed by this code.

§ 388. Information first pleading

The first pleading on the part of the Nation is the information.

REQUISITES AND SUFFICIENCY OF INDICTMENT OR INFORMATION

§ 401. Requisites of information

The information must contain:

1. The title of the action, specifying the name of the Court to which the information is presented, and the names of the parties.
2. A statement of the acts constituting the offense, in ordinary and concise language, and in such

manner as to enable a person of common understanding to know what is intended.

§ 402. Information certain and direct

The information must be direct and certain as it regards:

1. The party charged.
2. The offense charged.
3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

§ 403. Designation of defendant by fictitious name

When a defendant is prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the information.

§ 404. Single offense to be charged—Different counts

The information must charge but one offense, but where the same acts may constitute different offenses, or the proof may be uncertain as to which of two or more offenses the accused may be guilty of, the different offenses may be set forth in separate counts in the same information and the accused may be convicted of either offense, and the Court or jury trying the cause may find all or either of the persons guilty of either of the offenses charged, and the same offense may be set forth in different forms or degrees under different counts; and where the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count.

§ 405. Allegation of time

The precise time at which the offense was committed need not be stated in the information; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

§ 406. Misdescription of person injured or intended to be injured

When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

§ 407. Words, how construed

The words used in an information must be construed in their usual acceptance, in common language, except words and phrases defined by law, which are to be construed according to their

legal meaning.

§ 408. Statute not strictly pursued

Words used in a statute to define a public offense, need not be strictly pursued in the information; but other words conveying the same meaning may be used.

§ 409. Information, when sufficient

The information is sufficient if it can be understood therefrom:

1. That it is entitled in a Court having authority to receive it, though the name of the Court be not stated.
2. That it was presented by the Prosecuting Attorney in which the Court was held.
3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his true name is unknown.
4. That the offense was committed at some place within the jurisdiction of the Court, except where the act, though done without the local jurisdiction, is triable therein.
5. That the offense was committed at some time prior to the time of filing the information.
6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.
7. That the act or omission charged as the offense, is stated with such a degree of certainty, as to enable the Court to pronounce judgment upon a conviction according to the right of the case.

§ 410. Immaterial informalities to be disregarded

No information is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in the matter of form which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

§ 411. Matters which need not be stated

Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an information.

§ 412. Pleading a judgment

In pleading a judgment or other determination of, or proceeding before a Court or officer of special

jurisdiction it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

§ 413. Pleading private statute

In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the Court must thereupon take judicial notice thereof.

INDICTMENTS AND INFORMATIONS FOR PARTICULAR OFFENSES

§ 421. Arson—Omission or error in designating owner or occupant

An omission to designate, or error in designating in information for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears that upon the whole description given of the building, it is sufficiently identified to enable the defendant to prepare his defense.

§ 423. Forgery, misdescription of forged instrument immaterial, when

When an instrument, which is the subject of an information for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the information and established on the trial, the misdescription of the instrument is immaterial.

§ 424. Perjury, information for

In an information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what Court or before whom the oath alleged to be false was taken; and that the Court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the Court or person before whom the perjury was committed.

§ 425. Larceny or embezzlement, information for

In an information for the larceny or embezzlement of money, bank notes, certificates of stock or valuable securities, or for a conspiracy to cheat and defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock or valuable securities, without specifying the coin, number, denomination or kind thereof.

§ 426. Obscene literature, information for handling

An information for exhibiting, publishing, passing, selling or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

PARTIES PROSECUTED

§ 431. Several defendants

Upon an information against several defendants, any one or more may be convicted or acquitted.

§ 432. Accessories and principals in crime

All persons concerned in the commission of a crime, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, must be prosecuted, tried and punished as principals, and no additional facts need be alleged in any information against such an accessory than are required in an information against his principal.

§ 433. Accessory tried independently of principal

An accessory to the commission of a crime may be prosecuted, tried and punished, though the principal be neither prosecuted nor tried, and though the principal may have been acquitted.

§ 434. Compounding a crime—Separate prosecution

A person may be prosecuted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon the agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted or tried.

JOINDER OF OFFENSES AND OF DEFENDANTS

§ 436. Charging of two or more defendants in same information—Counts

Two or more defendants may be charged in the same information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately, provided that all of the defendants charged together in the same information are alleged to have participated in all of the same acts or transactions charged.

§ 437. Singular to include the plural

All laws in this chapter wherein the singular of words is used are hereby amended to include the

plural of such words to give effect to the purpose of this act.

§ 438. Trial of two or more informations

The Court may order two or more informations or both to be tried together if the offenses and the defendants, if there is more than one, could have been joined in a single information. The procedure shall be the same as if the prosecution was under such single information.

§ 439. Relief from prejudicial joinder

If it appears that a defendant or the Nation is prejudiced by joinder of offenses or of defendants in an information or by such joinder for trial together, the Court shall order an election or separate trial of counts, grant a severance of defendants, or provide whatever other relief justice requires.

CHAPTER 7

PROCEEDINGS BEFORE TRIAL

ARRAIGNMENT AND APPEARANCE

PLEADINGS AND MOTIONS

MISCELLANEOUS PROVISIONS

ARRAIGNMENT AND APPEARANCE

§ 451. Arraignment

When the information is filed, the defendant must be arraigned thereon before the Court in which it is filed.

§ 452. Defendant must appear personally, when

If the information is for a crime the defendant must be personally present.

§ 453. Officer to bring defendant before Court

When his personal appearance is necessary, if he be in custody, the Court may direct the officer in whose custody he is to bring him before it to be arraigned, and the officer must do so accordingly.

§ 454. Bench warrant to issue, when

If the defendant has been discharged on bail, or have deposited money instead thereof, and does not appear to be arraigned, when his personal attendance is necessary, the Court in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the Clerk to issue a

bench warrant for his arrest.

§ 455. Bench warrant may issue

The Clerk, on the application of the Prosecuting Attorney, may, accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant for any part of Cherokee Nation.

§ 456. Bench warrant, form of, in case of felony

The bench warrant must, if the offense is a crime, be substantially in the following form:

In Cherokee Nation,

To any sheriff, constable, policeman or marshal in this state:

An information having been filed on the day of, A. D., 20.., in the District Court in and for Cherokee Nation, charging C.D. with the crime of, (designating it generally) you are therefore commanded forthwith to arrest the above named C. D., and bring him before the Court (or before the court to which the information may have been removed, naming it) to answer said information; or if the Court have adjourned for the term, that you deliver him into the custody of the Marshal or Sheriff of Cherokee Nation.

Given under my hand, with the seal of said Court affixed this day of, A. D., 20

By order of the Court.

(Seal) E. F., Clerk.

§ 457. Bench warrant in case

If the offense is a bailable crime, the bench warrant must be in a similar form, adding to the body thereof a direction to the following effect:

Or if he requires it that you take him before any Magistrate that he may give bail to answer the information.

§ 458. Court to fix amount of bail—Endorsement

If the offense charged is bailable, the Court, upon directing the bench warrant to issue, must fix the amount of bail and an endorsement must be made on the bench warrant and signed by the Clerk, to the following effect:

The defendant is to be admitted to bail in the sum of

§ 459. Defendant held when offense not bailable

The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the Marshal or Sheriff.

§ 464. Counsel before trial—Compensation—Expert witnesses

If the defendant appear for trial, without counsel, he must be informed by the Court that it is his right to have counsel before being tried, and must be asked if he desires the aid of counsel. If he desires and is financially unable to employ counsel, the Court must assign counsel to defend him. The attorney so appointed shall represent said person in the examining Magistrate Court until he is discharged or bound over by said Court and shall receive such compensation as is ordered by the Court not to exceed One Hundred Dollars (\$100.00) and approved by the Court.

§ 465. Arraignment made, how

The arraignment must be made by the Court, or by the Clerk or Prosecuting Attorney, under its direction, and consists in reading the information to the defendant, and asking him whether he pleads guilty or not guilty thereto.

§ 466. Name of defendant

When the defendant is arraigned he must be informed that if the name by which he is prosecuted be not his true name, he must then declare his true name or be proceeded against by the name in the information.

§ 466A. Tribe of defendant

When the defendant is arraigned he must declare whether is he a citizen of or is eligible for citizenship in one or more Indian bands, tribes, or nations recognized by the federal government. He shall declare his blood quantum for each tribe of which he is a citizen or is eligible for citizenship and shall produce any and all citizenship documents to Indian bands, tribes or nations and any Certificate of Degree of Indian Blood that he may possess.

§ 467. Proceedings when defendant gives no other name

If he gives no other name, the Court may proceed accordingly.

§ 468. Proceedings where another name given

If he alleges that another name is his true name, the Court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information may be had against him by that name, referring also to the name by which he is informed against.

PLEADINGS AND MOTIONS

§ 491. Time to answer information

If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the Court may deem reasonable, to answer the information.

§ 492. Pleading to information

If the defendant does not require time, as provided in the last section, or if he does, then on the next day, or at such further day as the Court may have allowed him, he may, in answer to the arraignment, either move the Court to set aside the information or may demur or plead thereto.

§ 493. Information set aside, when

The information must be set aside by the Court in which the defendant is arraigned, and upon his motion in any of the following cases:

When it is not found, endorsed, presented or filed, as prescribed by the statutes.

§ 494. Hearing on motion to set aside information

To enable the defendant to make proof of the matter set up as grounds for setting aside the information, the defendant may file his application before the Court, setting out and alleging that he is being proceeded against in a certain Court, naming it, and setting out a copy of his motion and alleging, all under oath, that he is acting in good faith, and praying for an order to examine witnesses in support thereof. The Court shall thereupon issue subpoenas to compel any or all witnesses desired to appear before him at the time named, and shall compel the witnesses to testify fully in regard to the matter and reduce the examination to writing, and certify to the same, and it may be used to support the motion. The mover shall pay the costs of the proceeding. He shall notify the Prosecuting Attorney at least two (2) clear days before he proceeds, of the time and place of taking such testimony, and the Prosecuting Attorney may be present and cross-examine the witnesses and if need be the case in the District Court must be adjourned for that purpose.

§ 495. Witnesses on hearing to set aside information

All witnesses shall be bound to answer fully, and shall not be answerable for the testimony so given in any way, except for the crime of perjury committed in giving such evidence.

§ 496. Objection to information waived, when

If the motion to set aside the information be not made the defendant is precluded from afterwards taking the objections mentioned in the last section.

§ 497. Motion to set aside information heard, when

The motion must be heard at the time it is made unless for good cause the Court postpone the

hearing to another time.

§ 498. Defendant to answer information, when

If the motion be denied, the defendant must immediately answer to the information, either by demurring or pleading thereto.

§ 499. Motion sustained—Defendant discharged, or bail exonerated, when

If the motion be granted the Court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him unless it direct that the case be refiled.

§ 500. Resubmission of case—Bail

If the Court direct that the case be refiled, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new information.

§ 501. Setting aside information not a bar

An order to set aside an information as provided in this chapter is no bar to a further prosecution for the same offense.

§ 502. Defendant's pleadings

The only pleading on the part of the defendant is either a demurrer or a plea.

§ 503. Defendant to plead in open court

Both the demurrer and the plea must be put in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

§ 504. Demurrer to information

The defendant may demur to the information when it appears upon the face thereof either:

1. That it does not substantially conform to the requirements of this chapter;
2. That the facts stated do not constitute a public offense;
3. That the information contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

§ 505. Demurrer to information, requisites of

The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of the objection to the information, or it must be disregarded.

§ 506. Hearing on demurrer

Upon the demurrer being filed, the objections presented thereby must be heard, either immediately or at such time as the Court may appoint.

§ 507. Ruling on demurrer

Upon considering the demurrer, the Court must give judgment either sustaining or overruling it, and an order to that effect must be entered upon the minutes.

§ 508. Demurrer sustained, effect of

If the demurrer is sustained, the judgment is final upon the information demurred to, and is a bar to another prosecution for the same offense, unless the Court, being of opinion that the objection on which the demurrer is sustained may be avoided in a new information, direct that a new information be filed.

§ 509. Demurrer sustained—Defendant discharged or bail exonerated, when

If the Court does not direct the case to be further prosecuted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

§ 510. Proceedings if case resubmitted

If the Court direct that the case be further prosecuted, the same proceedings must be had thereon as are prescribed in this chapter.

§ 511. Demurrer overruled, defendant to plead

If the demurrer be overruled, the Court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the Court may allow. If he does not plead, judgment may be pronounced against him.

§ 512. Certain objections, how taken

When the objections mentioned in 22 CNCA § 504 appear upon the face of the information, they can only be taken by demurrer, except that the objection to the jurisdiction of the Court over the subject of the information, or that the facts stated do not constitute a public offense, may be taken after the arraignment of the defendant, or may be taken at the trial, under the plea of not guilty, and

in arrest of judgment.

§ 513. Pleas to indictment or information

There are four kinds of pleas to an information. A plea of:

First, Guilty.

Second, Not guilty.

Third, Nolo contendere, subject to the approval of the Court. The legal effect of such plea shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

Fourth, A former judgment of conviction or acquittal of the offense charged, which must be specially pleaded, either with or without the plea of not guilty.

§ 514. Pleas to be oral—Entry

Every plea must be oral and must be entered upon the minutes of the Court.

§ 515. Form of plea

The plea must be entered in substantially the following form:

1. If the defendant plead guilty:

The defendant pleads that he is guilty of the offense charged in this information.

2. If he plead not guilty:

The defendant pleads that he is not guilty of the offense charged in this information.

3. If he plead a former conviction or acquittal:

The defendant pleads that he has already been convicted (or acquitted, as the case may be), of the offense charged in this information, by the judgment of the Court of (naming it), rendered at (naming the place), on the day of

§ 516. Plea of guilty

A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an information against a corporation, in which case it can be put in by counsel.

§ 517. Plea of guilty may be withdrawn

The Court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

§ 518. Plea of not guilty, issues on

The plea of not guilty puts in issue every material allegation in the information.

§ 519. Plea of not guilty, evidence under

All matters of fact tending to establish a defense other than specified in third subdivision of 22 CNCA § 513 may be given in evidence under the plea of not guilty.

§ 520. Acquittal, what does not constitute

If the defendant was formally acquitted on the ground of variance between the information and proof, or the information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

§ 521. Acquittal, what constitutes

When, however, he was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance in the information on which he was acquitted.

§ 522. Former acquittal or conviction as bar

When the defendant shall have been convicted or acquitted upon an information, the conviction or acquittal is a bar to another information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that information.

§ 523. Refusal to plead

If the defendant refuse to answer the information by demurrer or plea, a plea of not guilty must be entered.

MISCELLANEOUS PROVISIONS

§ 581. Issue of fact arises, when

An issue of fact arises,

1st, upon a plea of not guilty; or

2nd, upon a plea of a former conviction or acquittal of the same offense.

§ 582. Issue of fact, how tried

Issues of fact must be tried by a jury.

§ 583. Defendant must be present, when

If the information is for a crime, the defendant must be personally present at the trial.

§ 584. Postponement for cause

When an information is called for trial, or at any time previous thereto, the Court may, upon sufficient cause shown by either party, as in civil cases, direct the trial to be postponed to another day in the same or next term.

§ 585. Postponement for investigation of claimed alibi

Whenever testimony to establish an alibi on behalf of the defendant shall be offered in evidence in any criminal case in any Court of record of Cherokee Nation, and notice of the intention of the defendant to claim such alibi, which notice shall include specific information as to the place at which the defendant claims to have been at the time of the alleged offense, shall not have been served upon the Prosecuting Attorney at or before five (5) days prior to the trial of the case, upon motion of the Prosecuting Attorney, the Court may grant a postponement for such time as it may deem necessary to make an investigation of the facts in relation to such evidence.

CHAPTER 8

JURY—FORMATION

GENERAL PROVISIONS

CHALLENGES GENERALLY

CHALLENGES TO PANEL

CHALLENGES TO INDIVIDUAL JURORS

ORDER OF TAKING CHALLENGES

GENERAL PROVISIONS

§ 591. Same jurors in both civil and criminal actions

The jurors duly drawn and summoned for the trial of civil actions, may also be the jurors for the trial of criminal actions. The panel of jurors shall be drawn randomly from the Registry of citizens of Cherokee Nation. If the citizen resides outside of Cherokee Nation he, by his request, shall be released from serving as a juror.

§ 592. Trial jury—How formed

Trial juries for criminal actions may also be formed in the same manner as trial juries in civil actions.

§ 593. Clerk to prepare and deposit ballots

At the opening of the Court the Clerk must prepare separate ballots, containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the same cannot be seen, and must deposit them in a sufficient box.

§ 594. Names of panel called, when—Attachment for absent jurors

When the case is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and the Court in its discretion may order that an attachment issue against those who are absent; but the Court may, in its discretion, wait or not for the return of the attachment.

§ 595. Manner of drawing jury from box

Before the name of any juror is drawn, the box must be closed and shaken, so as to intermingle the ballots therein. The Clerk must then, without looking at the ballots, draw them from the box.

§ 596. Disposition of ballots

When the jury is completed, the ballots containing the names of the jurors sworn must be laid aside and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

§ 597. Disposition of ballots—After jury discharged

After the jury is so discharged, the ballots containing their names must be again folded and returned to the box, and so on, as often as a trial is had.

§ 598. Disposition of ballot—When juror is absent or excused

If a juror be absent when his name is drawn or be set aside, or excused from serving on the trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn.

§ 599. Jurors summoned to complete jury—Treated as original panel

The names of persons summoned to complete the jury as provided in the Title on "Jurors", 38 CNCA, must be written on distinct pieces of paper, folded each as nearly alike as possible, and so that the name cannot be seen, and must be deposited in the box before mentioned.

§ 600. Drawing the jury

The Clerk must thereupon, under the direction of the Court, publicly draw out of the box so many of the ballots, one after another, as are sufficient to form the jury.

§ 601. Number of jurors—Oaths—Fines not exceeding Two Hundred Dollars

The jury consists of six (6) persons, chosen as prescribed by law, and sworn or affirmed well and truly to try and true deliverance to make between Cherokee Nation and the defendant whom they shall have in charge, and a true verdict to give according to the evidence. Criminal cases wherein the punishment for the offense charged is by a fine only not exceeding Two Hundred Dollars (\$200.00) shall be tried to the Court without a jury.

§ 601A. Alternate jurors—Challenges—Oath or affirmation—Attendance upon trial

Whenever in the opinion of the Court the trial of a cause is likely to be a protracted one, the Court may, immediately after the jury is impaneled and sworn, direct the calling of as many as two (2) additional jurors to be known as "alternate juror." Such alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications as regular jurors, and be subject to examination and challenge as such jurors, except that the Nation shall be allowed one (1) peremptory challenge to each alternate juror, and all parties defendant shall together, or any one party defendant for and on behalf and by the consent of all parties defendant, be allowed one (1) peremptory challenge to each alternate juror.

The alternate jurors shall be sworn (or affirmed) to well and truly try and true deliverance make of all issues finally submitted to them as jurors in said cause, if any such issue shall be so finally submitted to them, and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, shall attend at all times upon the trial of the cause in company with the regular jurors and shall obey all orders and admonitions of the Court; and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors, and, except as hereinafter provided, shall be discharged upon the final submission of the cause to the jury.

If, before the final submission of the cause to the jury, a regular juror, or two (2) regular jurors, shall be discharged because of illness, or shall die, the Court shall order one (1) or both alternate jurors, as circumstances may require, to take their places in the jury box. After an alternate juror is in the jury box, he shall be subject to the same regulations and requirements as other regular jurors.

§ 601B. Protracted deliberations—Sequestration of alternate jurors

If, upon final submission of the cause, the Court is of the opinion that the deliberations may be protracted, the Court may order the alternate juror or jurors to remain sequestered physically or by admonition not to discuss the case with any person or allow any person to discuss the case with a juror. In such event said alternate or alternates shall remain apart from the jury and not take part in its deliberations, but shall await the call of the Court at some place designated by the Court until such time as said alternate may be needed. In the event one (1) or two (2) of the twelve jurors shall, during the course of deliberations, be discharged because of illness, or die, the Court shall order one (1) or both alternate jurors to take their places in the jury room and deliberations shall then continue.

§ 602. Affirmation

Any juror who is conscientiously scrupulous of taking the oath above described, shall be allowed to make affirmation, substituting for the words "so help you God," at the end of the oath, the following: "This you do affirm under the pains and penalties of perjury."

CHALLENGES GENERALLY

§ 621. Challenges classed

A challenge is an objection made to the trial jurors, and is of two (2) kinds:

1. To the panel;
2. To an individual juror.

§ 622. Several defendants—Challenges

When several defendants are tried together they cannot sever their challenges, but must join therein.

CHALLENGES TO PANEL

§ 631. Panel defined

The panel is a list of jurors returned by a Marshal or Sheriff, to serve at a particular Court or for the trial of a particular action.

§ 632. Challenge to panel

A challenge to the panel is an objection made to all the trial jurors returned, and may be taken by either party.

§ 633. Challenge to panel, causes for

A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury, or on the intentional omission of the Marshal or Sheriff to summon one or more of the jurors drawn, from which the defendant has suffered material prejudice.

§ 634. When taken—Form and requisites

A challenge to the panel must be taken before a jury is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

§ 635. Issue on the challenge—Trying sufficiency

If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the Court, and thereupon the Court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

§ 636. Challenge and exception may be amended or withdrawn

If, on the exception, the Court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the Court may in like manner, permit an amendment of the challenge.

§ 637. Denial of challenge—Trial of fact questions

If the challenge is denied the denial may, in like manner, be oral and must be entered upon the minutes of the Court, and the Court must proceed to try the questions of fact.

§ 638. Trial of challenge

Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of challenge.

§ 639. Bias of officer, challenge for

When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner as if made to a juror.

§ 640. Procedure after decision of challenge

If, upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the Court must discharge the jury, and another jury can be summoned for the same term forthwith from the

body; or the Judge may order a jury to be drawn and summoned in the regular manner. If it be disallowed, the Court must direct the jury to be impaneled.

CHALLENGES TO INDIVIDUAL JURORS

§ 651. Defendant to be informed of right to challenge

When six (6) persons are called as jurors, the defendant must be informed by the Court or under its direction, of his right to challenge the jurors, and that he must do so before the jury is sworn to try the cause.

§ 652. Classes of challenge to individual

A challenge to an individual juror is either:

First, Peremptory; or

Second, For cause.

§ 653. When challenge taken

It must be taken when the jury is full, and as soon as one (1) person is removed by challenge, another must be put in his place, until the challenges are exhausted or waived. The Court for good cause shown may permit a juror to be challenged after he is sworn to try the cause, but not after the testimony has been partially heard.

§ 654. Peremptory challenge defined

A peremptory challenge may be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the Court must excuse him.

§ 655. Peremptory challenges—Number allowed

In all criminal cases the prosecution and the defendant are each entitled to the following peremptory challenges: Provided, that if two or more defendants are tried jointly they shall join in their challenges; provided, that when two or more defendants have inconsistent defenses they shall be granted separate challenges for each defendant as hereinafter set forth.

In all criminal prosecutions, three (3) jurors each.

§ 656. Challenge for cause

A challenge for cause may be taken either by the Nation or the defendant.

§ 657. Challenges for cause classified

It is an objection to a particular juror and is either:

1. General, that the juror is disqualified from serving in any case on trial; or
2. Particular, that he is disqualified from serving in the case on trial.

§ 658. Causes for challenge, in general

General causes of challenges are:

1. A conviction for felony;
2. A want of any of the qualifications prescribed by law, to render a person a competent juror;
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

§ 659. Particular causes—Implied bias—Actual bias

Particular causes of challenge are of two (2) kinds:

1. For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this chapter a simplified bias;
2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the Court, in the exercise of a sound discretion, that he cannot try the issue impartially, without prejudice to the substantial rights of the party challenging, and which is known in this chapter as actual bias.

§ 660. Implied bias, challenge for

A challenge for implied bias may be taken for all or any of the following cases, and for no other:

1. Consanguinity or affinity within the fourth degree, inclusive; to the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or to the defendant;
2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;
3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution;

4. Having served on a trial jury which has tried another person for the offense charged in the information;
5. Having been one of the jury formerly sworn to try the information and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it;
6. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

§ 661. Right of exemption from service not cause for challenge

An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

§ 662. Cause for challenge must be stated—Form and entry of challenge—Juror not disqualified for having formed opinion, when

In a challenge for implied bias, one or more of the causes stated in 22 CNCA § 660 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of 22 CNCA § 659 must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon rumor, statements in public journals, or common notoriety, provided it appears to the Court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered upon the minutes of the Court.

§ 663. Exception to the challenge

The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon, except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the grounds of challenge.

§ 664. Trial of challenges

All challenges, whether to the panel or to individual jurors shall be tried by the Court, without the aid of triers.

§ 665. Trial of challenge—Examining jurors

Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and is bound to answer every question pertinent to the inquiry therein.

§ 666. Other witnesses

Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of testimony, on the trial of the challenges.

§ 667. Ruling on challenge

On the trial of a challenge the Court must either allow or disallow the challenge and direct an entry accordingly upon the minutes.

ORDER OF TAKING CHALLENGES

§ 691. Challenges to individual jurors

All challenges to individual jurors must be taken, first by the defendant and then by the Nation alternately.

§ 692. Order of challenges for cause

The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;
2. To an individual juror for a general disqualification;
3. To an individual juror for implied bias;
4. To an individual juror for actual bias.

§ 693. Peremptory challenges

If all challenges on both sides are disallowed, either party, first the Nation and then the defendant, may take a peremptory challenge, unless the peremptory challenges are exhausted.

CHAPTER 9

WITNESSES

§ 701. Defendant a competent witness—Comment on failure to testify—Presumptions

In the trial of all informations, complaints and other proceedings against persons charged with the commission of a crime, before any Court or Committing Magistrate in this Nation, the person charged shall at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any presumption against him nor be mentioned on the trial; if

commented upon by counsel it shall be ground for a new trial.

§ 702. Civil rules of evidence applicable to criminal cases—Husband or wife as witness

Except as otherwise provided in this and the following chapter, the rules of evidence in civil cases pursuant to the Oklahoma Evidence Code, 12 O.S. § 2101 et seq., are applicable also in criminal cases; Provided, however, that neither husband nor wife shall in any case be a witness against the other except in a criminal prosecution for a crime committed one against the other, or except in a criminal prosecution against either the husband or wife, or both, for a crime committed by either, or both, against the minor children of either the husband or the wife, but they may in all criminal cases be witnesses for each other, and shall be subject to cross-examination as other witnesses, and shall in no event on a criminal trial be permitted to disclose communications made by one to the other except on a trial of an offense committed by one against the other or except on a trial of a crime committed by one, or both, against the minor children of either the husband or the wife.

§ 703. Subpoena defined

The process by which the attendance of a witness before a Court or Magistrate is required, is a subpoena.

§ 704. Magistrate may issue subpoena

A Magistrate before whom complaint is laid, may issue subpoenas, subscribed by him, for witnesses within the Nation, either on behalf of the Nation or of the defendant.

§ 706. Issuing subpoenas for trial

The Prosecuting Attorney may in like manner issue subpoena for witnesses within the Nation, in support of an information, to appear before the Court at which it is to be tried.

§ 707. Defendant's subpoenas

The Clerk of the Court at which an information is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, under the seal of the Court and subscribed by him as Clerk, for witnesses within the Nation, as may be required by the defendant.

§ 708. Form of subpoena

A subpoena, authorized by the last four sections, must be substantially in the following form:

IN THE NAME OF CHEROKEE NATION.

To

Greeting: You are commanded to appear before C. D., a Judge of at (or the grand jury of the county of or the District Court, or as the case may be), on the (stating day and hour), and remain in attendance on and call of said from day to day and term to term until lawfully discharged, as a witness in a criminal action prosecuted by Cherokee Nation against E. F. (or to testify as the case may be).

§ 709. Continuances, witnesses must take notice of

Every witness summoned in a criminal action pending in a District Court shall take notice of the postponements and continuances and when once summoned in such action shall, without further notice or summons, be in attendance upon such action, as such witness, until discharged by the Court.

§ 710. Subpoena duces tecum

If the books, papers or documents be required, a direction to the following effect must be continued in the subpoena:

And you are required also to bring with you the following: (Describe intelligently the books, papers or documents required).

§ 711. Service of subpoena by whom—Return

A Marshal or peace officer must serve any subpoena delivered to him for service, either on the part of the Nation or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service without delay. A subpoena may, however, be served by any other person.

§ 712. Service, manner of

Service of subpoenas for witnesses in criminal actions in the District Courts shall be made by the officer, or other person making the service, by either personal service of such subpoena containing the time, place and the name of the Court, and the action in which he is required to testify, or by mailing a copy thereof by certified mail not less than five (5) days before the trial day of the cause upon which said witness is required to attend, and the person making such service shall make a return thereof showing the manner of service, and if the same be by certified mail, he shall file with such return the registry receipt; provided, that the person or Prosecuting Attorney shall state therein the manner in which the witness or witnesses shall be served, and the officer or person serving such subpoena shall serve the same in the manner directed by the requesting party, and make his return in accordance therewith; provided, further, that if the requesting party calls for serving such subpoena by certified letter, then the requesting party shall prepare the subpoena, the return receipt card, and the envelope for mailing.

§ 715. Witness residing out of county

No person is obliged to attend as a witness, before a Court or Magistrate out of the county where the witness resides or is served with the subpoena, unless the Judge of the Court in which the offense is triable, upon an affidavit of the Prosecuting Attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness is material and his attendance at the examination or trial necessary, shall endorse on the subpoena an order for the attendance of the witness.

§ 716. Disobedience to subpoena

Disobedience to a subpoena, or a refusal to be sworn or to testify, may be punished by the Court or Magistrate, as for a criminal contempt, in the manner provided in civil procedure.

§ 717. Disobeying defendant's subpoena—Forfeiture

A witness disobeying a subpoena issued on the part of the defendant, also forfeits to the defendant the sum of Fifty Dollars (\$50.00), which may be recovered in a civil action.

§ 718. Witnesses—Fees and mileage

A. Except as otherwise specified by law, all witnesses in a criminal action who appear pursuant to a subpoena shall be paid out of the Court Fund the fees and mileage prescribed by law. Upon conviction of the defendant, said fees and mileage shall be taxed as costs and collected as other costs in the case.

B. A witness who appears from another state to testify in this Nation in a criminal case or proceeding pursuant to a subpoena issued in accordance with the provisions of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings shall be reimbursed from the Court Fund of the Court where prosecution is pending for travel and expenses at rates not to exceed those prescribed by law for reimbursement of Nation employees traveling interstate. Upon conviction, such fees and mileage shall be taxed as costs and collected as other costs in the case.

C. A witness who appears from a county other than the county in which a criminal case or proceeding is being conducted pursuant to a subpoena shall be reimbursed from the Court Fund of the Court where the prosecution is pending for travel and expenses at a rate not to exceed the rate of reimbursement specified for Nation employees. Upon conviction of the defendant, said fees and mileage shall be taxed as costs and collected as other costs in the case.

§ 719. Persons held as material witnesses to be informed of constitutional rights—Fees

Whenever any person shall be taken into custody by any law enforcement officer to be held as a material witness in any criminal investigation or proceeding, he shall, if not sooner released, be taken before a Judge of the District Court without unnecessary delay and said Judge of the District Court shall immediately inform him of his constitutional rights including the reason he is being held in custody, his right to the aid of counsel in every stage of the proceedings, and of his right to

be released from custody upon entering into a written undertaking in the manner provided by law. A witness who is held in custody pursuant to the provisions hereof shall be kept separately and apart from any person, or persons, being held in custody because of being accused of committing a crime. A witness who desires aid of counsel and is unable to obtain aid of counsel by reason of poverty shall be by the Court provided counsel at the expense of the Court Fund. During the time a witness is in custody he shall receive the witness fee provided by law for witnesses in criminal cases.

CHAPTER 10

EVIDENCE AND DEPOSITIONS

EVIDENCE GENERALLY

DEPOSITIONS

EVIDENCE GENERALLY

§ 741. Overt act in conspiracy

Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts be expressly alleged in the information, nor unless one or more of the acts alleged be proved; but any other overt act, not alleged in the information may be given in evidence.

§ 742. Accomplice, testimony of

A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

§ 743. False pretenses, evidence of

Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof, be in writing either subscribed by, or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corroborating circumstances. But this section does not apply to prosecution for falsely representing or impersonating another, and in such assumed character, marrying or receiving money or property.

§ 744. Seduction, corroboration of prosecutrix

Upon a trial for inveigling, enticing or taking away a person, under the age of twenty-five (25) years, for the purpose of prostitution, or aiding or assisting therein, or for having, under promise of marriage, seduced and had illicit connection with an unmarried female of previous chaste character, the defendant cannot be convicted upon testimony of the person injured unless she is corroborated by other evidence tending to connect the defendant with the commission of the offense.

§ 745. Murder, burden of proof in mitigation of

Upon a trial for murder, the commission of the homicide by the defendant being proven, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

§ 746. Bigamy, proof on trial for

Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when the second marriage took place out of the state, proof of that fact accompanied with proof of cohabitation thereafter in this state, is sufficient to sustain the charge.

§ 748. Perjury in Court, evidence as to

In cases of perjury, where the perjury is charged to have been committed in a Court, it shall be sufficient to show that the oath was administered by any officer of the Court authorized so to do, or that the defendant testified and gave his testimony as under oath, or if the question be in doubt as to what particular officer administered the oath, it may be shown that it was administered by any officer authorized so to do.

§ 749. Sworn statements taken by Prosecuting Attorney or peace officer of persons having knowledge of criminal offense—Use

A. In the investigation of a criminal offense, the Prosecuting Attorney or any peace officer may take the sworn statement of any person having knowledge of such criminal offense. Any person charged with a crime shall be entitled to a copy of any such sworn statement upon the same being obtained.

B. If a witness in a criminal proceeding gives testimony upon a material issue of the case contradictory to his previous sworn statement, evidence may be introduced that such witness has previously made a statement under oath contradictory to such testimony.

§ 750. Rape prosecutions—Evidence of complaining witness' previous sexual conduct inadmissible—Exception

A. In any prosecution for rape or assault with intent to commit rape, opinion evidence of, reputation evidence of and evidence as to specific instances of the complaining witness' sexual conduct is not admissible on behalf of the defendant in order to prove consent by the complaining witness. Provided that this section shall not apply to evidence of the complaining witness' sexual conduct with or in the presence of the defendant.

B. If the Prosecuting Attorney introduces evidence or testimony relating to the complaining witness' sexual conduct, the defendant may cross-examine the witness giving such testimony and offer relevant evidence or testimony limited specifically to the rebuttal of such evidence or testimony introduced by the Prosecuting Attorney.

§ 751. Admission of findings—State Bureau of Investigation laboratory—Controlled dangerous substances—Release by court order

At any hearing, a report of the findings of the laboratory of the Bureau, which has been made available to the accused by the Office of the Prosecuting Attorney at least five (5) days prior to the preliminary hearing, with reference to all or any part of the evidence submitted, when certified as correct by the Bureau employee making the report shall, when offered by the Nation or the accused, be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence.

When any alleged controlled dangerous substance has been submitted to the laboratory of the Bureau for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of the State of Oklahoma, no portion of such substance shall be released to any other person or laboratory absent an order of a District Court. The defendant shall additionally be required to submit to the Court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

§ 752. Admissibility of recorded statement of child twelve years of age or younger

A. This section shall apply only to a proceeding in the prosecution of an offense alleged to have been committed against a child twelve (12) years of age or younger, and shall apply only to the statement of that child or other child witness.

B. The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The Court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;
2. No attorney for any party is present when the statement is made;
3. The recording is both visual and aural and is recorded on film or videotape or by other electronic

means;

4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;
6. Every voice on the recording is identified;
7. The person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;
8. Each party to the proceeding is afforded an opportunity to view the recording at least ten (10) days before trial, unless such time is shortened by leave of the Court for good cause shown; and
9. The child either:
 - a. testifies at the proceedings; or
 - b. is unavailable as defined in this Title as a witness. When the child is unavailable as defined in this Title as a witness, such recording may be admitted only if there is corroborative evidence of the act.

**§ 753. Taking testimony of child age twelve or under in room other than courtroom—
Recording**

- A. This section shall apply only to a proceeding in the prosecution of an offense alleged to have been committed against a child twelve (12) years of age or younger, and shall apply only to the testimony of that child.
- B. The Court may, on the motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the Court and the finder of fact in the proceeding. Only the attorneys for the defendant, the Nation and the child, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony but does not permit the child to see or hear them. The Court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.
- C. The Court may, on the motion of the attorney for any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the Court and

the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (B) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided in subsection (B) of this section. Only the attorneys may question the child. The Court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The Court shall also ensure that:

1. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
2. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
3. Every voice on the recording is identified; and
4. Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a Licensed or Certified Court Reporter is provided to the parties.

D. If the Court orders the testimony of a child to be taken under subsections (B) or (C) of this section, the child shall not be required to testify in Court at the proceeding for which the testimony was taken.

DEPOSITIONS

§ 761. Examination of witnesses conditionally for defendant

When a defendant has been held to answer a charge for a public offense, he may either before or after information, have witnesses examined conditionally on his behalf as prescribed in this chapter, and not otherwise.

§ 762. Conditional examinations in certain cases

When a material witness in any criminal case is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant or Cherokee Nation may apply for an order that the witness be examined conditionally.

§ 763. Affidavit on application for conditional examination

The application must be made upon affidavit stating:

First. The nature of the offense charged;

Second. The state of the proceedings in the action;

Third. The name and residence of the witness, and that his testimony is material to the defense of the action;

Fourth. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

§ 764. Application made to Court or Judge—Notice

The application may be made to the Court or to a Judge thereof, and must be made upon five (5) days' notice to the Prosecuting Attorney.

§ 765. Order for examination

If the Court or Judge is satisfied that the examination of the witness is necessary an order must be made that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on the Prosecuting Attorney within a specified time before that fixed for the examination.

§ 766. Examination before Magistrate

The order must direct that the examination be taken before a Magistrate named therein; and on proof being furnished to such Magistrate, of service upon the prosecuting attorney of a copy of the order, if no counsel appear on the part of the people, examination must proceed.

§ 767. When examination shall not proceed

If the Prosecuting Attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the Magistrate by affidavit or other proof, or on examination of the witness, that he is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on trial, the examination cannot take place; otherwise, it must proceed.

§ 768. Attendance of witness enforced, how

The attendance of the witness may be enforced by subpoena issued by the Magistrate before whom the examination is to be taken, or from the Court where the trial is to be had.

§ 769. Taking and authentication of testimony

The testimony given by the witness must be reduced to writing. The Magistrate before whom the examination is had may, in his discretion, order the testimony and proceedings to be taken down in shorthand, and for that purpose he may appoint a shorthand reporter. The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence and his business or profession.

2. It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth; except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him.
3. If the witness declines answering a question, that fact with the ground on which the answer was declined must be stated.
4. The deposition must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated in writing as he gives it; except in cases where the deposition is taken down in shorthand, it must not be signed by the witness.
5. It must be signed and certified by the Magistrate when reduced to writing by him or under his direction; and when taken down in shorthand, the manuscript of the reporter, appointed as aforesaid, when written out in longhand writing, and certified as being a correct statement of such testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The reporter shall within five (5) days after the close of such examination transcribe into longhand writing his said shorthand notes, and certify and deliver the same to the Magistrate, who shall also certify the same and transmit such testimony and proceedings, carefully sealed up, to the Clerk of the Court in which the action is pending or may come for trial.

§ 770. Deposition read in evidence, when—Objections to questions therein

The deposition or certified copy thereof may be read in evidence by either party on the trial upon its appearing that the witness is unable to attend by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the Nation. Upon reading the depositions in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in Court.

§ 771. Prisoner, deposition of—Oath

When a material witness for a defendant under a criminal charge is a prisoner in a state prison or in a county jail of a county other than that in which the defendant is to be tried, his deposition may be taken on behalf of the defendant in the manner provided for in the case of a witness who is sick; and the foregoing provisions of this chapter, so far as they are applicable, govern in the application for, and in the taking and use of such depositions, such deposition may be taken before any Magistrate or notary public of the Nation; or in case the witness is confined in a penal institution, and the defendant is unable to pay for taking the deposition, before the warden or clerk of the board of control of the penal institution, whose duty it shall be to act without compensation. Every officer before whom testimony shall be taken by virtue hereof, shall have authority to administer, and shall administer an oath to the witness, that his testimony shall be the truth, the whole truth and nothing but the truth.

CHAPTER 11

DISMISSAL OF PROSECUTION

§ 811. Discharge when no indictment found

When a person has been held to answer for a public offense, if an information is not filed against him at the next term of court at which he is held to answer, the Court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

§ 812. Next term, dismissal when not brought to trial at

If a defendant, prosecuted for a public offense, whose trial has not been postponed upon his application, is not brought to trial at the next term of court in which the information is triable after it is filed, the Court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

§ 813. Continuance when—Release of defendant

If the defendant is not prosecuted or tried, as provided in the last two sections, and sufficient reason therefor is shown, the Court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

§ 814. Effect of dismissing action

If the Court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

§ 815. Dismissal by Court or on Prosecuting Attorney's application

The Court may either of its own motion or upon the application of the Prosecuting Attorney, and the furtherance of justice, order an action or to be dismissed; but in that case the reasons of the dismissal must be set forth in the order, which must be entered upon the minutes.

§ 816. Nolle prosequi abolished

The entry of a nolle prosequi is abolished, and the Prosecuting Attorney cannot discontinue or abandon a prosecution for a public offense, except as provided in the last section.

§ 817. Dismissal not to bar to another prosecution

An order for the dismissal of the action, as provided in this chapter, is not a bar to any other prosecution for the same offense.

CHAPTER 12

TRIAL

§ 831. Order of trial proceedings

The jury having been impaneled and sworn, the trial must proceed in the following order:

1. If the information is for a crime, the Clerk or Prosecuting Attorney must read it, and state the plea of the defendant to the jury.
2. The Prosecuting Attorney, or other Counsel for the Nation, must open the case and offer the evidence in support of the information.
3. The defendant or his counsel may then open his defense, and offer his evidence in support thereof.
4. The parties may then, respectively, offer rebutting testimony only, unless the Court for good reason, in furtherance of justice, or to correct an evident oversight, permit them to offer evidence upon their original case.
5. When the evidence is concluded, the attorneys for the prosecution may submit to the Court written instructions. If the questions of law involved in the instructions are to be argued, the Court shall direct the jury to withdraw during the argument, and after the argument, must settle the instructions, and may give or refuse any instructions asked, or may modify the same as he deems the law to be. Instructions refused shall be marked in writing by the Judge, if modified, modification shall be shown in the instruction. When the instructions are thus settled, the jury, if sent out, shall be recalled and the Court shall thereupon read the instructions to the jury.
6. Thereupon, unless the case is submitted to the jury without argument, the Counsel for the Nation shall commence, and the defendant or his counsel shall follow, then the Counsel for the Nation shall conclude the argument to the jury. During the argument the attorneys shall be permitted to read and comment upon the instructions as applied to the evidence given, but shall not argue to the jury the correctness or incorrectness of the propositions of law therein contained. The Court may permit one or more counsel to address the jury on the same side, and may arrange the order in which they shall speak, but shall not without the consent of the attorneys limit the time of their arguments. When the arguments are concluded, if the Court be of the opinion that the jury might be misled by the arguments of counsel, he may to prevent the same further instruct the jury. All instructions given shall be in writing unless waived by both parties, and shall be filed and become a part of the record in the case.

§ 832. Court to decide the law

The Court must decide all questions of law which arise in the course of the trial.

§ 834. Jury limited to questions of fact

On the trial of an information, questions of law are to be decided by the Court, and the questions of fact are to be decided by the jury; and, although the jury has the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive the law which is laid down as such by the Court.

§ 836. Defendant presumed innocent—Reasonable doubt of guilt requires acquittal

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted.

§ 837. Doubt as to degree of guilt

When it appears that a defendant has committed a public offense and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degree only.

§ 839. Discharge of defendant that he may testify for Nation

When two or more persons are included in the same information, the Court may, at any time before the defendants have gone into their defense, on the application of the Prosecuting Attorney, direct any defendant to be discharged from the information, that he may be compelled to be a witness for the Nation.

§ 840. Discharge of defendant that he may testify for codefendant

When two or more persons are included in the same information, and the Court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must, before the evidence is closed, in order that he may be compelled to be a witness for his codefendant, submit its opinion to the jury, who, if they so find, may acquit the particular defendant for the purpose aforesaid.

§ 841. Higher offense than charged, existence of—Jury discharged

If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the information, the Court may direct the jury to be discharged, and all proceedings on the information to be suspended, and may order the defendant to be committed or continued on, or admitted to bail, to answer any new information which may be filed against him for the higher offense.

§ 842. Discharge of jury not a former acquittal

If an information for the higher offense is filed within a year next thereafter, he must be tried

thereon, and a plea of former acquittal to such last prosecution is not sustained by the fact of the discharge of the jury on the first information.

§ 843. Trial on original indictment, when

If a new information is not filed for a higher offense within a year, as aforesaid, the Court shall again proceed to try the defendant on the original information.

§ 844. Jury may be discharged, when

The Court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts as charged in the information do not constitute an offense punishable by law.

§ 845. Disposition of prisoner on discharge of jury

If the jury is discharged because the Court has not jurisdiction of the offense charged in the information, and it appears that it was committed out of the jurisdiction of this Nation, the Court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the Prosecuting Attorney to the chief executive officer of the state, territory or district where the offense was committed.

§ 849. Duty of Court where no offense charged

If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the Court must order that the defendant, if in custody, be discharged therefrom, or, if admitted to bail, that the bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new information can be framed, upon which the defendant can be legally convicted, in which case a new information filed.

§ 850. Court may advise jury to acquit

If, at any time after the evidence on either side is closed, the Court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury is not bound by the advice, nor can the Court, for any cause, prevent the jury from giving a verdict.

§ 851. Jury may view place—Custody of sworn officer

When, in the opinion of the Court, it is proper that the jury should view the place in which the offense was charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a person appointed by the Court for that purpose, and the officers must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

§ 852. Juror must declare knowledge of case

If a juror have any personal knowledge respecting a fact in controversy in a cause he must declare it in open court during the trial. If, during the retirement of a jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

§ 853. Custody and conduct of jury before submission—Separation—Sworn officer

The jurors sworn to try an information, may, at any time before the submission of the cause to the jury, in the discretion of the Court, be permitted to separate, or to be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof. Such officer or officers having once been duly sworn, it is not necessary that they be resworn at each recess or adjournment. An admonition to the officer and the jury shall be sufficient.

§ 854. Court must admonish jury as to conduct

The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the Court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

§ 855. Sickness or death of juror—New juror sworn

If, before the conclusion of a trial, a juror becomes sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case or in the event of the death of a juror a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impaneled.

§ 856. Requisites of charge of Court—Presentation of written charge—Request to charge—Endorsement of disposition on charge presented—Partial refusal

In charging the jury, the Court must state to them all matters of law which it thinks necessary for their information in giving their verdict, and if it state the testimony of the case, it must in addition inform the jury that they are the exclusive judges of all questions of fact. Either party may present to the Court any written charge and request that it be given. If the Court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused the Court must endorse or sign its decision. If part of any written charge be given and part refused the Court must distinguish, showing by the endorsement or answer what part of each charge was given and what part refused.

§ 857. Jury after the charge—Decision in court—Retirement for deliberation—Custody of officer—Conduct of jury—Return into court

After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the Court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the Court.

§ 858. Defendant admitted to bail may be committed during trial

When a defendant who has given bail appears for trial, the Court may, in its discretion, at any time after his appearance for trial order him to be committed to the custody of the proper officer of the county to abide the judgment or further order of the Court, and he must be committed and held in custody accordingly.

§ 859. Substitute for Prosecuting Attorney failing or unable to attend trial or disqualified

If the Prosecuting Attorney fails, or is unable to attend at the trial or is disqualified, the Court must appoint some attorney-at-law to perform the duties of the Prosecuting Attorney on such trial.

§ 861. Formal exceptions to rulings or orders unnecessary

Formal exceptions to rulings or orders of the Court in criminal proceedings shall not be necessary but for all purposes for which an exception has heretofore been necessary at the trial of a cause it shall be sufficient that a party, at the time the ruling or order of the Court has been made or sought, makes known to the Court the action which he desires the Court to take or his objection to the action of the Court with his general grounds therefor.

CHAPTER 13

JURY—DELIBERATIONS AND CONDUCT

§ 891. Jury room—Expenses of providing

A room must be provided for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery.

§ 893. Jury may have written instructions, forms of verdict and documents in jury room—Copies of public or private documents

On retiring for deliberation the jury may take with them the written instructions given by the Court, the forms of verdict approved by the Court, and all papers which have been received as evidence in the cause, except that they shall take copies of such parts of public records or private documents as

ought not, in the opinion of the Court, to be taken from the person having them in possession.

§ 894. Jury brought into court for information—Presence of, or notice to, parties

After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony or if they desire to be informed on a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to the Prosecuting Attorney and the defendant or his counsel, or after they have been called.

§ 895. Illness of juror after retirement—Accident or cause preventing keeping together—Discharge

If, after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged.

§ 896. Discharge after agreement on verdict or showing of inability to agree

Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless at the expiration of such time as the Court deems proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

§ 897. Retrial after discharge at same or other term

In all cases where a jury is discharged or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the information during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term, as the Court may direct.

§ 898. Court during jury's retirement—Sealed verdicts—Final adjournment for term discharges jury

While the jury are absent the Court may adjourn from time to time as to other business, but it is nevertheless deemed open for any purpose connected with the cause submitted to them until verdict is rendered or the jury discharged. If the jury agree on a verdict during a temporary adjournment or recess of the court, they may, upon the direction of the Court, sign the verdict by their foreman, securely seal the same in an envelope, and deliver the same to the foreman, when they may separate until the next convening of the court, at which time they shall reassemble in the jury room and return their verdict in open court, when the same proceedings shall be had as in case of other verdicts. A final adjournment of the court for the term discharges the jury.

CHAPTER 14

VERDICT

§ 911. Return of jury into court upon agreement—Discharge on failure of some jurors to appear

When the jury have agreed upon their verdict, they may be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the cause must be again tried, at the same or another term.

§ 912. Presence of defendant required in criminal cases when verdict received

If the information is for a crime, the defendant must, before the verdict is received, appear in person.

§ 913. Proceedings when jury appear

When the jury appear, they must be asked, by the Court or the Clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.

§ 914. Form of verdict

A general verdict upon a plea of not guilty, is either "guilty," or "not guilty," which imports a conviction or acquittal of the offense charged. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the Nation," or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the charge and the proof, the verdict must be "not guilty by reason of variance between charge and proof."

§ 915. Degree of crime must be found

Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

§ 916. Included offense or attempt may be found

The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense.

§ 917. Several defendants—Verdict as to part—Retrial as to defendants not agreed on

On an information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered

accordingly, and the case as to the rest may be tried by another jury.

§ 918. Jury may reconsider verdict of conviction for mistake of law—Return of same verdict

When there is a verdict of conviction in which it appears to the Court that the jury have mistaken the law, the Court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after their consideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the Court cannot require the jury to reconsider it.

§ 919. Informal verdict to be reconsidered

If the jury render a verdict not in form, the Court may, with proper instructions as to the law, direct them to reconsider it, and it cannot be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury.

§ 920. Judgment when jury persist in informal verdict

If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the Court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant, upon the issue, or judgment be given against him on a special verdict.

§ 921. Polling jury

When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

§ 922. Recording and reading verdict—Disagreement of jurors entered upon minutes—Discharge if no disagreement

When the verdict is given, and is such as the Court may receive, the Clerk must immediately record it in full upon the minutes, and the Judge or the Clerk must read it to the jury and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

§ 923. Defendant discharged on acquittal—Variance resulting in acquittal may authorize new charges

If a judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as judgment is given, except that when the acquittal is for a variance between the proof and the information which may be obviated by a new information the Court may order his detention to the end that a new information may be preferred

in the same manner and with like effect as provided in cases where the jury is discharged.

§ 924. Commitment upon conviction

If a general verdict is rendered against the defendant he must be remanded if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the Court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant.

§ 925. Claim of insanity—Duty of Court and jury—Commitment to institution

When it is contended on behalf of the defendant in any criminal prosecution that he is at the time of the trial a lunatic, an insane person, or a person of unsound mind, the Court shall submit to the jury a proper form of verdict, and if the jury finds the defendant not guilty on account of such lunacy, insanity or unsoundness of mind, they shall so state in their verdict, and the Court shall thereupon order the defendant committed to the hospital for the insane, or other institution provided for the care and treatment of cases such as the one before the Court, until the sanity and soundness of mind of the defendant be judicially determined, and he be discharged from said institution according to law.

§ 926. Punishment, jury may assess, when

In all cases of a verdict of conviction for any offense against any of the laws of Cherokee Nation, the jury may, and shall upon the request of the defendant assess and declare the punishment in their verdict within the limitations fixed by law, and the Court shall render a judgment according to such verdict, except as hereinafter provided.

§ 927. Punishment, Court to assess, when

Where the jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment by their verdict, the Court shall assess and declare the punishment and render the judgment accordingly.

§ 928. Excess punishment to be disregarded

If the jury assess a punishment, whether of imprisonment or fine, greater than the highest limit declared by law for the offense of which they convict the defendant, the Court shall disregard the excess and pronounce sentence and render judgment according to the highest limit prescribed by law in the particular case.

§ 929. Remand for vacation of sentence—New sentencing proceeding—Construction of section

A. Upon any appeal of a conviction by the defendant, the appellate Court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence rendered and remand the case

to the trial Court in the jurisdiction in which the defendant was originally sentenced for resentencing. No error in the sentencing proceeding shall result in the reversal of the conviction in a criminal case unless the error directly affected the determination of guilt.

B. When a criminal case is remanded for vacation of a sentence, the Court may:

1. Set the case for a nonjury sentencing proceeding; or
2. If the defendant or the Prosecuting Attorney so requests in writing, impanel a new sentencing jury.

C. If a written request for a jury trial is filed within twenty (20) days of the date of the appellate court order, the trial Court shall impanel a new jury for the purpose of conducting a new sentencing proceeding.

1. All exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing shall be admissible in the new sentencing proceeding. Additional relevant evidence may be admitted including testimony of witnesses who testified at the previous trial.
2. The provisions of this section are procedural and shall apply retroactively to any defendant sentenced in this Nation.

D. This section shall not be construed to amend or be in conflict with the provisions of 22 CNCA § 926 and 22 CNCA § 927 relating to assessment of punishment in the original trial proceedings.

CHAPTER 15

NEW TRIAL—ARREST OF JUDGMENT

§ 951. New trial defined—Proceedings on new trial—Former verdict no bar

A new trial is a reexamination of the issue in the same court, before another jury, after a verdict has been given. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew except of witnesses who are absent from the nation or dead, in which event the evidence of such witnesses on the former trial may be presented; and the former verdict cannot be used or referred to either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment or information.

§ 952. Grounds for new trial—Affidavits and testimony

A court in which a trial has been had upon an issue of fact has power to grant a new trial when a verdict has been rendered against a defendant by which his substantial rights have been prejudiced, upon his application in the following cases only:

First. When the trial has been in his absence, if the charge is for a crime;

Second. When the jury have received any evidence out of court, other than that resulting from a view of the premises;

Third. When the jury have separated without leave of the Court, after retiring to deliberate on their verdict, and before delivering or sealing the same, if it be sealed, or have been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

Fourth. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of the jury;

Fifth. When the Court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial;

Sixth. When the verdict is contrary to law or evidence;

Seventh. When new evidence is discovered, material to the defendant, and which he could not with reasonable diligence have discovered before the trial, and that the facts in relation thereto were unknown to the defendant or his attorney until after the trial jury in the case was sworn and were not of record. When a motion for a new trial is made on the ground of newly discovered evidence, the defendant must produce at the hearing in support thereof affidavits of witnesses, or he may take testimony in support thereof and if time is required by the defendant to procure such affidavits or testimony, the Court may postpone the hearing of the motion for such length of time as under all the circumstances of the case may seem reasonable.

§ 953. Time for applying for new trial—Limitations

The application for a new trial must be made before judgment is entered; but the Court or Judge thereof may for good cause shown allow such application to be made at any time within thirty (30) days after the rendition of the judgment. A motion for a new trial on the ground of newly discovered evidence may be made within three (3) months after such evidence is discovered but no such motion may be filed more than one (1) year after judgment is rendered.

§ 954. Motion in arrest of judgment—Definition—Grounds—Time for

A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on plea or verdict of guilty, or on a verdict against the defendant on a plea of former conviction or acquittal. It may be founded on any of the defects in the information mentioned as grounds of demurrer unless such objection has been waived by a failure to demur, and must be before or at the time the defendant is called for judgment.

§ 955. Court may arrest on its own motion—Effect of allowing motion

The Court may also on its own view of any of these defects, arrest the judgment without motion. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation

in which he was before the information was filed, and in no case of arrest of judgment is the verdict a bar to another prosecution.

§ 956. Proceedings after motion for arrest of judgment sustained

If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new information can be framed upon which he may be convicted, the Court may order him to be recommitted to the proper officer, or admitted to bail anew to answer the new information. If the evidence shows him guilty of another offense, he must be committed or held thereon; but if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged, or, if admitted to bail, his bail is exonerated, or if money has been deposited instead of bail, it must be refunded to the defendant, and the arrest of judgment operates as an acquittal of the charge upon which the information was founded.

CHAPTER 16

JUDGMENT AND EXECUTION

GENERAL PROVISIONS

SUSPENSION OF JUDGMENT AND SENTENCE

ELDERLY AND INCAPACITATED VICTIM'S PROTECTION PROGRAM

GENERAL PROVISIONS

§ 961. Court appoints time for pronouncing judgment

After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the Court must appoint a time for pronouncing judgment.

§ 962. Time for pronouncing verdict specified

The time appointed must be at least two (2) days after the verdict, if the Court intend to remain in session so long; or, if not, at as remote a time as can reasonably be allowed.

§ 964. Officer may be directed to produce prisoner

When the defendant is in custody, the Court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so accordingly.

§ 965. Warrant for defendant not appearing—Forfeiture of bond or bail money

If the defendant has been discharged on bail, or has deposited money instead thereof, and does not

appear for judgment when his personal attendance is necessary, the Court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the Clerk to issue a bench warrant for his arrest.

§ 966. Clerk to issue bench warrant—Several counties

The Clerk, on the application of the prosecuting attorney, may, accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant.

§ 967. Form of bench warrant

The bench warrant must be substantially in the following form:

Cherokee Nation

To any Marshal, Sheriff, Constable or policeman in this Nation:

A B having been, on the day of A. D., 20, duly convicted in the District Court of the crime of (designating it generally), you are therefore commanded forthwith to arrest the above named A B and bring him before that Court for judgment, or if the Court has adjourned for the term, you are to deliver him into the custody of the Marshal or Sheriff of Cherokee Nation.

Given under my hand, with the seal of said Court affixed, this day of A. D., 20

By order of the Court.

(Seal.) E. F., Clerk.

§ 968. Service of bench warrant, mode of

The bench warrant may be served in the same manner as a warrant of arrest.

§ 969. Defendant to be arrested

The officer must arrest the defendant and bring him before the Court, or commit him to the officer mentioned in the warrant, according to the command thereof.

§ 970. Defendant informed of proceedings

When the defendant appears for judgment, he must be informed by the Court, or by the Clerk under its direction, of the nature of the indictment or information, and his plea and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

§ 971. Defendant may show cause against judgment—Grounds—Proceedings

He may show for cause against the judgment:

1. That he is insane; and if, in the opinion of the Court, there is reasonable ground for believing him to be insane, the question of his insanity must be tried as hereinafter in this chapter, provided for. If upon the trial of that question the jury find that he is sane, judgment must be pronounced, but if they find him insane he may be committed to one of the Nation lunatic asylums, until he becomes sane, or be otherwise committed according to law, and when notice is given of that fact, as hereinafter provided, he must be brought before the Court for judgment;
2. That he has good cause to offer, either in arrest of judgment, or for a new trial, in which case the Court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

§ 972. Rendition of judgment where cause against it not shown

If no sufficient cause be alleged or appear to the Court why judgment should not be pronounced it must thereupon be rendered.

§ 973. Court may hear further evidence, when

After a plea or verdict of guilty in a case where the extent of the punishment is left with the Court, the Court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in its discretion hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

§ 974. Testimony—How presented—Deposition of sick or infirm witness

The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a Magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the Court may direct.

§ 975. Other evidence in aggravation or mitigation of punishment prohibited

No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the Court or member thereof in aggravation or mitigation of the punishment, except as provided in the last two sections.

§ 976. Sentencing for multiple offenses—Concurrent sentences

If the defendant has been convicted of two or more offenses, before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses. Provided, that the sentencing Judge shall, at all times, have the discretion to enter a sentence concurrent with any other sentence.

§ 977. Entry of judgment—Papers filed by the Clerk—Record

When judgment upon a conviction is rendered, the Clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and must immediately annex together and file the following papers, which constitute a record of the action:

- 1st. The information and a copy of the minutes of the plea or demurrer;
- 2nd. A copy of the minutes of the trial;
- 3rd. The charges given or refused, and the endorsements, if any, thereon; and
- 4th. A copy of the judgment.

§ 978. Certified copy of judgment furnished to officer—Officer authorized to execute judgment

When a judgment has been pronounced, a certified copy of the entry thereof, upon the minutes, must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

§ 979. Execution of judgment by Marshal or Sheriff in certain cases—Delivery to proper officer in other cases

When the judgment is imprisonment in a penal institution, or a fine, and that the defendant be imprisoned until it be paid, the judgment must be executed by the Marshal or Sheriff of the Nation. In all other cases when the sentence is imprisonment, the Marshal or Sheriff must deliver the defendant to the proper officer, in execution of the judgment.

§ 979A. Payment of penal institution costs by inmate

The sentencing Court may require a person sentenced to confinement in penal institution, for any offense, to pay the penal institution the costs of food and maintenance for each day of incarceration, both before and after conviction, medical care, dental care, and psychiatric services. The costs for food and maintenance for each day of incarceration shall be an amount equal to the actual cost of the services, said costs to be determined by the administrator of the penal institution. The cost of the services shall be paid to all penal institutions where the inmate may have been held before and after conviction. The costs shall not be assessed if, in the judgment of the Court, such costs would impose a manifest hardship on the inmate, or if in the opinion of the Court the property of the inmate is needed for the maintenance and support of family of the inmate.

§ 981. Authority of officer while conveying prisoner—Assistance of citizens—Penalty for refusing assistance

The Marshal or Sheriff or his Deputy while conveying the defendant to the proper prison in execution of a judgment of imprisonment has the same authority to require the assistance of any citizen of this Nation in securing the defendant and in retaking him if he escape, as if the Marshal or Sheriff, and every person who refuses or neglects to assist the Sheriff, when so required, is punishable.

§ 982. Presentence investigation

Whenever a person is convicted of a crime, the Court may, before imposing sentence to commit any criminal to incarceration, order a presentence investigation to be made by the Nation and defendant. The Nation and the defendant shall thereupon inquire into the circumstances of the offense, and the criminal record, social history and present condition of the convicted person; and shall make a report of such investigation to the Court, including a recommendation as to appropriate sentence, and specifically a recommendation for or against probation. Such reports must be presented to the Judge so requesting, within a reasonable time, and upon the failure to so present the same, the Judge may proceed with sentencing. Whenever, in the opinion of the Court, it is desirable, the investigation shall include a physical and mental examination of the convicted person. The reports so received shall not be referred to, or be considered, in any appeal proceedings. Before imposing sentence, the Court may advise the defendant or his counsel and the Prosecuting Attorney of the factual contents and the conclusions of any presentence investigation or psychiatric examination and afford fair opportunity, if the defendant so requests, to controvert them. If either the defendant or the Prosecuting Attorney desires, such hearing shall be ordered by the Court providing either party an opportunity to offer evidence proving or disproving any finding contained in such report, which shall be a hearing in mitigation or aggravation of punishment.

If the Prosecuting Attorney and the defendant desire to waive such presentence investigation and report, both shall execute a suitable waiver subject to approval of the Court, whereupon the Judge shall proceed with the sentencing.

§ 983. Imprisonment or recommendation of suspension of driving privileges for failure to pay fines or costs—Persons unable to pay—Hearing—Installments

A. Any defendant found guilty of an offense in any court of this Nation may be imprisoned for nonpayment of the fine and/or costs when the trial Court finds that the defendant is financially able but refuses or neglects to pay the fine and/or costs. In no case may a sentence to pay a fine be converted into a penal institution sentence automatically, i.e., without a hearing and a judicial determination, memorialized of record, that the defendant is able to satisfy the fine and costs by payment but refuses or neglects so to do.

B. After a judicial determination that the defendant may be able to pay the fine and costs in installments, the Court may order the fine and costs to be paid in installments and shall set the amount and due date of each installment.

C. The Court also may send notice of any nonpayment of fine and costs for a moving traffic violation to the Department of Public Safety with a recommendation of suspension of driving

privileges of the defendant until the total amount of fine and costs has been paid. Upon receipt of payment of the total amount of fine and costs for the moving traffic violation, the Court shall send notice thereof to the Department, if a nonpayment notice was sent as provided for in this subsection. Such notices sent to the Department shall be on forms or by a method approved by the Department.

D. The Supreme Court shall implement procedures and rules for methods of payment of fines and/or costs by indigents, which procedures and rules shall be distributed to all District Courts by the Court Administrator.

SUSPENSION OF JUDGMENT AND SENTENCE

§ 991A. Sentence—Powers of Court—County community service sentencing programs

A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, when a defendant is convicted of a crime, the Court shall:

1. Suspend the execution of sentence in whole or in part, with or without probation. The Court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

a. To provide restitution to the victim according to a schedule of payments established by the sentencing Court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the Court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty; or

b. To reimburse any state or Cherokee Nation agency for amounts paid by the state or Cherokee Nation agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the Nation agency, with interest accruing thereon at the rate of twelve percent (12%) per annum; or

c. To engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted; or

d. To pay a reasonable sum into any trust fund, established pursuant to the provisions of 60 O.S. § 176 et seq., and which provides restitution payments by convicted defendants to victims of crimes committed within Cherokee Nation wherein such victim has incurred a financial loss; or

e. To confinement in the penal institution for a period not to exceed the maximum length of incarceration pursuant to 25 U.S.C. § 1823(7), or

f. To reimburse the court fund for amounts paid to court-appointed attorneys for representing the

defendant in the case in which he is being sentenced.

However, any such order for restitution, community service or confinement in the penal institution, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence; or

2. May impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section; and

3. May commit such person for confinement provided for by law with or without restitution as provided for in this section; and

4. In the case of nonviolent offenses, sentence such person to the community service sentencing program created pursuant to 22 CNCA § 991a-4; and

5. In addition to the other sentencing powers of the Court, in the case of a person convicted of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person:

a. To participate in an alcohol and drug substance abuse course, pursuant to 47 CNCA § 11-902.2 and 47 CNCA § 11-902.3;

b. To attend a victims impact panel program sponsored by Cherokee Nation, if such a program is offered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the program to offset the cost of participation by the defendant, if in the opinion of the Court the defendant has the ability to pay such fee;

c. To both participate in the alcohol and drug substance abuse course, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph.

B. When sentencing a person convicted of a crime, the Court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender.

C. Probation, for purposes of subsection (A) of this section, is a procedure by which a defendant found guilty of a crime is released by the Court subject to conditions imposed by the Court and subject to the supervision of the Court or Cherokee Nation. Such supervision shall be initiated upon an order of probation from the Court, and shall not exceed two (2) years.

D. Cherokee Nation, or such other agency as the Court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection (A) of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly

performed.

E. 1. Cherokee Nation is hereby authorized, subject to funds available through appropriation by the Council, to contract with counties for the administration of county community service sentencing programs.

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement by the Cherokee Nation.

3. Cherokee Nation shall establish criteria and specifications for contracts with counties for such programs.

F. In cases where the person is required by law to register pursuant to the Cherokee Nation Sex Offender Registration and Notification Act, 57 CNCA § 1 et seq., where the individual is sentenced after the effective date of this act in addition to the other sentencing powers of the Court, the Court may require the person to comply with sex offender-specific rules and conditions of probation established by the Marshal Service.

G. In cases where the person is required by law to register pursuant to the Cherokee Nation Sex Offender Registration and Notification Act, where the individual is sentenced after the effective date of this act in addition to the other sentencing powers of the Court the Court may prohibit the person from accessing or using any Internet social networking web site that has the potential or likelihood of allowing the sex offender to have contact with any child who is under the age of eighteen (18) years.

H. A person convicted of an offense or receiving any form of probation for an offense for which registration is required pursuant to the Cherokee Nation Sex Offender Registration and Notification Act, shall submit to deoxyribonucleic acid (DNA) testing for law enforcement identification purposes. Except as required by the Cherokee Nation Sex Offender Registration and Notification Act a deferred judgment does not require submission to deoxyribonucleic acid (DNA) testing.

I. When sentencing a person who has been convicted of a crime that would subject that person to the provisions of the Cherokee Nation Sex Offender Registration and Notification Act neither the Court nor the Prosecuting Attorney shall be allowed to waive or exempt such person from the registration requirements of the Cherokee Nation Sex Offender Registration and Notification Act.

J. In addition to other sentencing powers of the Court in the case of a sex offender sentenced after the effective date of this act and required by law to register pursuant to the Sex Offender Registration and Notification Act, the Court may require the person to participate in a treatment program designed for the treatment of sex offenders during the period of time while the offender is subject to supervision. The treatment program may include polygraph examinations specifically designed for use with sex offenders for purposes of supervision and treatment compliance, and may be administered every six (6) months or more frequently during the period of supervision. The examination shall be administered by a certified licensed polygraph examiner. The treatment

program must be approved by the Court. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay.

§ 991A-2. Nonviolent criminals—Night or weekend incarceration

Any person who has been convicted of a nonviolent crime in the Nation may be sentenced, at the discretion of the Judge, to incarceration in the penal institution for a period of one or more nights or weekends with the remaining portion of each week being spent under probation, in lieu of any other kind of imprisonment prescribed by law for the particular crime. Any person incarcerated in the penal institution may be assigned work duties as may be approved by the Judge. The sentencing Court may require a person incarcerated pursuant to this act to pay the Nation for food and maintenance for each day of incarceration, an amount equal to the maximum amount prescribed by law to be paid by the Nation, to the Administrator for such expenses. For the purposes of this section, weekend incarceration shall commence at 6 p.m. on Friday and continue until 8 a.m. on the following Monday, and incarceration overnight shall commence at 6 p.m. on one day and continue until 8 a.m. of the next day. Provided, that the sentencing Judge may modify said times if the circumstances of the particular case require such action.

§ 991A-3. Restitution to buyer of property unlawfully obtained

A. Upon a verdict or plea of guilty or upon a plea of nolo contendere for an offense in which any property is unlawfully obtained and the property is sold, traded, bartered, pledged or pawned, the Court may order the defendant to provide restitution to the buyer, recipient or pledgee of the property for the value of any consideration paid, loaned or given for the property unless the buyer, recipient or pledgee has violated the provisions of 21 CNCA § 1092, 21 CNCA § 1093 or 21 CNCA § 1713. Such restitution shall be in addition to any restitution to the victim and shall be in addition to any other penalties provided by law. Restitution to the buyer, recipient or pledgee shall be ordered pursuant to the provisions of 22 CNCA § 991A(A)(1)(a).

B. The buyer of any property which has been unlawfully obtained and which is lawfully returned to its rightful owner shall have the right to bring a civil action against the person who sold, traded, bartered, pledged or pawned the property for the value of any consideration paid, loaned or given for the property unless the buyer has violated the provisions of 21 CNCA § 1092, 21 CNCA § 1093 or 21 CNCA § 1713.

§ 991A-4. Community service sentencing program—Eligible offenders—Presentence investigation—Recommendation and imposition of sentence—Earned credits—Notice of completion—Immunity from tort liability

A. There is hereby created the "Community Service Sentencing Program". The purpose of the program shall be to provide an alternative to incarceration for nonviolent crime offenders who would normally be sentenced to incarceration in a penal institution.

B. Any eligible offender may be sentenced, at the discretion of the Judge, to a community service sentencing program pursuant to the provisions of this section. For purposes of this section,

"eligible offender" shall mean any person who:

1. Has not previously been convicted of two or more felonies;
2. Has been convicted of a nonviolent crime offense which shall be defined as any crime offense except assault and battery with a dangerous weapon, aggravated assault and battery on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, assault with intent to commit a crime, murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle, or structure with explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a crime, pointing firearms, rioting or arson in the first degree;
3. Has properly completed and executed all necessary documents; and
4. Is not otherwise ineligible by law or court rule.

C. Cherokee Nation shall administer the program. Cherokee Nation shall recommend an assignment of the offender to any one or combination of the following areas:

1. Community service, with or without compensation;
2. Education, vocational-technical education or literacy programs;
3. Substance abuse treatment programs;
4. Periodic testing for the presence of controlled substances;
5. Psychological counseling or psychiatric treatment;
6. Medical treatment;
7. Restitution;
8. Confinement in a penal institution for a period not to exceed the maximum incarceration found in 25 U.S.C. § 1823(7) ¹, night or weekend incarceration pursuant to the provisions of 22 CNCA § 991A-2;
9. Probation or conditional probation.

D. The Judge shall consider the criminal history of the offender, the nature of the offender's criminal conduct, the employment and family history of the offender and any other factors he deems relevant when sentencing persons to the program.

E. Cherokee Nation, all counties and municipalities of the State of Oklahoma and all nonprofit or educational organizations or institutions participating in the Program are hereby immune from liability for torts committed by or against any offender participating in the Program to the extent specified in 57 O.S. §§ 227 and 228.

F. Any offender participating in the program shall be advised of the provisions of this section and shall, in writing, acknowledge that he has been advised of and understands the provisions of the program.

¹ See 25 U.S.C. § 1302(a)(7).

ELDERLY AND INCAPACITATED VICTIM'S PROTECTION PROGRAM

§ 991A–5. Short title

This act shall be known and may be cited as the "Elderly and Incapacitated Victim's Protection Program".

§ 991A–6. Purpose

The purpose and intent of this act is to provide enhanced sentencing for persons committing certain offenses against elderly or incapacitated persons.

§ 991A–7. Definitions

As used in this act:

1. "**Elderly person**" means any person sixty-two (62) years of age or older; and
2. "**Incapacitated person**" means any person who is disabled by reason of mental or physical illness or disability to such extent he lacks the ability to effectively protect himself or his property.

§ 991A–8. Offenses to which act applies

The provisions of this act shall apply to any person convicted of one or more of the following offenses where the victim is an elderly or incapacitated person:

1. Assault, battery, or assault and battery with a dangerous weapon;
2. Aggravated assault and battery;
3. Burglary in the second degree;
4. Use of a firearm or offensive weapon to commit or attempt to commit a crime, or pointing a

firearm;

5. Grand larceny;

6. Extortion, or obtaining a signature by extortion;

7. Fraud, or obtaining or attempting to obtain property by trick or deception; or

8. Embezzlement.

§ 991A–9. Enhancement of sentence

Whenever a person is convicted of an offense enumerated in 22 CNCA § 991A–8 in which the victim is elderly or incapacitated, the Court shall upon conviction:

1. Commit the defendant for confinement as provided by law; provided, the first thirty (30) days of the sentence shall not be subject to probation, suspension or deferral; provided further, this mandatory minimum period of confinement shall be served in the penal institution as a condition of a suspended or deferred sentence, pursuant to 22 CNCA § 991A and may be served by night or weekend incarceration pursuant to 22 CNCA § 991A–2; and

2. a. Require restitution be paid to the victim for out-of-pocket expenses, loss or damage to property and medical expenses for injury proximately caused by the conduct of the defendant pursuant to 22 CNCA § 991A–10; or

b. Assign the offender to perform a required term of community service, according to a schedule consistent with the employment and family responsibility of the person convicted; or

c. Require restitution as provided in subparagraph a of this paragraph and community service as provided in subparagraph b of this paragraph; and

3. The Court may further impose a fine or any other penalty otherwise provided by law.

§ 991A–10. Restitution to victim—Determinations by Court

A. The Court shall at the time of sentencing:

1. Determine whether the property may be restored in kind to the owner or the person entitled to possession thereof;

2. Determine whether defendant is possessed of sufficient skill to repair and restore property damaged;

3. Provide restitution to the victim according to a schedule of payments established by the sentencing Court, together with interest upon any pecuniary sum at the rate of twelve percent

(12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the Court, he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family; and

4. Determine the extent of the out-of-pocket expenses, loss or damage to property and injury to the victim proximately caused by the conduct of the defendant.

B. The Court shall allow credit for property returned in kind, for property damages ordered to be repaired by the defendant, and for property ordered to be restored by the defendant and after granting such credit, the court shall assess the actual out-of-pocket expenses, losses, damages and injuries suffered by the victim.

C. In no event shall a victim be entitled to recover restitution in excess of the actual out-of-pocket expenses, losses, damages and injuries, proximately caused by the conduct of the defendant and restitution shall not be ordered to be paid on account of pain or suffering; provided however, that nothing in this section shall abridge or preclude any victim from the civil right to recover damages by separate civil cause of action brought against the defendant.

D. If the defendant fails to pay restitution in the manner or within the time period specified by the Court, the Court may enter an order directing the sheriff to seize any real or personal property of the defendant to the extent necessary to satisfy the order of restitution and dispose of such property by public sale. All property seized for the purposes of satisfying restitution shall be seized under the procedures established in 22 CNCA § 991A–11.

E. A sentence including provisions of restitution may be modified or revoked by the Court if the offender commits another offense, or the offender fails to make restitution as ordered by the Court, but no sentencing provision to make restitution shall be modified if the Court finds that the offender has had the financial ability to make restitution, and he has willfully refused to do so. If the Court shall find that the defendant has failed to make restitution and that the failure is not willful, the Court may impose an additional period of time within which to make restitution. The length of said additional period shall not be more than two (2) years. The court shall retain all of the incidents of the original sentence, including the authority to revoke or further modify the sentence if the conditions of payment are violated during such additional period.

§ 991A–11. Seizure of property—Forfeiture for sale—Notice of proceedings—Answer and claim to property—Hearing—Proof of claim—Sale under judgment—Distribution of proceeds

A. Any peace officer of this Nation shall seize any property, except property exempt under 31 O.S. § 1, to be held until a forfeiture for sale has been declared or release ordered.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the Clerk of the District Court for the county in which the property is seized and shall be given all owners and parties in interest.

C. Notice shall be given by the party seeking forfeiture and sale according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record at the Oklahoma Tax Commission, by mailing a copy of the notice by certified mail to the address shown upon the records of the Oklahoma Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the attorney or the party seeking the action to recover unpaid restitution, by mailing a copy of the notice by registered mail to the last-known address; or

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

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

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the Court shall hear evidence upon the fact of exemption under 31 O.S. § 1, and shall order the property forfeited and sold to pay restitution, if such property is not proved exempt.

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

G. At a hearing on the forfeiture the evidence of ownership and exemption under 31 O.S. § 1 shall be satisfied by a preponderance of the evidence.

H. The claimant of any right, title or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide ownership interest.

I. In the event of such proof, the Court shall order the property released to the bona fide owner, lienholder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the offender.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited and sold under judgment of the Court, as on sale upon execution.

K. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Office of the Prosecuting Attorney, subject only to the orders and decrees of the Court having jurisdiction thereof.

L. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;
2. To the payment of the actual expenses of storing the property;
3. To the payment of court costs and costs of the Marshal or Sheriff in conducting the sale;
4. To the payment of restitution to the victim; and
5. The balance of the proceeds of such sale shall be paid to the defendant.

M. If the Court finds that the party seeking the forfeiture failed to satisfy the requirements provided for in subsection (G) of this section, the Court shall order the property released to the owner or owners.

§ 991B. Revocation in whole or in part of suspended sentence—Hearing—Review

Whenever a sentence has been suspended by the Court after conviction of a person for any crime, the suspended sentence of said person may not be revoked, in whole or in part, for any cause unless a petition setting forth the grounds for such revocation is filed by the Prosecuting Attorney with the Clerk of the sentencing Court and competent evidence justifying the revocation of said suspended sentence is presented to the Court at a hearing to be held for that purpose within twenty (20) days after the date of arrest.

Where one of the grounds for revocation is the failure of the defendant to make restitution as ordered, Cherokee Nation or the Court Clerk shall forward to the Prosecuting Attorney all information pertaining to the defendant's failure to make timely restitution as ordered by the Court, and said Prosecuting Attorney shall file a petition setting forth the grounds for revocation.

The defendant ordered to make restitution can petition the Court at any time for remission or a change in the terms of the order of restitution if he undergoes a change of condition which materially affects his ability to comply with the Court's order.

At the hearing, if one of the grounds for the petition for revocation is the defendant's failure to make timely restitution as ordered by the Court, the Court will hear evidence and if it appears to the satisfaction of the Court from such evidence that the terms of the order of restitution create a manifest hardship on the defendant or his immediate family, cancel all or any part of the amount still due, or modify the terms or method of payment.

The Court may revoke a portion of the sentence and leave the remaining part not revoked, but suspended for the remainder of the term of the sentence, and under the provisions applying to it. The person whose suspended sentence is being considered for revocation at said hearing shall have the right to be represented by counsel, to present evidence in his own behalf and to be confronted

by the witnesses against him. Any order of the Court revoking such suspended sentence, in whole or in part, shall be subject to review on appeal, as in other appeals of criminal cases. Provided, however, that if the crime for which the suspended sentence is given was a crime, he may be allowed bail pending appeal. If the reason for revocation be that the defendant committed a crime, he shall not be allowed bail pending appeal.

§ 991C. Deferred judgment procedure

A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the Court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation under the supervision of the Court or Cherokee Nation under such conditions of probation as may be prescribed by the Court. The Court shall first consider restitution, administered in accordance with the provisions pertaining thereto, among the various conditions of probation it may prescribe. The Court may also consider ordering the defendant to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant. Further, the Court may order the defendant confined to the penal institution for a period not to exceed ninety (90) days to be served in conjunction with probation. Further, the Court may order the defendant to pay a sum into the Court Fund not to exceed the amount of fine authorized for the offense alleged against the defendant or authorized under the Cherokee Nation Bond Schedule and/or 18 U.S.C. § 1803(7) and an amount for reasonable attorney fee, to be paid into the Court Fund, if a court-appointed attorney has been provided to defendant. Further, the Court may, in the case of a person before the Court for the offense of operating or being in control of motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol and another intoxicating substance, before the Court for the offense of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person to participate in one or both of the following:

1. an alcohol and drug substance abuse course, pursuant to 47 CNCA § 11–902.2 and 47 CNCA § 11–902.3;
2. a victims' impact panel program sponsored by the Cherokee Nation of the State of Oklahoma, if such a program is offered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the victims' impact panel program to offset the cost of participation by the defendant, if in the opinion of the Court the defendant has the ability to pay such fee.

Upon completion of the probation term, which probation term under this procedure shall not exceed five (5) years, the defendant shall be discharged without a court judgment of guilt, and the verdict or plea of guilty or plea of nolo contendere shall be expunged from the record and said charge shall be dismissed with prejudice to any further action. Upon violation of the conditions of probation, the Court may enter a judgment of guilt and proceed as provided in 22 CNCA § 991A. Further, if the probation is for a crime offense, and the defendant violates the conditions of probation by committing another crime offense, the defendant shall not be allowed bail pending appeal. The deferred judgment procedure described in this section shall only apply to defendants not having been previously convicted of a crime under the laws of Cherokee Nation which if

committed under the laws of the State of Oklahoma would be a felony.

B. The deferred judgment procedure described in this section shall not apply to defendants found guilty or who plead guilty or nolo contendere to a sex offense requiring the defendant to register pursuant to the Sex Offenders Registration and Notification Act, 57 CNCA § 1 et seq.

§ 991D. Probation fee—Restitution administration fee—Drug and alcohol testing fees

A. A Court granting probation shall fix a fee of Forty Dollars (\$40.00) per month to be paid by the probationer to Cherokee Nation during the probationary period, provided, however, that this mandatory fee will not pertain if, in the judgment of the Court, such a fee would impose an unnecessary hardship on the probationer. In such hardship cases, the Court shall expressly waive the fee. The Court shall make payment of the fee a condition of granting or continuing the probation, and such condition shall be imposed whether the probation is incident to the suspending of execution of a sentence or incident to the suspending of imposition of a sentence or the deferring of proceedings after a verdict or plea of guilty, but such condition shall not be imposed unless probationary services are made available to the defendant. If restitution is ordered by the Court, the probation fee will be paid in addition to the restitution so ordered. In addition to the restitution payment and probation fee, a fee of One Dollar (\$1.00) per payment is to be paid to Cherokee Nation to cover the expenses of administration of such restitution. If, in the judgment of the Court, such a fee would impose an unnecessary hardship on the offender, the fee shall be waived.

B. The defendant is also responsible for the cost of alcohol and drug testing.

§ 991F. Definitions

For the purposes of this act:

1. "**Economic loss**" means actual economic detriment suffered by the victim consisting of medical expenses actually incurred, damage to real and personal property and any other out-of-pocket expenses reasonably incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included.
2. "**Monetary restitution**" shall mean the sum to be paid by the defendant to the victim of his criminal act to compensate that victim for the economic loss suffered as a direct result of the criminal act of the defender.
3. "**Victim**" means any person, partnership or corporation that suffers an economic loss as a direct result of the criminal act of another person.

§ 994. Suspension of judgment and sentence after appeal

After appeal, when any criminal conviction is affirmed, either in whole or in part, the Court in which the defendant was originally convicted may suspend the judgment and sentence as otherwise provided by law. Jurisdiction for such suspension shall be vested in said trial Court by a request by

the defendant within ten (10) days of the final order of the District Court. Any order granting or denying suspension made under the provisions of this section is a nonappealable order.

§ 995. Administration of probation—Parole services

The Court Administrator shall supervise the probation officer in all Cherokee Nation Courts and for such purposes and his or her staff shall have access to all probation records of said Courts.

Subject to the approval of the Chief Justice of the Cherokee Nation Supreme Court the Court Administrator shall establish reports and forms to be maintained by probation officers, procedures to be followed by the probation officers, standards and rules of probation work, including methods and procedures of investigation, mediation supervision, case work, record keeping, accounting, caseload, and case management.

The Court Administrator shall annually submit a written budget for the probation services to the Cherokee Nation Council for administration, supplies and salaries.

§ 996. The Powers of the Court

A. Probation is provided at the discretion of the Court.

B. No defendant shall be put on probation without a presentence investigation.

C. The Court may first consider a program of restitution for the victim as well as imposition of a fine and incarceration of the offender.

D. Probation, for the purposes of this section, is a procedure by which a defendant found guilty of a crime, or before a judgment of guilty pursuant to 22 CNCA § 991C, whether upon a verdict of plea of guilty or upon a plea of nolo contendere, is released by the Court subject to conditions imposed by the Court and subject to the supervision of Cherokee Nation District Court. Such supervision shall be initiated upon an order of probation from the Court, and shall not exceed two (2) years. In the case of a person convicted of a sex offense, supervision shall not be limited to two (2) years.

E. If the Court has imposed and entered exception of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

F. If the offender is charged with a criminal offense and the Court has reason to believe that drug or alcohol usage by the offender was a factor leading to the offender's criminal behavior or if the crime is committed by a first time offender, the Court upon the recommendation of the Attorney General and the Cherokee Nation Probation Office and after a presentence investigation may offer the defendant a deferred sentence. The deferred sentence shall be on the condition that the defendant spends the court-ordered amount of time on probation. The Court shall order the probation be supervised or unsupervised.

G. The person on probation is responsible for payment of any fees and cost to the probation officer. The rules and conditions of probation shall be in writing and signed before a Judge of a Cherokee Nation Court.

H. The Court may modify, reduce, or enlarge the conditions of a sentence of probation in any time prior to the expiration or termination of the term of probation.

I. The Court shall direct the probation officer provide the defendant with a copy of the rules and conditions of probation that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

J. Once the Judge has ordered probation the defendant has forty-eight (48) hours to report to the probation officer.

K. If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the Court shall have a revocation hearing pursuant to 22 CNCA §§ 991A to 991C and upon recommendation of the probation officer. And after such hearing the Court may continue the defendant on probation, with or without extending the term or modifying or enlarging the conditions, or revoke the sentence of probation and re-sentence the defendant.

L. Mandatory revocation for possession of controlled substance or firearm or refusal to comply with drug testing. If the defendant possesses a controlled substance, possesses a firearm and/or refuses to comply with drug testing, thereby violating the conditions of his probation a mandatory revocation hearing pursuant to 22 CNCA § 991C and upon recommendation of the probation officer shall be conducted. The Court may modify or enlarge the conditions of probation or revoke the sentence of probation and resentence the defendant.

§ 997. Community service unit

A. Community service is a condition of probation that requires probationers to perform services without compensation for the benefit of the community. The sanction not only provides service to the community but also enhances accountability and helps instill responsibility. Community service can be ordered by a Judge or by the supervising probation officer through the Adult Probation Department. Community service shall be ordered pursuant to the rules and conditions set forth in 22 CNCA § 991A-4.

B. The Adult Probation Department may place a probationer at a variety of work sites throughout Cherokee Nation jurisdictional boundaries. The sites shall be for the benefit of not-for-profit organizations, government agencies, and/or community service groups.

C. Officers assigned to the Adult Probation Department are responsible for placing, monitoring and evaluating all community service mandates. The needs and safety of the community as well as the skills of the probationer shall be considered when making placements. The Cherokee Nation

Marshal Service may be called upon to assist with security for community service mandates.

D. Once a site has been deemed appropriate, a letter of agreement between the Adult Probation Department and the agency is signed. If a probationer fails to comply with a community service mandate a revocation hearing shall be held.

CHAPTER 18

APPEALS

§ 1051. Right of appeal—Review—Corrective jurisdiction—Procedure—Scope of review on certiorari

A. An appeal to the Supreme Court may be taken by the defendant as a matter of right from any judgment against him, which shall be taken as herein provided; and, upon the appeal, any decision of the Court or intermediate order made in the progress of the case may be reviewed; provided, all appeals taken from any conviction on a plea of guilty shall be taken by petition for writ of certiorari to the Supreme Court, as provided in subsection (B) of this section; provided further, such petition must be filed within ninety (90) days from the date of said conviction. The Supreme Court may take jurisdiction of any case for the purpose of correcting the appeal records when the same do not disclose judgment and sentence; such jurisdiction shall be for the sole purpose of correcting such defect or defects.

B. The procedure for the filing of an appeal in the Supreme Court shall be as provided in the Rules of Appellate Procedure; and the Supreme Court shall provide by court rules, which will have the force of statute, and be in furtherance of this method of appeal: (1) The procedure to be followed by the trial courts in the preparation and authentication of transcripts and records in cases appealed under this act; (2) the procedure to be followed for the completion and submission of the appeal taken hereunder; and (3) the procedure to be followed for filing a petition for and the issuance of a writ of certiorari.

C. The scope of review to be afforded on certiorari shall be prescribed by the Supreme Court.

§ 1052. How governed

An appeal from a judgment in a criminal action may be taken in the manner and in the cases prescribed in this chapter.

§ 1053. Cherokee Nation may appeal in what cases

Appeals to the Supreme Court may be taken by Cherokee Nation in the following cases and no other:

1. Upon judgment for the defendant on quashing or setting aside an indictment or information;

2. Upon an order of the court arresting the judgment;
3. Upon a question reserved by Cherokee Nation; and
4. Upon judgment for the defendant on a motion to quash for insufficient evidence in a criminal matter.

§ 1053.1. Automatic appeal of judgments holding statutes unconstitutional in criminal actions

Any final judgment entered by a District Court in a criminal action rendering an act of the Council to be unconstitutional shall be automatically appealed to the Supreme Court, unless said act has been previously declared unconstitutional by said Supreme Court. Such appeals shall be by the Prosecuting Attorney upon a reserved question of law.

§ 1054. Time for taking appeal—Transcript—Notification of nonfiling of case made or transcript

In criminal cases the appeal must be taken within one hundred twenty (120) days after the judgment is rendered. A transcript in criminal cases must be filed as hereinafter directed.

It shall be the duty of the Clerk of the Court from which notice of appeal has been given, and in which case made or transcript has been filed and withdrawn, to notify the Clerk of the Supreme Court if a certificate from such Clerk acknowledging receipt of such case made or transcript is delayed three (3) days beyond the one hundred twenty (120) days maximum time from date of judgment provided for appeal in a criminal case, and on notification by the Clerk of nonfiling of case made or transcript in the Supreme Court, the judgment of the trial court will be immediately carried out as provided by law.

§ 1054.1. Perfecting appeal without filing motion for new trial

The right of a party to perfect an appeal from a judgment, order or decree of the trial court to the Supreme Court shall not be conditioned upon his having filed in the trial court a motion for a new trial, but in the event a motion for a new trial is filed in the trial court by a party adversely affected by the judgment, order or decree, no appeal to the Supreme Court may be taken until subsequent to the ruling by the trial court on the motion for a new trial.

§ 1056. Appeal by Nation not to suspend judgment

An appeal taken by the Nation in no case stays or affects the operation of the judgment in favor of the defendant, until the judgment is reversed.

§ 1058. Conditions of bond—Surrender by sureties—Stay of execution—Confinement of defendant when crime not bailable

If an appeal is taken and the appeal bond given as provided in the preceding section, said bond shall be conditioned that the defendant will appear, submit to and perform any judgment rendered by the Supreme Court or the court in which the original judgment was rendered in the further progress of the cause, and will not depart without leave of the Court. After the determination of the appeal in the Supreme Court, or if the appeal is not perfected as provided by law, the defendant may be surrendered by the sureties to the proper authorities for the execution of the sentence. If the defendant be adjudged to be incarcerated in any penal institution and/or to pay a fine, said sureties shall be relieved of liability for such fine and costs upon surrender of the defendant to the proper authorities for incarceration pursuant to the judgment and prior to forfeiture of the bond. If no bond be given the appeal shall not stay execution of the judgment, except where otherwise specifically provided by law. If pending the appeal the bond be given, a further execution of the judgment shall be stayed and the defendant released pending the determination of the appeal. In all cases where the sentence is for a crime not bailable the defendant shall be confined in the penal institution pending the appeal.

§ 1062. Exceptions

The exceptions stated in the case shall have the same effect as if they had been reduced to writing, allowed and signed by the Judge at the time they were taken.

§ 1065. Defendants may appeal jointly or severally

When several defendants are tried jointly, any one or more of them may take an appeal, but those who do not join in the appeal shall not be affected thereby.

§ 1066. Power of appellate court—Return by Clerk of lower court when new trial granted

The appellate court may reverse, affirm or modify the judgment or sentence appealed from, and may, if necessary or proper, order a new trial or resentencing. In either case, the cause must be remanded to the Court below, with proper instructions, and the opinion of the Court, within the time, and in the manner, to be prescribed by rule of the Court.

If the case is reversed for a new trial, the Clerk of the court from which such cause was appealed is required to make return showing that said case was specifically called to the attention of the trial court at the time of the setting of the docket following receipt of mandate, and showing the court's action in placing said cause on the docket for trial, said return to be made immediately after the trial and entry of judgment, or earlier disposal. Should the case not be retried and should it be dismissed by the Court, return shall be made, giving the reasons stated by the Court in his minutes justifying such dismissal.

§ 1067. Order when no offense committed—When indictment defective

When a judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the Supreme Court must direct that the defendant be discharged; but if it appears that the defendant is guilty of an offense although defectively charged in the indictment, the

Supreme Court must direct the prisoner to be returned and delivered over to the jailer of the proper county, there to abide the order of the Court in which he was convicted.

§ 1069. Appeal not dismissed for informality

An appeal shall not be dismissed for any informality or defect in the taking thereof. If the same be corrected in a reasonable time after an appeal has been dismissed, another appeal may be taken.

§ 1070. Judgment to be executed on affirmance

On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court may direct.

§ 1071. Opinions to be recorded

All opinions of the Supreme Court must be given in writing and recorded in the journal.

§ 1072. Record and enforcement of mandate or order in lower court—Return by Clerk of lower court to Clerk of Supreme Court

It is hereby made the duty of the Court Clerk in all counties, upon receipt from the Clerk of the Supreme Court of any mandate or order of the Supreme Court, to immediately and without any order from the Court, or Judge thereof, to spread said mandate or order of record in the proper court, and to issue and place in the hands of the proper officer appropriate process for carrying out such mandate or order.

That it shall be the duty of any such Court Clerk immediately upon return being made by the officer to whom process is delivered, to thereafter make return to the Clerk of the Supreme Court, showing the date that mandate was received, date filed and recorded, the date process was issued to the officer, and the date the process was served and whether the convicted person was incarcerated. If incarceration of the prisoner is delayed by reason of flight, or for any other cause for a period of more than fifteen (15) days after receipt of mandate, the return, under any such circumstance causing delay, must be immediately made to the Clerk of the Supreme Court; and upon later apprehension of prisoner and incarceration, a further return must be made to the Clerk of the Supreme Court, reporting the facts, within ten (10) days after such incarceration.

§ 1076. Notice to defendant of his right to appeal—Stay of execution of judgment

The Court shall at the time of entering judgment and sentence notify the defendant of his right to appeal. An appeal from a judgment of conviction stays the execution of the judgment in all cases where sentence of death is imposed, but does not stay the execution of the judgment in any other case unless the trial or appellate Court shall so order.

§ 1077. Bail allowable

Bail on appeal shall be allowed on appeal from a judgment of conviction of a crime, or in crime cases where the punishment is a fine only, and when made and approved shall stay the execution of such judgment. Bail on appeal after the effective date of this act shall not be allowed after conviction of any of the following offenses:

1. Murder in any degree;
2. Kidnapping for purpose of extortion;
3. Robbery with a dangerous weapon;
4. Rape in any degree;
5. Arson in the first degree;
6. Shooting with intent to kill;
7. Manslaughter in the first degree;
8. Forcible sodomy;
9. Any crime conviction for which the evidence shows that the defendant used or was in possession of a firearm or other dangerous or deadly weapon during the commission of the offense;
10. Trafficking in illegal drugs; or
11. Any other crime after former conviction of a crime.

The granting or refusal of bail after judgment of conviction in all other crime cases shall rest in the discretion of the Court, however, if bail is allowed, the trial Court shall state the reason therefor.

§ 1078. Amount of bond—Time to make appeal bond—Stay pending appeal—Additional bond

When bail is allowed, the Court shall fix the amount of the appeal bond and the time in which the bond shall be given in order to stay the execution of the judgment pending the filing of the appeal in the appellate Court, and until such bond is made shall hold the defendant in custody. If the bond be given in the time fixed by the Court, the execution of the judgment shall be stayed during the time fixed by law for the filing of the appeal in the appellate Court. If the appeal is filed within the time provided by law, then the bond shall stay the execution of the sentence during the pendency of the appeal, subject to the power of the Court to require a new or additional bond when the same is by the Court deemed necessary. If the bond is not given within the time fixed, or if given and the appeal not be filed in the appellate Court within the time provided by law, the judgment of the Court shall immediately be carried into execution.

§ 1079. Denial of bail—Review by habeas corpus

If bail on appeal be denied, or the amount fixed be excessive, the defendant shall be entitled to a review of the action of the trial Court and its reasons for refusing bail, by habeas corpus proceedings before the appellate Court, or if the Court be not in session, then by some Judge of said Court.

CHAPTER 19

BAIL

BAIL BOND PROCEDURE ACT

§ 1101. Offenses bailable—Who may take bail

Bail, by sufficient sureties, shall be admitted upon all arrests in criminal cases and in such cases it may be taken by any of the persons or Courts authorized by law to arrest or imprison offenders, or by the Clerk of the District Court or his Deputy, or by the Judge of such Courts.

§ 1104. Qualifications of bail—Justification

The qualifications of bail are the same as those in civil cases, and the sureties must in all cases justify by affidavits taken before the Magistrate, Court or Judge, or before the Clerk of the District or Superior Court or his Deputy, that they each possess those qualifications.

§ 1105. Defendant discharged on giving bail

Upon the allowance of bail and the execution of the requisite recognizance, bond or undertaking, to the Nation, the Magistrate, Judge or Court, must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged.

§ 1106. Deposit for bail

A deposit of the sum of money mentioned in the order admitting to bail is equivalent to bail and upon such deposit the defendant must be discharged from custody.

§ 1107. Arrest of defendant by bail—Commitment of defendant and exoneration of bail

Any party charged with a criminal offense and admitted to bail may be arrested by his bail at any time before they are finally discharged, and at any place within the Nation; or by a written authority endorsed on a certified copy of the recognizance, bond or undertaking, may empower any officer or person of suitable age and discretion, to do so, and he may be surrendered and delivered to the proper Marshal, Sheriff or other officer, before any Court, Judge or Magistrate having the proper jurisdiction in the case; and at the request of such bail the Court, Judge or Magistrate shall

recommit the party so arrested to the custody of the Marshal, Sheriff or other officer, and endorse on the cognizance, bond or undertaking, or certified copy thereof, after notice to the Prosecuting Attorney, and if no cause to the contrary appear, the discharge and exoneration of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law.

§ 1108. Forfeiture of bail

If the defendant neglects to appear according to the terms or conditions of the recognizance, bond or undertaking, either for hearing, arraignment, trial or judgment, or upon any other occasion when his presence in court or before the Magistrate may be lawfully required, or to surrender himself in execution of the judgment, the Court must direct the fact to be entered upon its minutes, and the recognizance, bond or undertaking of bail, or the money deposited instead of bail, as the case may be, is and shall be thereupon declared forfeited and forfeiture proceedings shall then proceed as prescribed in 59 O.S. § 1332. If money deposited instead of bail be so forfeited, the Clerk of the Court or other officer with whom it is deposited, must, immediately after the final adjournment of the court, pay over the money deposited to Cherokee Nation.

§ 1109. Additional security may be required

When proof is made to any Court, Judge or other Magistrate having authority to commit on criminal charges, that a person previously admitted to bail on any such charge is about to abscond, or that his bail is insufficient, or has removed from the Nation, the Judge or Magistrate shall require such person to give better security, or for default thereof cause him to be committed to prison; and an order for his arrest may be endorsed on the former commitment, or a new warrant therefore may be issued by such Judge or Magistrate, setting forth the cause thereof.

§ 1110. Jumping bail—Penalties

Whoever, having been admitted to bail or released on recognizance, bond, or undertaking for appearance before any Magistrate or Court of the State of Oklahoma, incurs a forfeiture of the bail or violates such undertaking or recognizance and willfully fails to surrender himself within five (5) days following the date of such forfeiture shall, if the bail was given or undertaking or recognizance extended in connection with a charge of a crime or pending appeal or certiorari after conviction of any such offense, be guilty of a crime. Nothing in this section shall be construed to interfere with or prevent the exercise by any Court of its power to punish for contempt.

BAIL BOND PROCEDURE ACT

§ 1115. Short title—Application

Sections 1115 through 1115.5 of this title shall be known and may be cited as the Bail Bond Procedure Act. The provisions of the Bail Bond Procedure Act shall not apply to parking or standing traffic violations.

§ 1115.1. Release on personal recognizance—Arraignment—Plea—Failure to plead or

appear

A. In addition to other provisions of law for posting bail, any person, whether a citizen of this Nation or a noncitizen, who is arrested by a law enforcement officer solely for a crime or offense, which if committed under the laws of the State of Oklahoma would constitute a misdemeanor violation, may be released by the arresting officer upon personal recognizance if:

1. The arrested person has been issued a valid license to operate a motor vehicle by Oklahoma, another state jurisdiction within the United States, which is a participant in the Nonresident Violator Compact or any party jurisdiction of the Nonresident Violator Compact;
2. The arresting officer is satisfied as to the identity of the arrested person;
3. The arrested person signs a written promise to appear as provided for on the citation; and
4. The violation does not constitute:
 - a. a crime which if committed under the laws of the State of Oklahoma would constitute a felony; or
 - b. negligent homicide; or
 - c. driving or being in actual physical control of a motor vehicle while impaired or under the influence of alcohol or other intoxicating substances; or
 - d. eluding or attempting to elude a law enforcement officer; or
 - e. operating a motor vehicle without having been issued a valid driver's license, or while the license is under suspension, revocation, denial or cancellation; or
 - f. an arrest based upon an outstanding warrant; or
 - g. a traffic violation coupled with any offense stated in subparagraphs a through f of this paragraph; or
 - h. a violation relating to the transportation of hazardous materials.

B. If the arrested person is eligible for release on personal recognizance as provided for in subsection (A) of this section, then the arresting officer shall:

1. designate the charge, crime or offense;
2. record information from the arrested person's driver's license on the citation form, including the name, address, date of birth, personal description, type of driver's license, driver's license number, issuing state, and expiration date;

3. record the motor vehicle make, model and tag information;
4. record the arraignment date and time on the citation; and
5. permit the arrested person to sign a written promise to appear as provided for in the citation.

The arresting officer shall then release the person upon personal recognizance based upon the signed promise to appear. The citation shall contain a written notice to the arrested person that release upon personal recognizance based upon a signed written promise to appear for arraignment is conditional and that failure to timely appear for arraignment shall result in the suspension of the arrested person's driver's license in Oklahoma, or in the nonresident's home state pursuant to the Nonresident Violator Compact.

C. The Court, or the Court Clerk as directed by the Court, may continue or reschedule the date and time of arraignment upon request of the arrested person or his attorney. If the arraignment is continued or rescheduled, the arrested person shall remain on personal recognizance and written promise to appear until such arraignment, in the same manner and with the same consequences as if the continued or rescheduled arraignment was entered on the citation by the arresting officer and signed by the defendant. An arraignment may be continued or rescheduled more than one time; provided however, the Court shall require an arraignment to be had within a reasonable time. It shall remain the duty of the defendant to appear for arraignment unless the citation is satisfied as provided for in subsection (D) of this section.

D. A defendant released upon personal recognizance may elect to enter a plea of guilty or nolo contendere to the violation charged at any time before he is required to appear for arraignment by indicating such plea on the copy of the citation furnished to him or on a legible copy thereof, together with the date of the plea and his signature. The defendant shall be responsible for assuring full payment of the fine and costs to the appropriate Court Clerk. Payment of the fine and costs may be made by personal, cashier's, traveler's, certified or guaranteed bank check, postal or commercial money order, or other form of payment approved by the Court in an amount prescribed as bail for the offense. Provided, however, the defendant shall not use currency for payment by mail. If the defendant has entered a plea of guilty or nolo contendere as provided for in this subsection, such plea shall be accepted by the Court and the amount of the fine and costs shall be prescribed by the Court.

E. 1. If, pursuant to the provisions of subsection (D) of this section, the defendant does not timely elect to enter a plea of guilty or nolo contendere and fails to timely appear for arraignment, the Court may issue a warrant for the arrest of the defendant.

2. The Court Clerk shall not process the notification and request provided for in paragraph 1 of this subsection if, with respect to such charges:

- a. the defendant was arraigned, posted bail, paid a fine, was jailed, or otherwise settled the case; or

b. the defendant was not released upon personal recognizance upon a signed written promise to appear as provided for in this section or if released, was not permitted to remain on such personal recognizance for arraignment.

§ 1115.2. Posting bail after release on personal recognizance for traffic violation—Failure to appear—Person ineligible for release on personal recognizance—Juveniles

A. If a person arrested for a crime or offense is released upon personal recognizance as provided for in 22 CNCA § 1115.1, but subsequently posts bail and thereafter fails to timely appear as provided for by law, the Court may issue a warrant for the person's arrest and the case shall be processed as provided for in 22 CNCA § 1108.

B. If the defendant is not eligible for release upon personal recognizance as provided for in 22 CNCA § 1115.1, or if eligible but refuses to sign a written promise to appear, the officer shall deliver the person to an appropriate Magistrate for arraignment and the Magistrate shall proceed as otherwise provided for by law. If no Magistrate is available, the defendant shall be placed in the custody of the appropriate municipal or county jailor or custodian, to be held until a Magistrate is available or bail is posted as provided for in 22 CNCA § 1115.3 act or as otherwise provided for by law or ordinance.

C. 1. In the event the defendant is additionally arrested for any violation for which personal recognizance is authorized pursuant to 22 CNCA § 1115.1, the arresting officer, for such additional violation, may either release the defendant upon such recognizance or require bail as provided for in this subsection;

2. If the defendant is unable to post bail with the arresting officer, then the officer shall proceed as otherwise provided for in this section.

D. 1. Notwithstanding any other provision of law, a juvenile may be held in custody pursuant to the provisions of this section, but shall be incarcerated separately from any adult offender. Provided however, the arresting officer shall not be required to:

a. place a juvenile into custody as provided for in this section; or

b. place any other offender into custody:

i. who is injured, disabled, or otherwise incapacitated; or

ii. if custodial arrest may require impoundment of a vehicle containing livestock, perishable cargo, or items requiring special maintenance or care; or

iii. if extraordinary circumstances exist, which, in the judgment of the arresting officer, custodial arrest should not be made.

In such cases, the arresting officer may designate the date and time for arraignment on the citation

and release the person. If the person fails to appear without good cause shown, the Court may issue a warrant for the person's arrest.

2. The provisions of this subsection shall not be construed to:

a. create any duty on the part of the officer to release a person from custody; or

b. create any duty on the part of the officer to make any inquiry or investigation relating to any condition which may justify release under this subsection; or

c. create any liability upon any officer, or the Nation or any political subdivision thereof, arising from the decision to release or not to release such person from custody pursuant to the provisions of this subsection.

§ 1115.3. Pre-set bail

A. The Court may prescribe prior to initial appearance the amount of bail for the following Nation offenses except for the major crimes found in 18 U.S.C. § 1152, and for the crimes listed in 22 CNCA § 1115.5.

B. The amount of bail for other offenses shall be the amount of fine and costs including any penalty assessments provided for in the Cherokee Nation Code Annotated.

C. The amount of bail for a Nation wildlife-related or water safety-related offense shall be the amount of fine and costs including any penalty assessment provided for in the Cherokee Nation Code Annotated.

D. The District Court Clerk, unless otherwise directed by the Court, shall accept bail or the payment of a fine and costs in the form of currency or personal, cashier's, traveler's, certified or guaranteed bank check, or postal or commercial money order for the amount prescribed in this section for bail.

E. The District Court Clerk shall accept as bail a guaranteed arrest bond certificate issued by a surety company, an automobile club or trucking association, if:

1. the issuer is authorized to do business in the State of Oklahoma by the State Insurance Commissioner;

2. the certificate is issued to and signed by the arrested person;

3. the certificate contains a printed statement that appearance of such person is guaranteed and the issuer, in the event of failure of such person to appear in Court at the time of trial, will pay any fine or forfeiture imposed; and

4. the limit provided on the certificate equals or exceeds the amount of bail provided for in this

section.

§ 1115.4. Dishonored check—Bench warrant and arrest of issuer

A personal check or other instrument tendered to a District Court Clerk for bail or for the payment of fine and costs, if dishonored and returned to said Clerk for any reason other than the lack of proper endorsement, shall constitute nonpayment of bail or fine, as the case may be, and the Court, in addition to any civil or criminal remedy otherwise provided for by law, may issue a bench warrant for the arrest of the person named on the citation to require his appearance on the charge specified.

§ 1115.5. Appearance before Magistrate before bail set in certain cases

Any person accused of or detained for any of the following offenses or conditions shall not be eligible for bail until the offender has been brought before a magistrate of the Cherokee Nation Court. The magistrate may prescribe conditions for release of the offender at such time:

1. A person arrested for an offense involving domestic violence such as strikes, shoves, kicks, or strangulation, or who otherwise touches a person or subjects him or her to physical contact, or is charged with a violation of a protection order, may not be admitted to bail until after an appearance before a Magistrate within thirty-six (36) hours of the arrest. Prior to the release of the person, the Magistrate shall review the facts of the arrest to determine whether the person is a threat to the alleged victim, is a threat to public safety, and is reasonably likely to appear in court.
2. Aggravated driving under the influence of an intoxicating substance, 47 CNCA § 11–902;
3. Any offense prohibited by the Oklahoma, federal and tribal Trafficking in Illegal Drug Acts, 21 CNCA § 2414 et seq.;
4. Any person having a violent felony conviction within the last ten (10) years;
5. Appeal bond;
6. Arson in the first degree, including attempts to commit arson in the first degree, 21 CNCA § 1401;
7. Assault and battery on a police officer, 21 CNCA § 649;
8. Bail jumping in any jurisdiction of the United States;
9. Bribery of a public official, 21 CNCA § 380;
10. Burglary in the first or second degree, 21 CNCA § 1431;
11. Distribution of a controlled dangerous substance, including the sale or possession of a

controlled dangerous substance with intent to distribute or conspiracy to distribute, 21 CNCA § 2101;

12. Driving under the influence of intoxicating substance where property damage or personal injury occurs, 47 CNCA § 11-904;

13. Any person who engages in reckless conduct while possessing any firearm, 21 CNCA § 1289.11;

14. Sex offenses, 21 CNCA § 881 through 21 CNCA § 1111;

15. Kidnapping, 21 CNCA § 741;

16. Manufacture of a controlled dangerous substance, 21 CNCA § 2401;

17. Persons currently on pretrial release or probation or parole by any agency with proper jurisdiction who are arrested on a new offense;

18. Any person who unlawfully possesses, manufactures, sells, uses or delivers any explosive device, foul, poisonous, offensive, or injurious substance according to 21 CNCA § 1767.1;

19. Possession of a controlled dangerous substance on Schedule I or II of the Controlled Dangerous Substances Act, 21 CNCA § 2401;

20. Possession of a firearm or other offensive weapon during the commission of a crime, 21 CNCA § 1287;

21. Possession of a stolen vehicle;

22. Rape in the first degree, including attempts to commit rape in the first degree, 21 CNCA § 1111;

25. Rape in the second degree, including attempts to commit rape in the second degree, 21 CNCA § 1111;

26. Robbery by force or fear, 21 CNCA § 792;

27. Robbery with a firearm or dangerous weapon, including attempts to commit robbery with a firearm or dangerous weapon, 21 CNCA § 801;

28. Sexual assault or violent offenses against children, 21 CNCA § 852.1;

29. Shooting with intent to kill, 21 CNCA § 652;

30. Stalking or violation of a protective order from any court with proper jurisdiction;

31. Any person having two or more prior felony convictions.

**§ 1115.6. Consideration of certain victims' safety prior to release of defendant on bond—
Emergency protective, restraining orders and condition of release**

A. The Court shall make findings on the record while considering the safety of any and all alleged victims of domestic violence and considers, acts including but not limited to, stalking, harassment, sexual assault, or forcible sodomy where the defendant is alleged to have violated a protective order, committed domestic assault and battery, stalked, sexually assaulted, or forcibly sodomized the alleged victim or victims prior to the release of the alleged defendant from custody on bond. The Court after consideration and to ensure the safety of the alleged victim or victims, may issue an emergency protective order. The Court may also issue to the alleged victim or victims, an order restraining the alleged defendant from any activity or action from which they may be restrained. The protective order shall remain in effect until either a plea has been accepted, sentencing has occurred in the case, the case has been dismissed, or until further order of the Court dismissing the protective order.

B. The conditions of release may include, but need not be limited to, enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim, prohibiting the person from telephoning, contacting, or otherwise communicating with the alleged victim with the intent to harass, either directly or indirectly; ordering the person to stay away from the home of the alleged victim, when the person and alleged victim are not residents of the same home, and ordering the person to stay away from any other location where the alleged victim is likely to be; prohibiting the person from possessing a firearm or other weapon specified by the court, except when such weapon is necessary for employment as a peace officer or military personnel; and issuing any other or modification of orders above required to protect the safety of the alleged victim or to ensure the appearance of the person in court.

C. If conditions of release are imposed, the Magistrate shall issue a written order for conditional release, immediately distribute a copy of the order to the law enforcement agency having custody and the arrested or charged person, place information pertaining to the order in the domestic violence protection order registry, and provided the law enforcement agency with any available information concerning the location of the alleged victim in a manner that protects the safety of the victim.

CHAPTER 20

FUGITIVES FROM JUSTICE

§ 1141. Extradition

Cherokee Nation hereby affirmatively surrenders any person charged with a crime or offense in another jurisdiction, regardless of their status as Indian, who may be found in Indian Country subject to the jurisdiction of Cherokee Nation. Cherokee Nation consents to duly appointed law

enforcement officers of the State of Oklahoma or its political subdivisions to enter in Indian Country to execute criminal warrants of the State of Oklahoma or its political subdivisions or Governor Warrants from other states or jurisdictions who have adopted the Uniform Criminal Extradition Act, 22 O.S. § 1141.1 et seq.

CHAPTER 21

HABEAS CORPUS

§ 1151. Habeas corpus for person to testify or be surrendered on bail

The Supreme Court and District Courts within this Nation, or the Judges thereof in vacation, shall have power to issue writs of habeas corpus, for the purpose of bringing the body of any person confined in any penal institution before them, to testify or be surrendered in discharge of bail. When a writ of habeas corpus shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness, shall be confined in any prison in this Nation, in which such principal or witness is required to be surrendered, in this Nation, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid, shall by the officer executing such writ, be returned by virtue of an order of the Court, for the purpose aforesaid, an attested copy of which, lodged with the custodian, shall exonerate such prison keeper from being liable for an escape. The party praying out such writ of habeas corpus shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the Courts respectively.

CHAPTER 22

INSANITY OF ACCUSED

DETERMINATION OF COMPETENCY—PROCEDURE

§ 1161. Acts of insane person not punishable—Acquittal on ground of insanity—Discharge procedure

An act committed by a person in a state of insanity cannot be punished as a public offense, nor can said person be tried, sentenced to punishment, or punished for a public offense while he is insane. When in any criminal action by indictment or information the defense of insanity is interposed either singly or in conjunction with some other defense, the jury shall state in the verdict, if it is one of acquittal, whether or not the defendant is acquitted on the ground of insanity. When the defendant is acquitted on the ground that he was insane at the time of the commission of the crime charged, said person shall not be discharged from custody until the Court has made a determination that said person is not presently mentally ill and dangerous to the public peace or safety.

To assist the Court in its determination, the Court shall immediately issue an examination order and specify the hospital for the mentally ill in which the said person is to be hospitalized. Upon the

issuance of the order, the Marshal or Sheriff shall deliver the said person to the designated hospital for the mentally ill where the said person shall remain hospitalized for a period of not less than thirty (30) days. Within forty-five (45) days of said hospitalization, a hearing shall be conducted by the Court to ascertain whether the said person is presently mentally ill and dangerous to the public peace or safety. During the required period of hospitalization the Oklahoma Department of Mental Health or the hospital shall have the said person examined by two qualified psychiatrists or one such psychiatrist and one qualified clinical psychologist. Each examiner shall individually prepare and submit to the Court, the Prosecuting Attorney and Trial Counsel a report of his findings and an evaluation concerning whether the said person is presently mentally ill and dangerous to the public peace and safety. If the Court is unsatisfied with the psychiatric reports or if a disagreement on the issue of present mental illness and dangerousness exists between the two examiners, the Court may designate one or more additional psychiatrists and have them submit their findings and evaluations as specified above.

Within ten (10) days after the psychiatric reports are filed, the Court must conduct a hearing to determine the said person's present condition as to the issue of whether he is presently mentally ill and dangerous to the public peace or safety. The Prosecuting Attorney must establish by a preponderance of the evidence that the defendant is presently mentally ill and dangerous to the public peace or safety. At this hearing the said person shall have the assistance of counsel and may present independent evidence as to the issue of whether he is presently mentally ill and dangerous to the public peace or safety. If the Court finds that the said person is not presently mentally ill and dangerous to the public peace or safety, it shall immediately discharge the said person from hospitalization. If the Court finds that the said person is presently mentally ill and dangerous to the public peace or safety, it shall commit the said person to the custody of Cherokee Nation or the Oklahoma Department of Mental Health. The said person shall then be subject to discharge pursuant to the procedure set forth in the Oklahoma Mental Health Law, 43A O.S. § 1–101 et seq.

During the period of hospitalization Cherokee Nation or the Oklahoma Department of Mental Health may administer or cause to be administered to the said person such psychiatric, medical or other therapeutic treatment as in its judgment should be administered.

During the period of hospitalization the Superintendent shall submit an annual report on the status of the said person to the Court, the Prosecuting Attorney and the patient's advocate of the hospital in which the said person is hospitalized. Not less than twenty (20) days prior to the scheduled release of the said person the Superintendent of the hospital for the mentally ill must deliver a written notice of the proposed discharge to the Court, the Prosecuting Attorney and the patient's advocate of the said hospital. Upon motion by the Prosecuting Attorney a second hearing shall be conducted by the Court to ascertain if the said person is mentally ill and dangerous to the public peace or safety. This hearing shall be conducted under the same procedure as the first hearing and must occur not less than ten (10) days before the scheduled release. If the Court determines that the said person continues to be mentally ill and dangerous to the public peace or safety, it shall return the said person to the hospital for additional treatment. Additional hearings may be conducted upon motion by the Prosecuting Attorney under the same provisions as described in this section.

§ 1162. Jury to try sanity

When an information is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt arise as to the sanity of the defendant, the Court must order a jury to be impaneled from the jurors summoned and returned for the term, or who may be summoned by direction of the Court, to inquire into the fact.

§ 1163. Sanity hearing—Criminal trial to be suspended

The trial of the cause or the pronouncing the judgment, as the case may be, must be suspended until the question of insanity is determined by the verdict of the jury.

§ 1164. Order of trial of sanity

The trial of the question of insanity must proceed in the following order:

1. The Counsel for the defendant must open the case and offer evidence in support of the allegation of insanity;
2. The Counsel for the Nation may then open their case and offer evidence in support thereof;
3. The parties may then respectively offer rebutting testimony only, unless the Court, for good reason, in furtherance of justice permit them to offer evidence upon their original case;
4. When the evidence is concluded, unless the case be submitted to the jury on either side or on both sides, without argument, the Counsel for the Nation must commence, and the defendant or his Counsel may conclude the argument to the jury;
5. The Court must then charge the jury before argument as in other cases.

§ 1165. Rules governing sanity trial

The provisions of the chapter on trials, in respect to the duty of the Court upon questions of law, and of the jury upon questions of fact, and the provisions in respect to the charge of the Court to the jury, upon the trial of an information, apply to the questions of insanity.

§ 1166. Sanity hearing—Trial or judgment to proceed if defendant sane

If the jury find the defendant sane, the trial of the information must proceed, or judgment may be pronounced as the case may be.

§ 1167. Finding of insanity—Suspension of trial or judgment—Commitment to Nation hospital

If the jury finds the defendant presently insane, the trial or judgment must be suspended until he becomes sane, and if the jury deem his discharge dangerous to the public peace or safety, the Court

shall order that the defendant be committed to one of the hospitals for the mentally ill, and to be held therein and kept as a patient and inmate until he be discharged and released as presently sane by the authority of the Superintendent of said hospital. A release by the Superintendent of said hospital shall be to the custody of the Marshal or Sheriff of the jurisdiction which the criminal case theretofore suspended is or was pending and from which he was committed. The Court having jurisdiction thereof shall set the cause for trial.

§ 1168. Commitment in sanity hearing exonerates bail

The commitment of the defendant as mentioned in the last section, exonerates his bail, or entitles the person authorized to receive the property of the defendant to the return of money he may have deposited instead of bail.

§ 1169. Restoration to sanity

When the defendant becomes sane the Marshal or Sheriff must thereupon, without delay, place him in the proper custody until he be brought to trial or judgment, as the case may be, or be legally discharged.

DETERMINATION OF COMPETENCY—PROCEDURE

§ 1175.1. Definitions

As used in this act:

1. "**Competent**" or "**competency**" means the present ability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him, and is able to effectively and rationally assist in his defense. A person may be incompetent due to physical disability;
2. "**Criminal proceeding**" means every stage of a criminal prosecution after arrest and before judgment, including, but not limited to, interrogation, line up, preliminary hearing, motion dockets, discovery, pretrial hearings and trial;
3. "**Doctor**" means any physician, psychiatrist, psychologist or equivalent expert;
4. "**Incompetent**" or "**incompetency**" means any person who is not presently competent;
5. "**Physical disability**" means deafness, muteness, blindness or some combination thereof.

§ 1175.2. Application for determination of competency—Service—Notice—Suspension of criminal proceedings

A. No person shall be subject to any criminal procedures after he is determined to be incompetent except as provided in 22 CNCA §§ 1175.1 through 1175.8. The question of the incompetency of a

person may be raised by the person, the Defense Attorney, or the Prosecuting Attorney, by an application for determination of competency. The application for determination of competency shall allege that the person is incompetent to undergo further proceedings, and shall state facts sufficient to raise a doubt as to the competency of the person. The Court, at any time, may initiate a competency determination on its own motion, without an application, if the Court has a doubt as to the competency of the person.

If the Court so initiates such an application, it may appoint the Prosecuting Attorney for the purpose of proceeding with the application. If the Prosecuting Attorney opposes the application of the Court, and by reason of a conflict of interest could not represent the Court as applicant, then the Court shall appoint private Counsel. Said private Counsel shall be reasonably compensated by the Court Fund.

B. A copy of the application for determination of competency and a notice, as hereinafter described, shall be served personally at least one (1) day before the first hearing on the application for a competency determination. The notice shall contain the following information:

1. The definition provided by 22 CNCA § 1175.1 of competency and incompetency;
2. That, upon request, the hearing on the application may be conducted as a jury trial as provided in 22 CNCA § 1175.4;
3. That the petitioner and any witnesses identified in the application may offer testimony under oath at the hearings on the petition and that the defendant may not be called to testify against his will, unless the application is initiated by the defendant;
4. That if the person whose competency is in question does not have an attorney, the Court will appoint an attorney for the person who shall represent him until final disposition of the case;
5. That if the person whose competency is in question is indigent or poor, the Court will pay the attorney fees; and
6. That the person whose competency is in question shall be afforded such other rights as are guaranteed by Nation and federal law and that such rights include a trial by jury, if demanded. The notice shall be served upon the person whose competency is in question, upon his father, mother, husband, or wife or, in their absence, someone of the next of kin, of full age, if any said persons are known to be residing within the county, and upon any of said relatives residing outside of the county, and within the state, as may be ordered by the Court, and also upon the person with whom the person whose competency is in question may reside, or at whose house he may be. The person making such service shall make affidavit of the same and file such notice, with proof of service, with the District Court. This notice may be served in any part of this Nation.

C. Any criminal proceedings against a person whose competency is in question shall be suspended pending the determination of the competency of the person.

§ 1175.3. Hearing—Date—Evidence—Orders—Examination of accused—Instructions to physician

A. Upon filing of an application for determination of competency, the Court shall set a hearing date, which shall be as soon as practicable, but at least one (1) day after service of notice as provided by 22 CNCA § 1175.2.

B. The Court shall hold a hearing on the date provided. At the hearing, the Court shall examine the application for determination of competency to determine if it alleges facts sufficient to raise a doubt as to the competency of the person. Any additional evidence tending to create a doubt as to the competency of the person may be presented at this hearing.

C. If the Court finds there is no doubt as to the competency of the person, it shall order the criminal proceedings to resume.

D. If the Court finds there is a doubt as to the competency of the person, it shall order the person to be examined by doctors or appropriate technicians. The doctors or technicians shall be practitioners in the appropriate branch of medicine relevant to the alleged incompetency of the person. The person may be examined on an outpatient or inpatient basis, as ordered by the Court. The Court may commit the person to the custody of Cherokee Nation or the Oklahoma Department of Mental Health and Substance Abuse Services or any other state agency or private facility for the examination provided by this act. The person shall be required to undergo examination for a period of time sufficient for the doctor or doctors or technicians to reach a conclusion as to competency, and the Court shall impose a reasonable time limitation for such period of examination. If the Court determines that the person whose competency is in question may be a threat to the safety of himself or others, it shall order the person retained in a secure facility until the completion of the competency hearing provided in 22 CNCA § 1175.4.

E. The doctor or doctors shall receive instructions that they shall examine the patient to determine:

1. Is this person able to appreciate the nature of the charges against him?
2. Is this person able to consult with his lawyer and rationally assist in the preparation of his defense?
3. If the answer to question 1 or 2 is no, can the person attain competency within a reasonable time if provided with a course of treatment, therapy or training?
4. Is the person a mentally ill person or a person requiring treatment as defined by 43A O.S. § 1–103?
5. If the person were released without treatment, therapy or training, would he probably pose a significant threat to the life or safety of himself or others?

§ 1175.4. Post-examination competency hearing—Evidence—Presumptions—Jury trial—

Presence of accused—Witnesses—Instructions

A. After the doctor, doctors or technicians have made the determination required in 22 CNCA § 1175.3, a hearing on the competency of the person shall be held.

B. The Court, at the hearing on the application, shall determine, by clear and convincing evidence, if the person is incompetent. The person shall be presumed to be competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence. If the Court deems it necessary, or if the person alleged to be a person requiring treatment, or any relative, friend, or any person with whom he may reside, or at whose house he may be, shall so demand, the court shall schedule the hearing on the application as a jury trial to be held within seventy-two (72) hours of the request, excluding weekends and legal holidays, or within as much additional time as is requested by the attorney of the person whose competency is in question, upon good cause shown. The jury shall be composed of six (6) persons having the qualifications required of jurors in courts of record, summoned to determine the questions of the person's competency and need for treatment. Whenever a jury is required, the Court shall proceed to the selection of such jury in the manner as provided by law and such jury shall determine the questions of the competency and need for treatment of the person whose competency is in question. The jurors shall receive fees for attendance and mileage as are allowed by law.

C. The person whose competency is in question shall have the right to be present at the hearing on the petition unless it is made to appear to the Court that the presence of the person makes it impossible to conduct the hearing in a reasonable manner. The Court may not decide in advance of the hearing, solely on the basis of the certificate of the examining doctor or doctors, that the person whose competency is in question should not be allowed to appear. It shall be made to appear to the Court based on clear and convincing evidence that alternatives to exclusion were attempted before the Court renders his removal for that purpose or his appearance at such hearing improper and unsafe.

D. All witnesses shall be subject to cross-examination in the same manner as is provided by law. No statement, admission or confession made by the person whose competency is in question obtained during his examination for competency may be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time, directly, indirectly or in any manner or form, except that if such person is found to be competent at the time of his examination hearing, any such statement made by him may be used for purposes of impeachment.

E. If the question of competency is submitted to a jury, the Court shall instruct the jury as to the law regarding competency, and the findings they are to make. If the trial of the question is to the Court, the Court shall make the required findings.

§ 1175.5. Questions to be answered in determining competency

The jury or the Court, as the case may be, shall answer the following questions in determining the

disposition of the person whose competency is in question:

1. Is the person incompetent to undergo further criminal proceedings at this time? If the answer is no, criminal proceedings shall be resumed. If the answer is yes, the following question shall be answered.
2. Can the incompetency of the person be corrected within a reasonable period of time, as defined by the Court, by treatment, therapy or training? If the answer is yes, the Court shall make the appropriate order. If the answer is no, the following questions shall be answered.
3. Is the person mentally ill, mentally retarded or a person requiring treatment as defined by 43A O.S. § 1-103?
4. Is the person a threat to the safety of himself or others if released?

§ 1175.6. Disposition orders

A. Upon the finding by the jury or the Court as provided by 22 CNCA § 1175.5, the court shall issue the appropriate order regarding the person:

1. If the person is found to be competent, the criminal proceedings shall be resumed;
2. If the person is found to be incompetent, but capable of achieving competence with treatment, therapy, or training, the Court shall remand the person to Cherokee Nation, the Oklahoma Department of Mental Health and Substance Abuse Services, the Oklahoma Department of Human Services, other appropriate state agencies or a private care provider for appropriate treatment, therapy, or training;
3. If the person is found to be incompetent and not capable of achieving competency within a reasonable period of time, and a person requiring treatment as defined by 43A O.S., then the Court shall order treatment as if there had been a finding pursuant to 43A O.S. that the defendant was a mentally ill person requiring treatment, without any further proceedings, and shall suspend the criminal proceeding. Cherokee Nation, the Department of Mental Health and Substance Abuse Services or other agency providing treatment to the person or the institution wherein the person is confined or treated shall make periodic reports to the Court as to the competency of the defendant. If the agency or institution reports that the person appears to have achieved competency, the Court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding shall be resumed; and
4. If the person is found to be incompetent, and not capable of achieving competency within a reasonable period of time, but is not a person requiring treatment as defined by 43A O.S. and is not a threat to himself or society, the Court shall remand the person to Cherokee Nation or the Oklahoma Department of Human Services for assistance, subject to assistance from any other appropriate state agencies and shall suspend the criminal proceedings. Cherokee Nation or the Oklahoma Department of Human Services shall make periodic reports to the Court as to the status

and activities of the person. If Cherokee Nation or the Oklahoma Department of Human Services reports that the person appears to have achieved competency, the Court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding shall be resumed.

B. Any person arrested and charged with a violent criminal offense, who is found to be incompetent by the Court and ordered into the custody of Cherokee Nation or the Oklahoma Department of Mental Health and Substance Abuse Services pursuant to paragraphs 2 or 3 of subsection (A) of this section, shall be placed in a maximum security ward of the mental health facility designated by Cherokee Nation or the Oklahoma Department of Mental Health and Substance Abuse Services until such time as said person is adjudicated to be competent or is adjudicated no longer determined to be a threat to any other person.

§ 1175.7. Persons incompetent but capable of achieving competency within reasonable time—Treatment order—Medical supervisor—Commitment—Private treatment

A. If the person is found incompetent, but capable of achieving competency within a reasonable period of time, as defined by the Court, the Court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

B. The Court shall appoint a medical supervisor for a course of treatment. The medical supervisor of treatment may be any person or agency that agrees to supervise the course of treatment. The proposed treatment may be either inpatient or outpatient care depending on the facilities and resources available to the Court and the type of disability sought to be corrected by the Court's order. The Court may require the supervisor to provide periodic progress reports to the Court and may pay for the services of the medical supervisor from Court funds.

C. The Court may commit the incompetent person to the custody of the Department of Mental Health or other appropriate nation agency, if the Court, after the hearing provided in 22 CNCA § 1175.4, determines that such commitment is necessary for the effective administration of the treatment ordered, or if the Court determines that the defendant is dangerous to himself or society.

D. The Court may allow the person to receive treatment from private facilities if such facilities are willing, and neither the Nation nor the Court Fund is required to directly pay for such care.

§ 1175.8. Resumption of competency

If the medical supervisor reports that the person appears to have achieved competency after a finding of incompetency, the Court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceedings shall be resumed.

§ 1176. Raising issue of mental illness or insanity at time of offense

A. If the defendant intends to raise the question of mental illness or insanity at the time of the

offense, the defendant shall file an application with the Court at least twenty (20) days before trial. The procedure to be followed for review of such an application will be the same as provided in 22 CNCA § 1175.3.

B. If the Court finds that the defendant's sanity at the time of the offense is to be a significant factor in his defense at trial and that the defendant is financially unable to obtain the services of a psychiatrist, the Court shall provide the defendant with access to a psychiatrist by authorizing Counsel to obtain the services of a psychiatrist to conduct an appropriate examination and assist in evaluation, preparation and presentation of the defense. Compensation for such services shall be paid from the Nation Judicial Fund as provided in 22 CNCA § 464(B).

CHAPTER 24

SEARCHES AND SEIZURES

GENERAL PROVISIONS

LIQUORS AND GAMBLING PARAPHERNALIA

GENERAL PROVISIONS

§ 1221. Search warrant defined

A search warrant is an order in writing, in the name of the Nation, signed by a Magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the Magistrate.

§ 1222. Grounds for issuance of search warrant—Seizure of property

A search warrant may be issued and property seized upon any of the following grounds:

First: When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

Second: When it was used as the means of committing a crime, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be.

Third: When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered, in which case it may be taken on the warrant from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

Fourth: When the property constitutes evidence that an offense was committed or that a particular person participated in the commission of an offense.

§ 1223. Probable cause must be shown

A search warrant shall not be issued except upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

§ 1223.1. Electronically recorded oral statement—Transcription

A Magistrate may take an oral statement under oath which shall at that time be recorded electronically and thereafter transcribed by an official Court Reporter. The original recording and transcription thereof shall become a part of and kept with the official records of the case. The transcribed statement shall be deemed to be an affidavit for the purposes of this section and 22 CNCA § 1223.

In such cases, the Magistrate and the official Court Reporter shall sign the transcription of the recording of the sworn statement. Thereafter, the transcript shall be filed with the Clerk of the District Court along with the original recording.

§ 1224.1. Oral testimony supplemental to affidavit

Before issuing a search warrant the Judge may take oral testimony, sworn to under oath, supplemental to any affidavits. Provided, however, that such oral testimony shall be recorded, such record transcribed forthwith, and filed with the affidavits to support the search warrant.

§ 1224.2. Filing and indexing of documents

In the event the search warrant is executed, then the search warrant, affidavit for search warrant, and transcript of oral testimony, if any, shall be filed with the Clerk of the District Court, and shall be indexed by the Clerk in alphabetical order. Upon a criminal prosecution being filed, said document shall be filed in said case.

§ 1225. Requisites of search warrant—Issuing Magistrate

A. If a Magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, with his name of office, to a peace officer of this Nation or cross-deputized state law enforcement officer, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the Magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law.

B. The Magistrate may orally authorize a peace officer to sign the name of the Magistrate on a copy made to conform with the original warrant if the peace officer applying for the warrant is not

in the actual physical presence of the Magistrate. Such copy shall be deemed to be a search warrant for the purposes of this act and it shall be returned to the Magistrate as provided for in 22 CNCA § 1233. In such cases, the Magistrate shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant and the copy made to conform with the original warrant with the Clerk of the District Court as provided for in 22 CNCA § 1224.2.

C. A search warrant authorized by this section may be issued by any Magistrate for a search of a person or property within the judicial district in which the Magistrate presides or outside the judicial district if there was probable cause to believe the property was within the judicial district when the warrant was sought, but moved outside the judicial district before the warrant was executed.

§ 1226. Form of search warrant

The warrant must be in substantially the following form:

In the District Court of Cherokee Nation

In the name of Cherokee Nation. To any peace officer of this Nation or duly cross-deputized state law enforcement officer.

Probable cause having been shown on this date before me, by (name every officer and person who has made affidavit or given oral testimony supplementing an affidavit) for believing the following property (describe the property) is located at (specify the location where the property is shown to be).

You are therefore commanded, in the daytime (or "at any time of the day or night,") as the case may be, according to 22 CNCA § 1230, as amended, to make immediate search on the person of C.D. (or "in the house situated," describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity), and if you find the same, or any part thereof to bring it forthwith before me, at (stating the place) or before a Magistrate who presides in the judicial district in which the property was found and seized.

Dated at ____ the ____ day of ____, 20 ____.

(Signature of Judge)

(Judge's Official Designation)

§ 1227. Service of search warrant

A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer, on his requiring it, he being present, and acting in its execution.

§ 1228. Execution of search warrant

A peace officer may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant when:

1. The officer has been refused admittance after having first given notice of his authority and purpose; or
2. Pursuant to an instruction inserted in the search warrant by the Magistrate that no warning or other notice of entry is necessary because there is probable cause to believe that such warning or other notice would pose a significant danger to human life.

§ 1229. Execution of search warrant—Liberating person detained

He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

§ 1230. Search warrant may be served, when

Search warrants shall be served during the hours of six o'clock a.m. to ten o'clock p.m., inclusive, unless the affidavits be positive that the property is on the person, or in the place to be searched and the Judge finds that there is likelihood that the property named in the search warrant will be destroyed, moved or concealed. In which case the Judge may insert a direction that it be served at any time of the day or night.

§ 1231. Search warrant void after ten days

A search warrant must be executed and returned to the Magistrate by whom it is issued within ten (10) days. After the expiration of these times respectively, the warrant, unless executed, is void.

§ 1232. Disposition of property recovered

When the property is delivered to the Magistrate, he must, if it was stolen or embezzled, deliver it to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the Magistrate. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of 22 CNCA § 1222, he must retain it in his possession, subject to the order of the Court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken,

is triable.

§ 1233. Return of search warrant

Any peace officer who executes a search warrant must forthwith return the warrant to the Magistrate who authorized the warrant or to a Magistrate who presides in the judicial district in which the property was found and seized together with a written inventory of the property taken, which shall be made publicly, or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the Magistrate, to the following effect:

I, A.B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

§ 1234. Inventory to be furnished, when

The Magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

§ 1235. Hearing on issuance of warrant

If the grounds on which the warrant was issued be controverted, the Magistrate must proceed to take testimony in relation thereto.

§ 1236. Testimony on hearing for warrant

The testimony given by each witness must be reduced to writing and authenticated.

§ 1237. Restoration of property to person searched

If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the Magistrate must cause it to be restored to the person from whom it was taken.

§ 1238. Papers returned to District Court

The Magistrate must annex together the depositions, the search warrant and return, and the inventory, and then return them to the District Court.

§ 1239. Procuring search warrant without cause

A person who maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a crime.

§ 1240. Officer exceeding his authority

A peace officer in executing a search warrant, who willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a crime.

§ 1241. Search of defendant for weapons or evidence

When a person charged with a crime is supposed by the Magistrate before whom he is brought to have upon his person a dangerous weapon or anything which may be used as evidence of the commission of the offense, the Magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the Court in which the defendant may be tried.

LIQUORS AND GAMBLING PARAPHERNALIA

§ 1261. Seized property—Report and disposition

In all cases where contraband mentioned in laws of this Nation or any personal property used for the purpose of violating any of the prohibitory liquor laws or gambling laws of this Nation, shall be seized by any officer or person with or without a search warrant, such officer or person is hereby required within five (5) days to make a written report under oath and file the same with the Court Clerk, which report shall in detail state the name of the officer or person making the seizure, the place where seized and an inventory of the property, articles or intoxicating liquors so taken into possession, and within said five (5) days said person is hereby required to deliver the same to the Sheriff of the county and take the Sheriff's receipt therefore, in duplicate and such sheriff shall retain the same and all thereof, until the same shall be destroyed pursuant to the orders of the Court. In computing the time, five (5) days, Sundays and holidays shall be excluded and not counted. A duplicate copy of said receipt shall immediately be filed with said Court Clerk, who shall keep a record of same, provided the Marshal or Sheriff and his Deputies shall be required to make the affidavit and issue the receipt and otherwise comply with the provisions of this act. Provided, that all liquors so seized shall be preserved for use as evidence in the trial of any action growing out of such seizure and all officers seizing any such liquors are hereby required to mark the bottles or containers for identification by writing thereon the date of the seizure and the name of the person from whom seized. The Marshal or Sheriff shall be liable on his bond for the safekeeping of all such property so turned over to him under the provisions of this act.

CHAPTER 25

MISCELLANEOUS PROVISIONS

IN GENERAL

CRIMINAL PROCEEDINGS AGAINST CORPORATIONS

STOLEN PROPERTY AND PROPERTY TAKEN FROM DEFENDANT

REWARDS

SHOPLIFTING

IN GENERAL

§ 1271. Compensation of Counsel assigned defendant

In all criminal cases triable in Cherokee Nation, where it is satisfactorily shown to the Court that the defendant has no means and is unable to employ Counsel, the Court shall, in all such cases, where Counsel is appointed and assigned for defense, allow and direct to be paid by the Nation in which such trial is had, out of the Court Fund of said Nation, a reasonable and just compensation to the attorney or attorneys so assigned for such services as they may render, such compensation being allowable in any court of record. The attorney shall not be paid a sum to exceed Five Hundred Dollars (\$500.00) in any one case, the specific amount to be left to the discretion of the Presiding Judge. In any Court in which a Public Defender is regularly employed, the Court shall appoint such Public Defender to act as counsel for the defendant. If two or more indigent defendants are charged conjointly, and the Public Defender cannot justly defend both, the Court may appoint and compensate Counsel as provided above.

§ 1272. Affidavits or depositions need not be entitled

It is not necessary to entitle an affidavit, or deposition in the action, whether taken before or after indictment; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceedings, in which it is made.

§ 1273. Informalities or errors not fatal if not prejudicial

Neither a departure from the form or mode prescribed in this chapter in respect to any pleadings or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant or tended to his prejudice, in respect to a substantial right.

§ 1275. Clerk to keep record of indictments, informations and bonds

The Clerk of the District Court shall keep a record in which all informations and bonds shall be entered and certified as true and correct copies of all original informations and bonds filed in his office, and whenever any such original indictment, information or bond filed with the clerk becomes either lost, destroyed or stolen, or for any other reason cannot be produced at the trial, a certified copy of the aforesaid record of such original information or bond shall be competent evidence and shall have the same validity and effect as the original thereof.

§ 1276. Record of informations and bonds not public

The record provided for in the preceding section shall be kept by the Clerk as a private record and

to be made public only in case the original information or bond becomes lost, stolen or cannot be found.

§ 1278. Interpreters for deaf mutes—Appointment—Oath—Compensation

A. In all criminal prosecutions, where the accused is a deaf mute, he shall have all of the proceedings of the trial interpreted to him in a language that he can understand by a qualified interpreter appointed by the Court from a list of names submitted by the Oklahoma Association of the Deaf.

B. In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is a deaf mute, all of the court proceedings, pertaining to him, shall be interpreted to him in a language that he understands by a qualified interpreter appointed by the Court.

C. Interpreters who shall be appointed under the terms of this act shall be required to take an oath that they will make a true interpretation to the person accused or being examined, which person is a deaf mute, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf mute's answers to questions to Council, Court, or jury, in the English language, in his best skill and judgment.

D. Interpreters appointed under the terms of this act shall be paid for their services a sum to be determined by the Court.

CRIMINAL PROCEEDINGS AGAINST CORPORATIONS

§ 1301. Information against corporation—Summons

Upon an information against a corporation, the Magistrate may issue a summons signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place to answer the charge; the time to be not less than ten (10) days after the issuing of the summons.

§ 1302. Form of summons

The summons must be in substantially the following form:

IN THE DISTRICT COURT OF CHEROKEE NATION

To the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer to the charge made against you, upon the information of A. B., for (designating the offense generally.)

Dated at the city, or town, of, the day of 20

G H

Judge of District Court (as the case may be.)

§ 1303. Service of summons

The summons must be served at least five (5) days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier or managing agent thereof.

§ 1307. Appearance and plea by corporation

If an information be filed, the corporation may appear by counsel to answer the same. If they do not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

§ 1308. Conviction of corporation—Fine collected, how

When a fine is imposed upon a corporation, on conviction it may be collected, by virtue of the order imposing it, by the Marshal, out of their real and personal property, in the same manner as upon an execution.

STOLEN PROPERTY AND PROPERTY TAKEN FROM DEFENDANT

§ 1321. Custody and return of stolen or embezzled property

A. It is the intent of the Council that any stolen or embezzled money or property held in custody of the Nation, state or subdivision in any criminal action or proceeding be returned to its lawful owner without unnecessary delay.

B. If the property coming into the custody of a Nation, state, municipal, county or state peace officer is not alleged to have been stolen or embezzled, the peace officer may return such property to the owner upon satisfactory proof of ownership. The notice and hearing provisions of this section shall not be required for return of the property specified in this section if there is no dispute concerning the ownership of such property, except that within fifteen (15) days of the time the owner of such property is known, the peace officer shall notify the owner of such property that the property is in the custody of the peace officer. The property shall be returned to the owner upon request.

C. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he shall hold it subject to the order of the Magistrate authorized by 22 CNCA § 1322 to direct the disposal thereof. Within fifteen (15) days of the time the owner of such property is known, the peace officer shall notify the owner of such property that the property is in the custody

of the peace officer. Such officer may provide a copy of a nonownership affidavit to the defendant to sign if such defendant is not claiming ownership of the money or property taken from the defendant and if such defendant has relinquished his right to remain silent. Such affidavit is not admissible in any proceeding to ascertain the guilt or innocence of the defendant. A copy of this affidavit shall be provided to the defendant and a copy shall be filed by the officer with the Court Clerk. Upon request, a copy of this affidavit shall be provided to any person claiming ownership of such money or property. The owner of the property or designated representative of the owner may make application to the Magistrate for the return of the property. The application shall be on a form provided by the Administrative Director of the Courts and made available through the Court Clerk. The Court may charge the applicant a reasonable fee to defray the cost of filing and docketing the application. Once application has been made and notice provided, the magistrate shall docket said application for a hearing as provided in this section. Where notice by publication is appropriate, the publication notice form shall be provided free of charge to the applicant by the Administrative Director of the Courts through the Court Clerk with instructions on how to obtain effective publication notice. The applicant shall notify the last person in possession of such property prior to such property being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to such property. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published.

D. If the Magistrate determines that the property is needed as evidence the Magistrate shall determine ownership and determine the procedure and time frame for future release. The Magistrate may order the release of property needed as evidence pursuant to 22 CNCA § 1327, provided however, the order may require the owner to present such property at trial. The property shall be made available to the owner within ten (10) days of the court order for release. The Magistrate may authorize ten (10) days additional time for the return of such exhibit if the Prosecuting Attorney shows cause that additional time is needed to photograph or mark such exhibit.

E. If the property is not needed as evidence, it may be released by the Magistrate to the owner or designated representative of the owner upon satisfactory proof of ownership. The owner of the property or designated representative of the owner may make application to the magistrate for the return of the property. The applicant shall notify the last person in possession of such property prior to such property being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a nonownership affidavit pursuant to this section disclaiming any ownership rights to such property. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting

Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published.

F. When property alleged to have been stolen comes into the custody of a peace officer and such property is deemed to be perishable said peace officer shall take such action as he deems appropriate to temporarily preserve the property. Provided, however, within seventy-two (72) hours of the time the property was recovered, the receiving agency shall make application for a disposition hearing before a Magistrate and the receiving agency shall notify all persons known to have an interest in the property of the date, time and place of such hearing.

G. In any case, the Magistrate may, for good cause shown, order any evidence or exhibit to be retained pending the outcome of any appeal.

§ 1322. Stolen property—Magistrate to order delivery, when

On satisfactory proof of title to the property, the Magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the Magistrate. The order entitles the owner to demand and receive the property. Such property shall be made available to the owner within ten (10) days of the issuance of the order. The Court, however, may keep the property as evidence or on the issuance of an order, require the owner to present such property at trial.

§ 1323. Magistrate to deliver stolen property, when

If the property stolen or embezzled comes into the custody of a Magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the Magistrate.

§ 1324. Trial Court may deliver stolen property

If property stolen or embezzled has not been delivered to the owner, the Court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

§ 1325. Unclaimed property or money in Sheriff's possession—Disposition—Procedure

A. The Marshal is authorized to sell personal property which has come into his possession, or deposit with Cherokee Nation, as hereafter provided, all money or legal tender of the United States which has come into his possession, whether said property or money be stolen, embezzled, lost, abandoned or otherwise, the owner of said property or money being unknown or not having claimed the same, and which the Marshal or Sheriff has held for at least six (6) months, and such property or money, or any part thereof, being no longer needed to be held as evidence or otherwise used in connection with any litigation.

B. The Marshal or Sheriff shall file an application in the District Court requesting the authority of said Court to conduct a sale of such personal property, and shall attach to his application a list describing such property, including all identifying numbers and marks, if any, the date said property came into his possession and the name of the owner and his address, if known. The Court shall set said application for hearing not less than ten (10) days nor more than twenty (20) days after filing.

C. Notice shall be given of said hearing to each and every owner known and asset forth in said application by certified mail directed to his last-known address at least ten (10) days prior to the date of said hearing. Said notice shall contain a brief description of the property of said owner and the place and date of the hearing. In addition thereto notice of said hearing shall be posted in three public places in the county, one being the District Courthouse at the regular place assigned for the posting of legal notices.

D. At the hearing, if no owner appears and establishes ownership to said property, the Court shall enter an order authorizing the Sheriff to sell said personal property to the highest bidder for cash, after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Sheriff shall make a return of said sale and, when confirmed by said Court, the order confirming said sale shall vest in the purchaser title to said property so purchased.

E. The Marshal, having in his possession money or legal tender under the circumstances provided in subsection (A) above, prior to appropriating the same for deposit with Cherokee Nation, shall file an application in the District Court requesting the Court to enter an order authorizing him to so appropriate said money for deposit with Cherokee Nation. Said application shall describe the money or legal tender, together with serial numbers, if any, the date the same came into his possession, and the name of the owner and his address, if known. Upon filing, said application, which may be joined with an application as described in subsection (B) above, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof, and notice of said hearing shall be given as provided in subsection (C) above. Such notice shall state that, upon no one appearing to prove ownership to said money or legal tender, the same will be ordered by the Court to be deposited with Cherokee Nation by the Marshal or Sheriff. Said notice may be combined with a notice to sell personal property as set forth in subsection (C) above. At the hearing, if no one appears to claim and prove ownership to said money or legal tender, the Court shall order the same to be deposited by the Marshal or Sheriff with Cherokee Nation, as provided hereafter in subsection (F).

F. The money received from the sale of personal property as above provided, after payment of the court costs and other expenses, if any, together with all money in possession of said Marshal or Sheriff, which has been ordered by the Court to be deposited with Cherokee Nation, shall be deposited in the General Fund.

§ 1326. Receipts for property taken from defendant

When money or other property is taken from a defendant arrested upon a charge of public offense,

the officer taking it must at the time give duplicate receipts therefore, specifying particularly the amount of money or the kind of property taken. One of which receipts he must deliver to the defendant, and the other of which he must file with the Clerk of the Court to which the depositions and statement must be sent, as provided in 22 O.S. § 276.

§ 1327. Disposition of exhibits

A. All exhibits which have been introduced, filed, or held in custody of the Nation in any criminal action or proceeding may be disposed of as provided for in this section.

B. The Court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order all such exhibits, other than documentary exhibits, as may be released from the custody of the Court or the Nation, without prejudice to the Nation, delivered to such party at any time after the final determination of the action or proceedings; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided, further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the Court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed an on ownership affidavit pursuant to 22 CNCA § 1321 disclaiming any ownership rights to such exhibit. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one (1) publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published. In the event the Court orders the release of said exhibit to the owner, the Prosecuting Attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner within ten (10) days of the court order. The Court may authorize ten (10) days additional time for the return of such exhibit if the Prosecuting Attorney shows cause that additional time is needed to photograph or mark such exhibit. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such exhibits is unknown, or fails to apply for the return of such exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at any time after the judgment has become final, the Court in which the case was tried shall make an order specifying what exhibits may be released from the custody of the Court without prejudice to the Nation. Upon receipt of such an order, the property shall be transferred to the Marshal, Sheriff or other proper governmental agency for sale to the public. At least ten (10) days prior to such sale, notice of the sale shall be sent by certified mail return receipt requested to the last person in possession of such exhibit prior to such exhibit being seized by the Nation at the last-known address of such person;

2. At any time prior to the time fixed for the transfer, the owner or any person entitled to the possession of any of such exhibits may obtain from the Court an order returning them to him;

3. Articles not returned to their owners or to persons entitled to their possession at or prior to the time set for the transfer shall be sold by the proper receiving agency for cash. The articles shall be sold singly or in combinations. The money received from such sales shall be placed in the appropriate fund of the governmental agency responsible for the sale;

4. Where the exhibit consists of money or currency and is unclaimed at the time of the transfer, it shall not be transferred but shall be immediately deposited in the appropriate fund of the governmental agency in possession of such property; and

5. If any property is transferred to the Marshal or other governmental agency pursuant to this section it may be sold in the manner provided by law for the sale of surplus personal property. If the Marshal or other proper governmental agency determines that any such property transferred to it for sale is needed for a public use, such property may be retained by the agency and need not be sold.

C. The Court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order such documentary exhibits as may be released from the custody of the Court without prejudice to the Nation delivered to such party any time after the final determination of the action or proceeding; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided, further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the Court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a nonownership affidavit pursuant to 22 CNCA § 1321 disclaiming any ownership rights to such exhibit. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published.

In the event the Court orders the release of said exhibit to the owner, the Prosecuting Attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner within ten (10) days of the court order. The Court may authorize ten (10) days additional time for the return of such exhibit if the Prosecuting Attorney shows cause that additional time is needed to photograph or mark such exhibit. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such documentary exhibits is

unknown, or fails to apply for the return of said exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at anytime after the judgment has become final, the Court in which the case was tried shall make an order requiring such exhibits to be destroyed; provided, that no such order shall be made authorizing the destruction of any documentary exhibit if the destruction of such exhibit would prejudice the Nation; and

2. No exhibit shall be destroyed or otherwise disposed of until sixty (60) days after the Clerk of the Court has posted a notice conspicuously in three public places in the county, referring to the order for the disposition, describing briefly the exhibit, and indicating the date after which the exhibit will be destroyed or otherwise disposed of.

D. The provisions of subsection (B) of this section shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives, or any property of any kind or character whatsoever the possession of which is prohibited by law. Any such property filed as an exhibit or held by the Nation shall be, by order of the Trial Court, destroyed or sold or otherwise disposed of under the conditions prescribed in such order. This act shall not be interpreted to authorize the return of any property, the possession of which is prohibited by law.

§ 1333. Clerk's fees

The Clerk furnishing such transcript shall be allowed the same fees for same as he is allowed by law for similar services, which shall be paid by the person entitled thereto.

REWARDS

§ 1334. Dumping, etc. of trash on public or private property—Evidence—Rewards

A. Cherokee Nation may offer and pay a reward, from funds set aside for that purpose, in an amount not less than fifty percent (50%) of the fine imposed, for the arrest and conviction or for evidence leading to the arrest and conviction of any person who violates the provisions of 21 CNCA § 1761.1.

B. Cherokee Nation may create and maintain a reward fund which shall be a revolving fund not subject to fiscal year limitations, from which to pay the rewards provided for in subsection (A) of this section. Any monies for which no claim is filed within the period provided in subsection (C) of this section, shall revert to the General Fund. Any monies remaining in the reward fund after all claims have been paid or denied shall revert to the General Fund.

C. Claims for rewards shall be on forms provided by Cherokee Nation and shall be submitted to the Prosecuting Attorney no later than thirty (30) days after sentencing of the defendant. The Prosecuting Attorney shall investigate the validity of the claim and make a nonbinding written recommendation to the Council.

D. All claims relating to a conviction shall be considered together at the next regular meeting of the Council following receipt of the Prosecuting Attorney's report.

E. In determining the amount of the reward, the Council shall have sole discretion to honor or deny the claim, but shall consider:

1. The severity of the offense;
2. The size of the fine imposed;
3. The number of persons claiming a reward and the degree to which each claimant was responsible for the arrest or conviction;
4. The burden, if any, incurred by the claimant including cost to appear at trial; and
5. Other factors which the board or governing body deems appropriate.

F. No reward shall be authorized and no debt shall accrue to Cherokee Nation upon the depletion of the reward fund authorized by this section.

G. The reward authorized by this section shall be in lieu of any other county or municipal reward.

H. Full-time peace officers of this Nation or of any state, county or municipality within this nation shall not be eligible for the reward provided by this section.

SHOPLIFTING

§ 1341. Definitions

As used in this section:

1. "**Mercantile establishment**" means any mercantile place of business in, at, or from which goods, wares and merchandise are sold, offered for sale or delivered from and sold at retail or wholesale;
2. "**Merchandise**" means all goods, wares and merchandise offered for sale or displayed by a merchant;
3. "**Merchant**" means any corporation, partnership, association or person who is engaged in the business of selling goods, wares and merchandise in a mercantile establishment;
4. "**Wrongful taking**" includes stealing of merchandise or money and any other wrongful appropriation of merchandise or money.

§ 1342. Peace officers—Arrest without warrant

Any peace officer may arrest without warrant any person he has probable cause for believing has committed larceny of merchandise held for sale in retail or wholesale establishments, when such arrest is made in a reasonable manner.

§ 1343. Detention of suspect—Purposes

Any merchant, his agent or employee, who has reasonable grounds or probable cause to believe that a person has committed or is committing a wrongful taking of merchandise or money from a mercantile establishment, may detain such person in a reasonable manner for a reasonable length of time for all or any of the following purposes:

1. Conducting an investigation, including reasonable interrogation of the detained person, as to whether there has been a wrongful taking of such merchandise or money;
2. Informing the police or other law enforcement officials of the facts relevant to such detention;
3. Performing a reasonable search of the detained person and his belongings when it appears that the merchandise or money may otherwise be lost; and
4. Recovering the merchandise or money believed to have been taken wrongfully. Any such reasonable detention shall not constitute an unlawful arrest or detention, nor shall it render the merchant, his agent or employee criminally or civilly liable to the person so detained.

§ 1344. Concealing unpurchased merchandise—Presumption

Any person concealing unpurchased merchandise of any mercantile establishment, either on the premises or outside the premises of such establishment, shall be presumed to have so concealed such merchandise with the intention of committing a wrongful taking of such merchandise within the meaning of 22 CNCA § 1341, and such concealment or the finding of such unpurchased merchandise concealed upon the person or among the belongings of such person shall be conclusive evidence of reasonable grounds and probable cause for the detention in a reasonable manner and for a reasonable length of time, of such person by a merchant, his agent or employee, and any such reasonable detention shall not be deemed to be unlawful, nor render such merchant, his agent or employee criminally or civilly liable.

TITLE 23

DAMAGES

Reserved for Future Use

TITLE 24

DEBTOR AND CREDITOR

CHAPTER 1

USE OF PROPERTY TO SECURE DEBTS OF SPOUSE

§ 1. Use of property to secure debts of spouse

No property belonging exclusively to the wife shall be taken to secure the payment of the debts of the husband, without her consent, nor shall any property separately belonging to the husband, be taken to pay the debts of his wife, without the consent of the husband, and property, belonging separately to either, attached or levied upon to secure the payment of the debts of the other, may be released as in other cases; provided, that where man and wife are living together and holding property jointly, such property shall be subject to the payment of debts contracted by either while so living together.

TITLE 25

DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

§ 1. Citation of Code

This Code shall be known and cited as the "Cherokee Nation Code Annotated".

§ 2. Construction of statutes generally

A. In all interpretations of statutes, the Courts shall look diligently for intention of the Council.

B. In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.

C. In addition to the rules for construction prescribed in subsections (A) and (B) of this section, the rules provided in this subsection shall govern the construction of all statutes with respect to subjects enumerated:

1. The masculine gender includes the feminine and the neuter;
2. The singular or plural number each includes the other, unless the other is expressly excluded;
3. The present or past tense includes the future;

4. A joint authority given to any number of persons or officers may be executed by a majority of them, unless otherwise expressly provided for in the statute conferring the authority;

5. The word "**person**" includes corporations as well as natural persons, unless otherwise expressly provided.

D. A substantial compliance with any statutory requirement, especially on the part of public officers, shall be deemed and held sufficient and no proceeding shall be declared void for want of such compliance, unless expressly so provided by statute.

E. Unless otherwise expressly provided, the passage or repeal of a statute shall not affect any action then pending.

§ 3. Construction of definitions

Defined words shall have the meanings specified, unless the context in which the word or term is used clearly requires that a different meaning be used.

§ 4. Computation of time

Except as otherwise specifically provided, in computing any period of time prescribed by statute, the day of the event, act or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, in which event the period runs until the following Monday, or unless it is a legal holiday, in which event the period runs until the following day which is not a Saturday, Sunday or legal holiday.

§ 5. Severability

A. Except as otherwise specifically provided in this Code, in the event any title, chapter, Code section or subdivision thereof, sentence, clause, phrase or word of this Code is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Code.

B. Except as otherwise specifically provided in a law or resolution of the Council, in the event any section, sentence, clause, phrase, or word of a law or resolution of the Council is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of such law or resolution, which shall remain in full force and effect as if such portion so declared or adjudged invalid or unconstitutional were not originally a part of such law or resolution. The Council declares that it would have enacted the remaining parts of the law or resolution if it had known that such portion thereof would be declared or adjudged invalid or unconstitutional.

§ 6. General repeal of laws not included—Affirmation of laws included in this Code

- A. All laws and parts of law of Cherokee Nation not included in this Code are repealed.
- B. This repeal shall not revive any law previously repealed, nor shall it affect any right already existing or accrued or any action or proceeding already taken, unless otherwise provided in this Code.
- C. All laws included in this Code are hereby affirmed as the positive law of Cherokee Nation.

§ 7. Codification of laws

A. In codifying laws enacted by the Council, the publisher may, where it will not alter the sense, meaning or effect of the law:

1. Renumber and rearrange sections or parts of sections.
2. Combine sections or divide sections so as to give to distinct subject matter a separate section.
3. Furnish or change the wording of section catchlines.
4. Substitute the proper section or chapter number for the terms "this act," "this law," "the preceding section" and the like.
5. Strike out figures where they are merely a repetition of written words and vice versa.
6. Change capitalization for the purpose of uniformity.
7. Correct manifest typographical, spelling and grammatical errors.
8. Make any other purely formal or clerical changes.
9. Change references to titles, chapters, subchapters, sections and subdivisions thereof where necessitated by renumbering or rearrangement of sections during codification or by subsequent substantive changes in the law.
10. Change references to governmental bodies and officers where necessitated by discrepancies in laws being prepared for codification or by subsequent substantive changes in the law.

B. The publisher may omit all titles of acts, all enacting, resolving, and repealing clauses, all severability clauses, all appropriation measures, all temporary or local statutes, all declarations of emergency, and all validity, declaration of policy, and construction clauses, except where the retention thereof is necessary to preserve the full meaning and intent of the law.

C. Any change made under subdivision 9 or 10 of subsection (A) of this section shall be approved by the Code Commission or its designee and shall be accompanied by an explanatory editorial

note.

§ 8. Code Subcommittee—Establishment—Composition—Compensation of members—Meetings

A Code Subcommittee is hereby established within the Rules Committee of the Council of Cherokee Nation to be composed of such members of the Rules Committee as the Chairman of that Committee shall appoint. The Code Subcommittee shall serve without additional compensation. The Subcommittee shall meet upon the call of the Chairman.

§ 9. Code Subcommittee—Powers and duties generally

The Code Subcommittee shall supervise the revision of the general laws. The revision shall consist of those activities necessary to allow for the codification of the general laws. The revision activities shall include:

1. Repeal of laws or sections thereof already repealed by general repealing acts, but the repeal of which is not sufficiently specific and certain to justify their omission from the compilation of laws;
2. Repeal of laws or sections thereof superseded by subsequent statutes, but not described or indicated with sufficient definiteness to justify elimination;
3. Consolidation of sections where two or more sections cover the same subject matter;
4. Redrafting of laws or sections thereof where two or more subjects are covered in the same law or section;
5. Redrafting of laws or sections thereof which have been partially repealed, superseded or held unconstitutional;
6. Repeal of laws or sections thereof which have obviously become obsolete and entirely inapplicable because of subsequent legislation;
7. Amendment of laws or sections thereof already amended by general acts, but the amendment of which is not sufficiently specific and certain to justify their amendment in the compilation of laws;
8. Correction of terminology in the general laws to conform with the terms and names of officers made necessary by subsequent enactments;
9. Drafting of new bills from resolutions which have the purpose or intention of law.

§ 10. Code Subcommittee—Review of bills and resolutions

All bills and resolutions shall be submitted to the Code Subcommittee contemporaneously to submitting them to the Rules Committee. The Code Subcommittee shall review the bills or

resolutions for conformity, format, and assignment of title and section.

CHAPTER 2

LAWS AND RESOLUTIONS

§ 21. Definition and style of laws

When a permanent rule of conduct of government in the form of a continuing regulation is the intent of the Council of Cherokee Nation, the same shall be effected by an enactment of law of Cherokee Nation, the following form shall be used:

Legislative Act ____-(year)

ACT RELATING TO

(insert title)

Example: **The Regulation of Waterways and Environment**

BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. Title and Codification

Example: This act shall be known as the _____ and codified as ____ (Title) ____ (Section) ____ of the Cherokee Nation Code Annotated.

SECTION 2. Purpose

SECTION 3. Legislative History

SECTION 4. Definitions

For purposes of this Title:

SECTION 5. (Insert substantive provisions of law; repeals, additions and amendments)

SECTION 6. Provisions as Cumulative

The provisions of this act shall be cumulative to existing law.

SECTION 7. Severability

The provisions of this act are severable and if any part or 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 8. 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 9. 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 Cherokee Nation on the ____ day of _____ 20__.

_____, President
Council of Cherokee Nation

ATTEST:

_____, Secretary
Council of Cherokee Nation

Approved and signed by the Principal Chief this ____ day of _____, 20__.

_____,
Principal Chief
Cherokee Nation

ATTEST:

_____, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

(List Members of Council of Cherokee Nation)

§ 22. Recording of votes on laws

A roll call vote shall be made on every law and said vote shall be recorded in yeas, nays, and abstentions in the permanent Journal of the Council.

§ 23. Effective date of laws

All laws of Cherokee Nation shall be effective thirty (30) days after approval by the Council if approved and signed by the Principal Chief or after approval pursuant to Article V, Section 11 [now Article VI, Section 11] of the Constitution, or when an emergency is declared as provided in 25 CNCA § 24.

§ 24. Form and effect of emergency clauses

Any law may be made effective immediately upon the approval and signature of the Principal Chief by a clear finding, with provision therein, by the Council that an emergency exists by reason of which the welfare of the Nation requires that it take effect immediately. Said provision shall be styled "It being immediately necessary for the welfare of Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

§ 25. Publication of laws

Any law enacted and approved as provided for in this chapter shall, upon direction of the Secretary of the Council, be published in full in the first issue of the official tribal publication or as soon thereafter as can reasonably be accomplished.

§ 26. Indexing and maintenance of laws—Availability for public inspection

All laws of Cherokee Nation shall be indexed and maintained by the Legislative Office of Cherokee Nation. Both a printed copy and an electronic copy of each law shall be given to the Legislative Office. A copy of all original laws shall be made available for public inspection in the office of the Legislative Branch in the Cherokee Nation seat of government.

§ 27. Definition and style of resolutions

When an act of a temporary character not prescribing a permanent rule of government but only declaratory of the will of the Council of Cherokee Nation on a given matter or in the nature of a ministerial act is the intent of the Council, the same shall be effected by a resolution of Cherokee Nation and the following form shall be used:

RESOLUTION NO. _____

COUNCIL OF THE CHEROKEE NATION

(purpose)

Example: A RESOLUTION AUTHORIZING THE SUBMISSION OF A SPECIAL GRANT APPLICATION

WHEREAS, Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people;

WHEREAS, Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America;

WHEREAS, (Paragraphs regarding the purpose and substance of the resolution)

BE IT RESOLVED BY THE CHEROKEE NATION, that

Certification

The foregoing resolution was adopted by the Council of Cherokee Nation at a duly called meeting on the ____ day of ____, 20 ____, having ____ members present, constituting a quorum, by the vote of ____ yea; ____ nay; ____ abstaining.

_____, President
Council of the Cherokee Nation

ATTEST:

_____, Secretary
Cherokee Nation Tribal Council

Approved this ____ day of ____, 20 ____.

_____,
Principal Chief
Cherokee Nation

ATTEST:

_____, Secretary of State
Cherokee Nation

§ 28. Indexing and maintenance of resolutions—Availability for public inspection

All resolutions of Cherokee Nation shall be indexed and maintained by the Legislative Office of Cherokee Nation. A printed copy and an electronic copy of each resolution shall be given the Legislative Office. A copy of all original resolutions shall be made available for public inspection in the Office of the Legislative Branch in the Cherokee Nation seat of government.

TITLE 26

ELECTIONS

CHAPTER 1

GENERAL PROVISIONS

§ 1. Purpose

This title is adopted for the purpose of conducting all Cherokee Nation elections, for Principal Chief, Deputy Principal Chief, Council, Constitutional amendments, initiatives and referenda of Cherokee Nation.

§ 2. Authority

This Title is enacted pursuant to Article IX, Section 1 of the Constitution of Cherokee Nation ruled effective by the Cherokee Nation Supreme Court on July 26, 2003.

§ 3. Definitions

For purposes of this Title, the following terms shall be defined as follows:

1. **"At-large registered voter"** means a person who is a citizen of the Cherokee Nation, under the age of twenty-five (25) residing outside of the jurisdictional boundaries of the Cherokee Nation, who has not previously registered to vote, and fails to choose a single district upon the time of their first registration; and citizens age twenty-five (25) and older residing outside of the boundaries not registered to vote at the time of the first election to fill at-large Council seats pursuant to Article VI, § 3 of the Cherokee Nation Constitution.
2. **"Ballot box"** means the locked box or electronic counting device in which ballots are inserted when votes are cast or any transfer case used for ballots inserted in an electronic counting device.
3. **"Candidate"** means a person who has filed and is qualified to run in an election to hold elective office in the Cherokee Nation, in accordance with 26 CNCA §§ 31 to 34 and in accordance with the Cherokee Nation Constitution.
4. **"Citizen of Cherokee Nation"** means a person enrolled as a citizen of Cherokee Nation pursuant to 11 CNCA § 11 et seq.
5. **"Computer technology"** shall include electronic hardware and software.
6. **"Constitutional amendment"** means constitutional amendment(s) proposed by Cherokee Nation Council that are submitted to the registered voters of Cherokee Nation for the purposes of voting on said amendment(s) at a special or general election pursuant to Article XV, Section 2 of the Cherokee Nation Constitution and Article XV, Section 3 which gives the right of the people to

propose constitutional amendments.

7. "**Council**" means the Council of Cherokee Nation.

8. "**Council Member**" means a Member of the Council of Cherokee Nation.

9. "**Counting device**" means an electronic device used for the purpose of accepting and counting ballots and for all other legitimate purposes related to the conduct of an election.

10. "**Election Commission**" means the Cherokee Nation Election Commission created pursuant to Article IX, Section 1 of the Cherokee Nation Constitution.

11. "**Election outcome**" means the determination of the candidate winning an election for office; and the determination of the passage or failure of an initiative or referendum question.

12. "**Election results**" means the number of votes in favor of each candidate for office; and the number of votes in favor of and opposed to each constitutional amendment or initiative or referendum question.

13. "**Election Services Office**" means the Cherokee Nation Election Services Office established under 26 CNCA § 14.

14. "**Elective office**" means the office of Principal Chief, Deputy Principal Chief, and Tribal Council.

15. "**Election period**" shall include the primary election and the runoff election.

16. "**General election**" means a regular election for offices of the Principal Chief and Deputy Principal Chief and for seats on the Cherokee Nation Council as provided by law on a date certain; provided that elections for the following purposes may also occur during a general election: consideration of referendum and initiative petitions pursuant to Article XV, Sections 3 and 4 of the Cherokee Nation Constitution, and consideration of constitutional amendments pursuant to Article XV, Sections 1 and 2 of the Cherokee Nation Constitution.

17. "**Initiative petition**" means a petition submitted by the registered voters of the Cherokee Nation for purposes of proposing any legislative measure and constitutional amendment pursuant to Article XV, Sections 1, 3, 5 and 6 of the Cherokee Nation Constitution.

18. "**Jurisdictional boundaries**" means the boundaries described by the patents of 1838 and 1846 diminished only by the Treaty of July 19, 1866, and the Act of March 3, 1893, which encompasses all or portions of the northeastern fourteen (14) counties of Oklahoma.

19. "**Officer**" means the Principal Chief and Deputy Principal Chief.

20. "**Original enrollee**" is as defined by 11 CNCA § 4.1, derived only through proof of Cherokee

blood based on the Final Rolls.

21. "**Political purposes**" means actions or activities designed to influence the success or defeat of a candidate for elective office or any ballot measure.

22. "**Precinct**" shall mean an official voting place within a district, as designated by the Election Commission.

23. "**Precinct Board**" means a Cherokee Nation Election Precinct Board for each precinct, appointed by the Election Commission and exercising the duties set forth in 26 CNCA § 12(C).

24. "**Primary election**" means the initial submission of candidates or measures to a vote of the people during a general election or a special election, prior to a runoff election.

25. "**Referendum petition**" means a petition submitted by registered voters of Cherokee Nation for purposes of submitting to a vote of the people all or a portion of a Council enactment pursuant to Article XV, Sections 1, 3, 4, 5 and 6 of the Cherokee Nation Constitution.

26. "**Registration**" means the act of registering to vote in a resident voter's home district, or in the case of a non-resident voter, the act of registering in the district of choice, in accordance with Article VI, Section 3 of the Cherokee Nation Constitution.

27. "**Re-register**" means the act of changing a voter registration as a result of a change in residency for purposes of changing voting districts or for other legitimate purposes.

28. "**Residence**" means the home, a place or dwelling in which one lives; "**residence**" is synonymous with "**domicile**" which is the principal place of the residence of an individual. This definition is for the purposes of defining voter residency for the Cherokee Nation Election Code.

29. "**Resident registered voter**" means a person whose residence is inside of the jurisdictional boundaries of Cherokee Nation at the time he or she registers to vote or when any portion of their residence is inside the jurisdictional boundaries of Cherokee Nation. The Cherokee Nation Election Commission and their mapping providers shall make the determination of location by providing maps of the voter's residence. Once the determination has been made, the registered voter has the one-time, initial option, to choose the district in which to vote, regardless of whether their residence lies within two (2) districts or at-large, which will then be how the voter votes in the future.

30. "**Runoff election**" means the election of one of the two candidates for an executive office or Council seat who had the highest number of votes at the primary election; a runoff election may occur during a general or special election.

31. "**Special election**" means an election specially set on a date other than the date certain established for general elections, for one or more of the following purposes: consideration of referendum and initiative petitions when special election is required by the Council or Principal

Chief pursuant to Article XV, Section 4 of the Cherokee Nation Constitution, consideration of constitutional amendments when special election is required by the Council pursuant to Article XV, Sections 2 and 4 of the Cherokee Nation Constitution, election by the Council to fill Council vacancies pursuant to Article VI, Section 13 of the Cherokee Nation Constitution, election of the Principal Chief pursuant to Article VII, Section 5 of the Cherokee Nation Constitution.

§ 4. Tenure of elected officials

Tenure of the Principal Chief, Deputy Principal Chief, and Council Members shall be a term of four (4) years pursuant to Article VI, Section 3 and Article VII, Section 1 of the Constitution, except for vacancies that are filled in accordance with Article VI, Section 13 and Article VII, Section 5 of the Cherokee Nation Constitution.

§§ 5 to 10. Reserved

CHAPTER 2

SUPERVISORY BODIES AND ELECTION SERVICES OFFICE

§ 11. Cherokee Nation Election Commission

Election Commission; Establishment and Appointment. There shall be a Cherokee Nation Election Commission. The Election Commission shall be composed of five (5) members, two (2) appointed by the Council, two (2) appointed by the Principal Chief and one (1) selected by those four (4) appointees who shall be confirmed by the Principal Chief and the Council. The Election Commission shall have the sole responsibility and explicit authority for the conduct of all Cherokee Nation elections, including activities described in subsection (D) of this section. It shall be an independent commission in the performance of its statutory authority and in the performance of such authority shall not be subject to direction or supervision or of any other type of influence by the Executive Office or the Cherokee Nation Council.

A. Term. The Election Commission shall be appointed as soon as practical, preferably within six (6) months following the expiration of the term of the Election Commission which served the prior general election. Each Election Commission member shall serve a term commencing with the day of appointment and ending on October 1 of the general election year for which he or she served as an Election Commissioner. A person appointed or selected to fill a vacancy on the Election Commission shall serve only the remaining term of the vacant position.

1. Staggered terms. Beginning with the appointment of an Election Commissioner in October 2011, the Tribal Council shall appoint one (1) member to a four- (4) year term and one (1) member to a six- (6) year term. The Principal Chief shall appoint one (1) member for a four- (4) year term and one (1) member for a six- (6) year term. The members shall then select a person to be the fifth member of the Election Commission for a four- (4) year term to be confirmed by the Principal Chief and Tribal Council. Thereafter all appointments shall be for a four- (4) year term.

2. Holdover clause. Members of the Election Commission shall remain in office until their successors are duly appointed and confirmed.

3. Vacancies. In the case of death, removal or resignation of a Commissioner the Branch of Government which made the appointment shall select the replacement, who will serve the remainder of the term.

B. Qualifications. No elected official of Cherokee Nation, no person who is related within the third degree by either consanguinity or affinity to an elected official, no employee of Cherokee Nation, including any corporation, agency or other entity which is at least fifty-one percent (51%) owned by Cherokee Nation, no person who has been convicted of a felony, no person who has ever plead no contest or guilty to a felony without said matter being expunged from court records, or convicted of a crime in any tribal court of any federally recognized Indian tribe that would be considered a felony in state or federal court shall serve on the Election Commission. No candidate or regular employee of a candidate for office or person who is related within the third degree by either consanguinity or affinity to a candidate for office shall serve on the Election Commission.

C. Duties. The Election Commission shall have the responsibility of conducting all general and special elections. The Election Commission shall also engage in the following activities in the performance of its responsibilities:

1. Elect a chairperson, vice-chairperson/parliamentarian, and a secretary/treasurer from its own membership;

2. Publish a schedule for its regular meetings, establish an agenda for each meeting in accordance with Robert's Rules of Order, approve and maintain correct and accurate minutes of its deliberations, and rules and regulations of the Commission which shall be regularly posted on the Cherokee Nation website;

3. Hire independent legal counsel as needed, who shall not be employed in any other manner by Cherokee Nation or any agency or enterprise of Cherokee Nation;

4. Use available technology, including without limitation facsimile machines and computer technology; provided that computer technology may include any necessary accompanying consultant services related thereto, in the conduct of elections; and provided further that selection of computer hardware, computer software and computer consultant services and related costs shall be approved by the Principal Chief and the Council;

5. Oversee the registration of voters, provided that nothing herein shall affect the validity of registration of voters during any period between expiration of the term of one Election Commission and the seating of the next Election Commission;

6. Maintain current voter lists and use all efforts to diligently update said lists with correct addresses and phone numbers;

7. Develop rules and regulations necessary to conduct Cherokee Nation elections, provided that such rules and regulations shall be published and transmitted to the Council no later than ninety (90) days before the first day of filing for the election for which said rules and regulations are intended to apply, unless a shorter time is prescribed by the Council for purposes of a special election. Said rules are to be published in the Cherokee Phoenix and on the official website of Cherokee Nation as soon as practicable after transmittal to the Council;

8. Approve the number and location of precincts and notify the Council of the identity of such sites no later than ninety (90) days before the first day of filing before the election. Said locations are to be published in the *Cherokee Phoenix* and on the official website of Cherokee Nation as soon as practicable after transmittal to the Council;

9. Provide the various Precinct Board officials with the proper instruction and training for performing their duties;

10. Determine the eligibility of all candidates for office pursuant to 26 CNCA § 36(C) and have the first authority to consider challenges to candidate eligibility;

11. Conduct all election recounts pursuant to 26 CNCA § 94;

12. Conduct all general and special elections by secret ballot, provided that elections by the Council to fill vacant Council seats shall be by public roll call vote:

a. prepare and order the official ballot or ballots;

b. issue ballots and all support materials to hold an election;

c. be responsible for the storage and safekeeping of all election ballots and related documents after the close of the election pursuant to procedures established by the Election Commission;

d. engage in any other activities for the performance of its responsibilities as required by the provisions of this title.

e. provide written reports and recommendations on a not less than monthly basis to the Council and Principal Chief through the Rules Committee on activities of the Commission related to the conduct of elections. The Chairman or his or her designee shall give said report no less than on a monthly basis.

f. investigate and audit all financial reports and disclosures required by this act, and to report any violations to the Cherokee Nation Attorney General and/or Cherokee Nation law enforcement. Further, the Election Commission has the authority to assess any fines, penalties or other sanctions authorized by this act.

D. Meetings. The Election Commission shall conduct business in open meetings at the Election Services Office or other public location designated by the Commission, provided that the

Commission complies with the provisions of LA 25–01 and its subsequent amendments, known as the Cherokee Nation Freedom of Information and Rights of Privacy Act, 67 CNCA § 101 et seq.

E. Compensation. The Election Commission members shall receive stipends or compensation for their services in accordance with their itemized budget approved by the Council.

F. Removal of Election Commission members. An Election Commission member may be removed from office for committing the following acts:

1. willful neglect of the duties prescribed in this act;
2. corruption in office;
3. habitual drunkenness;
4. incompetency, misfeasance, or malfeasance of office;
5. any conviction involving moral turpitude committed while in office;
6. campaigning for any candidate or measure or who otherwise improperly interferes with or attempts to improperly interfere with the conduct of any election;
7. violation of any law of Cherokee Nation that would be a felony in the State of Oklahoma;

A petition for removal of an Election Commissioner may be brought by a majority vote of the Tribal Council or the Principal Chief. An Election Commissioner accused of violating the provisions of this act shall be given notice of the hearing and charges and an opportunity to respond to the charges. The hearing shall be before the Cherokee Nation Supreme Court in accordance with its Rules and Procedures. If the Cherokee Nation Supreme Court finds that a commissioner has committed an act that would warrant removal that member shall be removed as a Commissioner.

§ 12. Precinct Boards

A. Establishment of Precinct Boards. There shall be a Precinct Board consisting of not more than twelve (12) people but, adequate in number to carry out the provision of this act for each precinct defined in 26 CNCA § 3(19), and for any other places specified by the Election Commission. Each Precinct Board shall be appointed by the Election Commission. The responsibilities of each Precinct Board official shall be established by the Election Commission, and may include titles such as inspector, judge, clerk and any other position titles deemed necessary by the Election Commission.

B. Qualifications. No elected official of Cherokee Nation, no person who is related within the first degree by either consanguinity or affinity to an elected official, and no employee of Cherokee Nation, including any corporation, agency or other entity which is at least fifty-one percent (51%)

owned by Cherokee Nation, shall serve on a Precinct Board. No candidate or regular employee of a candidate for office or person who is related within the first degree by either consanguinity or affinity to a candidate for office shall serve on a Precinct Board.

C. Duties. Each Precinct Board shall oversee the conduct of elections at its assigned precinct within a district, including the following specific duties:

1. ensure that the identity of each person attempting to vote is established either through personal knowledge or photo ID;
2. ensure that the name of each person attempting to vote is on the voter registration list at the particular precinct where each person is attempting to vote;
3. ensure that the voter countersigns his name or makes his mark on the register of persons voting, provided that the mark of a voter who makes his or her mark on the register shall be witnessed by the Precinct Inspector and one other precinct official who shall write his or her initials beside the mark;
4. ensure that only (1) ballot is cast by the voter at the precinct;
5. make a final decision for the Election Commission regarding questions of eligibility of a person to vote pursuant to the procedure for challenged ballots set forth in 26 CNCA § 64;
6. ensure that the ballot boxes are locked at all times except when the ballots are being counted; or if counting devices are used, to ensure that said devices are not subject to tampering and that transfer cases are secured;
7. count the ballots cast and make a tally thereof, provided that counting and tallying may be made manually or by an electronic counting device;
8. make precinct certified election returns to include the number of votes cast in that precinct and a vote tally, and post a copy thereof on the exterior of the precinct;
9. preserve mutilated ballots;
10. return all of the ballot boxes after counting and lock, seal, and mark the boxes with the name of the precinct and date of election;
11. return the unused ballots, spoiled and mutilated ballots, and locked and sealed ballot boxes to the Election Services Office immediately following the election; and
12. report conduct which, based on actual observation or information from another person, appears to the precinct board member to violate 26 CNCA § 52 to the appropriate Cherokee Nation authorities.

D. Presence during voting hours. No member of a Precinct Board shall leave the precinct during voting hours. If it becomes necessary for any Precinct Board member to leave the precinct or premises, said member cannot return to the precinct.

E. Compensation. A Precinct Board member shall receive such stipend or compensation for his or her services as prescribed by the Election Commission.

§ 13. Oath

Each Election Commission member, each member of the Election Services Office staff and each Precinct Board member, before entering upon the duties of his or her respective positions, shall take and subscribe to the following oath or affirmation:

"I do solemnly swear or affirm that I will faithfully execute the duties of the Election Commission [or Election Services Office or Precinct Board] of Cherokee Nation in a responsible, impartial and unbiased manner, and will, to the best of my ability, preserve, protect and defend the Constitutions of Cherokee Nation and the United States of America. I swear or affirm further, that I will do everything within my power to promote the culture, heritage and traditions of Cherokee Nation."

§ 14. Election Services Office

A. Permanent office. The Election Services Office shall be maintained on a full-time basis with a permanent staff and/or temporary staff as necessary to conduct every election. The site of the Election Services Office shall be at a location apart from the Cherokee Nation W. W. Keeler Complex Building and shall maintain strong security measures.

B. Staff. All election staff, excluding members of the Election Commission, shall be deemed employees of Cherokee Nation, shall receive all benefits of Cherokee Nation employees and shall be subject to all applicable Cherokee Nation human resources policies and procedures.

C. Administrator. The Administrator of the Election Commission shall be a Cherokee citizen who is independently hired by the Election Commission using objective standards developed by the Election Commission and in accordance with Cherokee Nation human resources policies and procedures, provided that nothing herein shall be construed to authorize the removal or replacement of the Administrator at the time of enactment of this law or serving in said position at any time when new Commissioners take office. The Administrator shall be under the direct supervision of the Election Commission. At all times the Administrator shall maintain independence and report to the Council and the Principal Chief. The Administrator shall have exclusive authority over the day-to-day operations of the Election Commission staff, including without limitation: direct supervisory authority over the Election Commission staff; authority over procurements, including the ordering of routine supplies, responsibility for budget preparation and preparation of financial reports for the Election Commission.

§§ 15 to 20. Reserved

CHAPTER 3

QUALIFICATIONS AND REGISTRATION OF VOTERS

§ 21. Eligibility to vote

A. Basic requirements. Subject to the limitations contained herein, any person who meets the following requirements shall be entitled to vote in any election held by Cherokee Nation:

1. The person shall be a citizen of Cherokee Nation eighteen (18) years of age or older as of the date of any election; and
2. A person shall be registered to vote no later than the last business day in March of the election year. Provided that Cherokee citizens that are seventeen (17) years old and can show that their birth date is prior to the date of the primary election shall be allowed to register to vote (except for Original Enrollees as provided in this chapter);
 - a. If said person is a resident voter as defined herein he or she shall affiliate with the district in which he or she resides;
 - b. If said person is an at-large voter as defined herein he or she shall be affiliated with a district pursuant to Article VI, Section 3 of the Cherokee Nation Constitution.

Any person who voted in the last primary, general or special election shall be deemed eligible to vote unless the Commission has notice that they have relinquished their citizenship. The Election Commission shall maintain the list of eligible voters.

B. Original Enrollees. An Original Enrollee who is not on the voter list at a precinct but who appears at the precinct with proof that he or she is an Original Enrollee and that his or her place of residence was within that district prior to the date of the election may complete a voter registration form and may be allowed to cast a ballot immediately thereafter.

C. Voting by districts.

1. Resident registered voters. Every resident registered voter shall be registered to vote in the district of his or her residence. A resident registered voter shall have the right to vote only for the candidate for a Council seat for the district in which the voter resides, and cannot vote for a candidate for a Council seat for any other district except as provided for in paragraph 4 of this subsection.
2. At-large registered voters. Every at-large registered voter shall be registered to vote in the at-large district, unless said voter has elected to remain a voter in a district pursuant to Article VI, Section 3 of the Cherokee Nation Constitution. Provided, when redistricting occurs, at-large registered voters who elected to remain a voter within a district pursuant to Article VI, Section 3 of the Cherokee Nation Constitution, shall be notified by regular mail notifying the voter of his or her

right to choose a new district that was part of their original district. The at-large registered voter shall have ninety (90) days from the date of the notice to notify the Election Commission of their choice of a new district. After the expiration of the ninety (90) day period, the voter shall be automatically assigned to the appropriate district based on the precinct chosen at the time of registration.

3. Re-registration for purposes of changing district and/or precinct. A resident registered voter who has moved to a new district and who wishes to change precincts within their district, shall re-register for a new district and/or precinct on or before, but not after, the last business day in March of the election year, in order to effect a change of voting district and/or precinct for said election year; provided that the new registration form shall be delivered to the Election Services Office by 5:00 p.m. on or before said day in order to be valid for said election year.

4. Effect of failure to re-register. Any registered voter who fails to change his or her voting district and/or precinct by re-registering with a new district and/or a new precinct on or before the last business day in March of the election year must vote during the current election year for the candidate for Council within the district in which the person was registered to vote as of said date.

5. At-large voters who have previously chosen districts. At-large registered voters who have previously selected a district within the jurisdictional boundaries in accordance with Article VI, Section 3 of the Cherokee Nation Constitution may select, at the time of the 2013 election, a district that was subsequently part of their original district.

§ 22. Registration process

A. Ongoing process. The Election Services Office shall conduct registration of voters on an ongoing basis. This process shall include periodic publicity and community outreach efforts by the Election Services Office. The Election Service Office shall publish information promoting voter registration at least four (4) times annually, in the *Cherokee Phoenix* and Cherokee Nation websites.

B. Cards. The Election Services Office shall issue voter identification cards to registered voters. Whenever possible, the card should be in a picture-ID format. The card may be used as a convenient means of identification of persons whose names appear on the voter list.

§ 23. Voter database—Coordination with Registrar—Preparation of list of voters

A. Database. The Cherokee Nation Election Services Office shall establish and maintain an independent database which shall be accessible by the Cherokee Nation Registration Department for voter registration purposes. The Election Services Office shall have access to information maintained by the Cherokee Nation Registrar by computer modem, including without limitation the following information: citizenship verification, deaths, new citizens, and address changes.

B. Lists. The Election Services Office database shall include the voter list, that includes the names and the district and precinct of each registered voter who is eligible to vote in an upcoming

election. Said list may be separated into a listing of such persons who have applied for absentee ballots and those who have not applied for absentee ballots. The Election Commission shall designate those addresses on the lists that do not appear to be the current addresses for designated voters.

C. List information. Each list specified in subsection (B) of this section shall contain the following information for each voter listed: name, last known address, date of birth, last known phone number, social security number or other identifying number, date of citizenship enrollment, dates of voter registration and re-registration, voting district and precinct, the voter's participation in past elections and any other information deemed relevant by the Election Services Office; provided that any list released pursuant to 26 CNCA § 25 shall exclude the voter's date of birth, social security number or any other identifying number.

D. Maintenance. Each list as it existed as of a specific election date shall be maintained by the Election Services Office for at least five (5) years following December 31 of the year that the specific election occurred.

§ 24. Removal of names from the voter lists

Deceased relinquished and disenrolled persons. The Election Services Office shall remove the names of any deceased citizens and persons who have been disenrolled from the voter list, upon receipt of satisfactory evidence of the death or disenrollment as specified by the Cherokee Nation Registration Department.

§ 25. Obtaining list—Duplication of list

The most recent voter list shall be made available to all citizens of Cherokee Nation, subject to the provisions of the Cherokee Nation Freedom of Information Act, 67 CNCA § 101 et seq. The voter list shall be made available on paper, computer diskette, gummed labels, electronically, or any other method available. The Election Commission may charge a nominal fee to cover the costs of duplication of the voter list, provided that the voter list shall be subject to inspection free of charge during the business hours of the Election Commission.

§§ 26 to 30. Reserved

CHAPTER 4

QUALIFICATIONS OF AND FILING BY CANDIDATES

§ 31. General qualifications of candidates for elective office—Certifications and acknowledgments

A. General qualifications. Each candidate who desires to run for the elective Cherokee Nation office of Principal Chief, Deputy Principal Chief or Council Member shall meet the following general eligibility requirements consistent with the Constitution of Cherokee Nation, Article VI,

Section 3, Article VII, Sections 2 and 3, and Article IX, Section 2:

1. The candidate shall be a citizen of Cherokee Nation, in accordance with Article IV of the Constitution of Cherokee Nation and shall be a citizen by blood of Cherokee Nation;
2. The candidate shall not have been convicted of or have pled guilty or no defense to a felony charge under the laws of the United States of America, or of any state, territory or possession thereof, or convicted of a crime in any Tribal Court of any federally-recognized Indian tribe that would be considered a felony in state or federal court, unless such person has received a pardon from an authorized official of the jurisdiction in which the candidate was convicted or pled guilty or no defense to said felony charge; provided that for purposes of this section, a deferred sentence and/or an expungement of a felony record shall not constitute a pardon or affect or erase the felony conviction, a guilty plea to a felony charge, or a plea of no defense to a felony charge;
3. The candidate shall not hold any office of honor, profit or trust in any other tribe of Indians, either elective or appointive, if elected to the Cherokee Nation office which he or she is seeking;
4. Any outstanding fines imposed by the Election Commission during a previous Cherokee Nation election must be paid before a person can be eligible to run as a candidate for an elective office in a subsequent election.

B. Prerequisites for filing. In addition to the general eligibility qualifications set forth in subsection (A) herein, a candidate must not be in violation of any of the following at the time of filing:

1. The candidate shall not be an employee of Cherokee Nation, including any corporation, agency or other entity which is at least fifty-one percent (51%) owned by Cherokee Nation, as of the date of filing or at any time thereafter if elected; provided, that an incumbent serving in an elective office shall not be deemed to be an employee for purposes of this section;
2. The candidate may not file to run for an office if he or she has already filed to run for another office in the same election, unless the prior filing is withdrawn.

C. Other qualifications. In addition to the requirements set forth in this section, each candidate shall meet any other applicable requirements as set forth in the Constitution of Cherokee Nation and this chapter.

§ 32. Special qualifications for Principal Chief and Deputy Principal Chief

In addition to the general qualifications set forth in Section 31 of this Title, the qualifications for Principal Chief and Deputy Principal Chief as set forth in Article VII of the Constitution shall be as follows:

1. Age. The candidate shall have obtained the age of thirty (30) years at the time of the election;
2. Residence. The candidate shall have established a bona fide permanent residence within the

jurisdictional boundaries of Cherokee Nation for no less than two hundred seventy (270) days immediately preceding the day of the general election in which he or she is seeking election. Proof of a bona fide permanent residence shall be regulated by the Election Commission. If elected to office, the candidate shall continuously maintain a bona fide permanent residence within the jurisdictional boundaries. Failure to meet this requirement shall subject the person to disqualification and removal from office.

§ 33. Special qualifications for Council

In addition to the general qualifications set forth in 26 CNCA § 31, the qualifications for Council Member shall be as follows:

1. Age. The candidate shall have obtained the age of twenty-five (25) years of age at the time of the election.
2. Residence. The candidate shall have established a bona fide permanent residence in the district for which he or she is a candidate for no less than two hundred seventy (270) days immediately preceding the day of the general election in which he or she is seeking election. Proof of a bona fide permanent residence shall be regulated by the Election Commission. If elected to office, the candidate shall maintain a bona fide permanent residence in the district which he or she represents. Failure to meet this requirement shall subject the person to disqualification and removal from office. This section shall not apply to at-large district candidates, and thereby shall require that they establish a bona fide permanent residence located outside the jurisdictional boundaries of the Cherokee Nation no less than two hundred seventy (270) days immediately preceding the day of the general election to which he or she is seeking election.

§ 34. Establishment of residency

Proof of a bona fide permanent residence, necessary to qualify as a candidate for Council, Principal Chief and Deputy Principal Chief shall be regulated by the Election Commission, subject to the following definitions and requirements:

1. Definition. "**Residence**" is synonymous with the term "domicile" or "abode" and means a place where the candidate has a true, fixed and permanent home, and to which, whenever absent, the candidate has the intention to return;
2. Verification. Verification of residence may be shown by at least three (3) of the following documents, provided always that such documents show one or more addresses within the required geographic area for a continuous period of two hundred seventy (270) days for the time-period outlined in the requirements for each elective office:
 - a. current driver's license(s);
 - b. utility bill or bills;

- c. income tax return from the preceding year;
- d. state or county voter's registration;
- e. homestead exemption;
- f. a bona fide document evidencing such verification.

§ 35. Filing fees generally

A. Amount; payment. A filing fee shall be charged each candidate filing for an elected office of Cherokee Nation. Such fees are to be filed and paid to the Election Commission by cash, cashier's check, money order, or valid check at the Cherokee Nation Election Services Office, Tahlequah, Oklahoma. The fees shall be as follows:

Office of the Principal Chief \$750.00

Office of the Deputy Principal Chief \$500.00

Office of the Council \$250.00

B. No refund. No refund of filing fee shall be permitted for any reason, even if the candidate withdraws voluntarily or is disqualified under the provisions of this law.

§ 36. Filing of candidacy—Withdrawal of candidacy

1. Filing period. The filing date shall be for a four- (4) day period commencing at 8:00 a.m. on the first Monday of March of the election year and ending at 5:00 p.m. on the first Thursday following the first Monday of March. The deadline for filing for an elective office of Cherokee Nation shall be publicized by the Election Commission.

2. Certifications and acknowledgments. To be eligible to run for elective office, each prospective candidate shall submit an application established by the Election Commission, which at a minimum shall contain the following:

a. Proof of citizenship by Indian blood consisting of his or her Certificate of Degree of Indian Blood card and a Cherokee Nation citizenship card issued in his or her name in accordance with Articles IV, VI, VII of the Constitution of Cherokee Nation, and 11 CNCA § 1 et seq.;

b. Proof of residency;

c. Proof of age;

d. Certification that at time of filing that he or she is not an employee, voting board member or a Election Commission member of Cherokee Nation, including any corporation, agency or other

entity which is at least fifty-one percent (51%) owned by Cherokee Nation, and acknowledgment that he or she understands that should he or she become an employee during the election process, he or she shall be automatically disqualified as a candidate;

e. Certification that if elected to office, said candidate shall resolve all conflicts of interest as defined by 28 CNCA § 1 et seq.;

f. Acknowledgment that said candidate shall be automatically disqualified in the event that any false or misleading information or statements are made in filing for office; and

g. Such other documents, certifications and acknowledgments required by regulation of the Election Commission.

3. Background checks and eligibility certification. The Election Commission shall conduct background checks and review all information necessary for a determination of eligibility pursuant to regulations prescribed by the Commission. The Election Commission shall issue an official letter certifying the eligibility of each candidate or denying said eligibility, within twelve (12) working days after the close of the filing period.

4. Withdrawal of candidacy. Any candidate who wishes to withdraw from the election shall have the opportunity to do so by providing a formal written notice to the Election Commission ten (10) working days after the deadline for filing.

§ 37. Challenges

A. Third-party challenge of eligibility. Any citizen of Cherokee Nation registered to vote shall have the right to contest the eligibility of any candidate to run for office. The protest shall be received by the Election Commission in writing within five (5) working days after the close of the filing period. The hearing shall be conducted in conformance with rules and regulations adopted by the Election Commission for said proceedings. Said rules and regulations shall provide the candidate reasonable notice of the challenge and the opportunity to respond at a hearing before the Election Commission.

B. Candidate eligibility determination appeals to the Cherokee Nation Supreme Court. An appeal of any decision of the Election Commission concerning a candidate's eligibility shall be filed with the Cherokee Nation Supreme Court in writing no later than five (5) days after receipt of the Election Commission's notice of denial or approval of eligibility for candidacy. Only the person denied eligibility or the person who originally filed a protest challenging the person's eligibility shall be permitted to file an appeal. The Election Commission Chairperson shall deliver copies of each notice of appeal and all related documents to the Cherokee Nation Supreme Court in a timely manner as directed by the Court.

C. Notice and scheduling of hearing. The Cherokee Nation Supreme Court shall issue notice of a hearing date within three (3) working days of the Court's receipt of an appeal of an Election Commission finding of a candidate's eligibility or ineligibility. The hearing shall be held no later

than ten (10) working days from date of issuance of said notice. The hearing may be continued to a later designated date for good cause, provided that said date shall not be more than ten (10) working days from date of the originally scheduled hearing.

D. Conduct of hearing; decision. At the Cherokee Nation Supreme Court hearing, the candidate who is the subject of the challenge, the third party challenging the finding of eligibility and the Election Commission may each present testimony of witnesses, evidence and legal arguments. The Election Commission may be represented by the Election Commission's independent counsel. No other attorney shall appear on behalf of Cherokee Nation or the Executive or Legislative Branches at the Government's expense. The other parties to the proceedings may be represented by counsel at their own expense. The decision of the Cherokee Nation Supreme Court shall be served on the parties no later than five (5) days following the date of the hearing. The decision of the Cherokee Nation Supreme Court regarding a candidate's eligibility shall be final.

§ 38. Interference with and improper influences of the Election Commission

After a hearing held in conformance with the regulations adopted by the Election Commission, any candidate found to be directly or indirectly interfering or attempting to interfere with the Election Commission's performance of its duties, or improperly influencing or attempting to influence the Election Commission while it is performing its duties, shall be disqualified by the Election Commission from running for elected office of Cherokee Nation for the duration of the upcoming election period. Said regulations shall provide the candidate with reasonable notice of the charges and the opportunity to respond at a hearing before the Election Commission, and shall specify the manner in which the charges shall be presented and by whom. Any candidate disqualified from holding office pursuant to this section may appeal the Election Commission's disqualification decision by filing a written appeal with the Cherokee Nation Supreme Court in conformance with the requirements of 26 CNCA § 37(B).

§§ 39, 40. Reserved

CHAPTER 5

DISCLOSURE OF CAMPAIGN FINANCES

§ 41. Definitions

For purposes of this chapter, the following terms shall be defined as follows:

1. **"Campaign contribution"** means a contribution in money or services to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on behalf of a ballot measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.
2. **"Campaign expenditure"** means an expenditure of money or services incurred by any person in connection with a campaign for an elective office or on behalf of a ballot measure. Whether an

expenditure is incurred before, during or after an election does not affect its status as a campaign expenditure.

3. "**Financial agent**" means the person or persons designated and authorized by a candidate to accept contributions and pay obligations related to the candidate's campaign pursuant to 26 CNCA § 42.

4. "**In-kind contribution**" means any campaign contribution of a good or service rather than a money donation. In-kind contributions shall be reported as such, and the report shall include the name of the donor, his or her address, employer and occupation, and the fair market value of the good or service contributed.

5. "**Legal entity**" means any associations or groups comprised of any combination of individuals or corporations that expresses interest by political activities, financial contributions or other methods of either support for or opposition to any candidate for any office in any Cherokee Nation Election.

6. "**Loan**" means any payment made from the candidate's own funds for campaign purposes, or any funds obtained by loan to the candidate from a bank, savings and loan association or credit union on his or her own behalf, and shall be considered as contributions.

7. "**Report**" means a financial disclosure report required by this chapter.

§ 42. Designation of financial agent filing—Penalty

No later than the filing date for an election, each candidate shall file with the Election Commission a statement of designation, containing the names and addresses of every person authorized as the candidate's financial agent by or through whom said candidate has expended or proposes to expend money in defraying the expenses of his or her campaign, or a statement that the candidate has not authorized and will not authorize any person to act for him or her, but that the candidate will account for all money or other things of value expended in the interest of his or her candidacy. The candidate will be allowed to amend the designation any time prior to the opening of the polls on the day set for the election. Should the candidate fail to file said statement, the Election Commission shall find the candidate in violation of this section and shall assess the candidate a fine in an amount no less than One Hundred Dollars (\$100.00) and no more than Five Hundred Dollars (\$500.00).

Any person, persons or entity who files a ballot measure which shall include but not be limited to initiative questions, referendum questions or constitutional amendments shall register a financial agent with the Election Commission and shall follow the financial disclosure requirements set forth in this Title.

§ 43. Restrictions related to contributions

A. Contributors limited to individual natural persons. Contributions may only be made by

individual natural persons. No corporation, partnership, and/or any other legal entity shall contribute to any Cherokee Nation campaign or candidate.

B. Contribution amount limits. No person shall contribute more than Five Thousand Dollars (\$5,000.00) in cash or in kind to any one (1) candidate during an election period.

C. Contributions on behalf of another; contributions in name of minor; reimbursements. No person shall knowingly make or authorize a campaign contribution or political expenditure in the name of or on behalf of another person, unless the other person's name is provided in order for the proper disclosure to be made. No contributions shall be made in the name of a minor. No person shall directly or indirectly reimburse another for a contribution to a candidate.

D. Prohibition against intimidation. No person, corporation or other legal entity shall use or threaten to use physical force, job discrimination, employment reprisal, employment reward, or financial reprisal to obtain money or any other thing of value for the purpose of influencing the result of an election or to assist an office holder.

E. Every person shall provide their name, address, telephone number, type of employment and employer's name with every contribution made to a candidate or on behalf of a ballot measure. The candidate or his or her financial agent shall forward this information to the Election Commission.

§ 44. Candidate requirements related to acceptance of campaign contributions and expenditures

A. Period for acceptance of campaign contributions. No officeholder, no candidate, no potential candidate for elective office and no financial agent shall receive campaign contributions prior to the beginning of the six- (6) month period immediately preceding the primary or special election date for the office sought by said candidate or potential candidate, or past the date which is six months immediately following said primary or special election date. Unless otherwise provided all campaign contributions shall include the name, address, occupation and the amount given by the individual.

B. No personal use of contributions. No candidate or financial agent who receives a campaign contribution may convert the contribution to personal use, including any use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for elective office. Left-over contributions will be placed in an escrow account to be reserved for the cost of subsequent Cherokee Nation elections.

C. Prohibition against intimidation. No candidate or financial agent shall knowingly solicit or accept a contribution or make any expenditure by using anything of value secured by actual or threat of physical force, job discrimination, employment reprisal, employment reward, or financial reprisals.

D. Prohibition related to Cherokee Nation employees. No candidate or financial agent shall solicit a contribution from an employee of Cherokee Nation, including an employee of any corporation,

agency or other entity that is at least fifty-one percent (51%) owned by Cherokee Nation, in exchange for any advantage or promise of an advantage conditioned on making a contribution, or based on reprisal or threat of reprisal related to the failure to make a contribution.

E. Anonymous contributions. No candidate or financial agent shall accept anonymous contributions exceeding One Thousand Dollars (\$1,000.00) in aggregate per election period. The recipient of total anonymous contributions of more than One Thousand Dollars (\$1,000.00) shall not keep the amount which is in excess of One Thousand Dollars (\$1,000.00) but shall, within two (2) business days of receipt of the contribution that causes the total anonymous contributions to exceed One Thousand Dollars (\$1,000.00), turn it over to the Election Commission for immediate deposit to an escrow account to be reserved for the cost of subsequent Cherokee Nation elections.

F. Expenditure records and receipts. An expenditure of more than One Hundred Dollars (\$100.00) for campaign purposes shall be made by written instrument drawn upon the campaign account containing the name of the candidate and the name of the recipient.

G. General prohibition. No candidate or financial agent shall knowingly accept a campaign contribution or knowingly make or authorize political expenditures that the candidate or his or her financial agent knows to have been made in violation of this section or 26 CNCA § 43.

§ 45. Sanctions for violations of contribution and expenditure requirements and prohibitions

A. Criminal sanctions. Any candidate or other person who is a citizen of Cherokee Nation or a member of any other federally-recognized Indian tribe who has violated any requirement or prohibition in 26 CNCA § 43 and 26 CNCA § 44 shall be guilty of a crime.

B. Civil damages. Any candidate, other person, corporation or other legal entity who or which has knowingly made or accepted a campaign contribution or made a campaign expenditure on behalf of a candidate in violation of 26 CNCA § 43 and 26 CNCA § 44 shall be liable to the Election Commission and to any party whose name appeared on the ballot in opposition to said candidate in the amount of double the value of the unlawful contribution or expenditure. Said damages shall be payable to each plaintiff filing suit in Cherokee Nation District Court within six (6) months of the final election date, upon a finding of a violation(s) by said Court, plus reasonable attorney fees incurred in the suit. Reasonable attorney fees incurred in a suit brought under this subsection may be awarded to the defendant if judgment is rendered in defendant's favor.

§ 46. Financial disclosure report—Forms—Time of filing—corrections—Late filing—Failure to file

A. Report forms; certification. Each candidate filing for elective office of Cherokee Nation shall file with the Election Commission a certified monthly and final financial disclosure report on forms provided by the Election Commission. The report shall include information for each of the financial agents named by the candidate pursuant to 26 CNCA § 42.

B. Time of filing monthly report; late filing; failure to file. Each candidate shall deliver a complete

monthly financial disclosure report to the Election Commission at the Election Services Office beginning with a report for the month that the candidate filed for office. The report shall comprise the entire previous month, beginning on the first day of the month and ending on the last. The report shall be due on the 15th day of the following month. In the event that the Election Commission has not received a monthly report by the 15th day of the month in which it was due, the Commission shall impose a fine in the amount of One Hundred Dollars (\$100.00) on the candidate and shall send a notice of the failure to meet the deadline and notice of the fine to the candidate by certified mail return receipt requested. Unless the candidate can show extenuating circumstances for his or her failure to file a report or the filing of an incomplete report by the 15th day of the month following the month in which it was due, or failure to meet the deadline for any two (2) monthly reports, or failure to pay a fine by the date of election, the candidate shall be disqualified from the election by the Election Commission after notice and hearing. Said disqualification may be appealed to the Cherokee Nation Supreme Court. The Election Commission shall expedite all such proceedings.

C. Time of filing final report. The candidate or his financial agent shall file a final financial disclosure report no later than five (5) days prior to the date for swearing in of the successful candidates. The candidate receiving the highest number of votes in any Cherokee Nation Election shall not be eligible to take office until his or her final report is filed.

D. Corrections; revisions; retention of reports. The Election Commission shall give the candidate an opportunity to correct any deficiency or error in his or her reports. Any contributions received during the six- (6) month period following said election date shall be recorded on a revised final report to be filed no later than the first of the month following the expiration date of said six- (6) month period. The reports shall be maintained by the Election Services Office, which shall preserve the reports in a secure location for at least five (5) years, during which time they shall be a public record available for inspection and copying.

§ 47. Financial disclosure report—Contents

A. Contributions. With respect to contributions, the report shall include the name, occupation and mailing address of the source of each contribution.

B. Expenditures. The report shall detail expenditures in categories set forth on the report form, excluding filing fees, any interest earned on contributions, candidate's costs for necessary personal travel within the boundaries of Cherokee Nation, and candidate's subsistence expenses. Payment made by a candidate or his or her financial agent from the candidate's own funds shall be included as expenditures for purposes of this subsection, and may be shown as a loan from the candidate or may include any funds loaned to the candidate by a bank, savings and loan association or credit union and on his or her own behalf, and shall not be considered as contributions. All expenditure from loans shall specify the name of the lending institution, the date and amount of the loans. The candidate may reimburse his or her personal funds from campaign contributions in the amount of the reported loan(s).

C. Radio and television time. Where radio and television time is donated or offered on an equal

basis to all qualified candidates for any particular office, said donation shall be reported by or on behalf of each candidate receiving the same, without assigning any cash value thereto.

D. No financial activities. If there has been no financial activity subject to the reporting requirements of this section for the reporting period, the candidate and/or his or her financial agents shall so certify on the report.

E. Certification; criminal sanctions for misrepresentation. Each financial disclosure report shall be certified by the candidate or his or her financial agents. A candidate or a candidate's financial agent who certifies a report and therein knowingly fails to fully disclose the information required in this section as to any gift, promise, treat, reward, favor, or anything of value given or expended, is guilty of a crime. If a person is convicted of a criminal violation under this subsection, then he or she shall not hold the office and shall be barred for a period of five (5) years from holding any elective office of Cherokee Nation. Where any person who has received the highest number of votes for any office is disqualified from holding said office, a special election shall be held to elect another person to hold such office. If the candidate has been elected and sworn into office, such conviction may be grounds for removal under Article XI of the Cherokee Constitution.

§§ 48 to 50. Reserved

CHAPTER 6

CONDUCT OF ELECTIONS

ARTICLE I. GENERAL PROVISIONS

ARTICLE II. VOTING GENERALLY

ARTICLE III. ABSENTEE VOTING

ARTICLE IV. COUNT AND RETURN OF VOTES—RECOUNTS AND RUNOFFS

ARTICLE V. CHALLENGES TO ELECTION RESULTS

ARTICLE I

GENERAL PROVISIONS

§ 51. Official election dates—Notice

A. General election. The general primary election for elective offices shall be the fourth Saturday in June of the election year.

B. Runoff election. The runoff election for a general election shall be the fourth Saturday in July of the election year.

C. Special election; special dates and procedures. A special election shall be called in accordance with the Constitution of the Cherokee Nation for a specifically stated purpose or purposes. The Council shall determine the date for the primary election, and if necessary the date for a runoff election. Special elections shall be conducted in compliance with this Title, provided that the deadlines established in this Title for the following purposes may be changed and specially set by the Election Commission and confirmed by the Council to meet the particular needs related to a special election: the cut-off date for eligibility to vote in an election established in 26 CNCA § 21, the deadline for providing voter lists to candidates established in 26 CNCA § 25, the candidacy filing date established in 26 CNCA § 36, the swearing-in date established in 26 CNCA § 51, the absentee ballot request deadline and absentee ballot issuance dates established in 26 CNCA § 73, and any other date which requires special setting. Special elections for Constitutional provisions may be conducted, if authorized by the Council, by mail-in vote.

D. Notice. Notice of each election date shall be given by the Election Commission.

E. Swearing-in of elected officials. The swearing-in of the successful candidates for elective office shall be August 14 of the election year.

§ 52. Electioneering

A. Electioneering near polling area. No person shall be allowed to electioneer inside any precinct or within three hundred feet (300') outside of the entrance to any precinct while an election is in progress, nor shall any person or persons, except precinct officials and other persons authorized by law, be allowed to approach the ballot box while an election is in progress. Prohibited activities within the prescribed area by a candidate or other persons on election day which might reasonably be construed as electioneering shall include the following: wearing any article of clothing with any candidate's name or office on it or holding any article with any candidate's name or office on it; or distribution or display of any written materials, campaign literature or campaign items of any kind or nature within the prescribed area, other than that provided by the Election Commission.

B. Obstructing or impeding voter access to polling place. No person shall be allowed to impede or obstruct voters attempting to access polling places while an election is in progress, including, but not limited to, by obstructing or impeding any entrances or exits utilized by vehicles occupied by voters traveling to or traveling from the polling place.

C. Enforcement, notice to law enforcement and regulations. Persons engaged in the conduct proscribed in subsections (A) and (B) above shall be subject to removal by local law enforcement and/or the Cherokee Nation Marshal Service at the request of the appropriate official, including but not limited to any precinct official. The Election Commission shall notify appropriate law enforcement departments of the provisions set forth in subsections (A) and (B) of this section.

D. Employee solicitation. Use of the official website of Cherokee Nation, the Cherokee Nation intranet, employee e-mail lists, office phone extensions for political purposes is prohibited. Any candidate, other person, corporation or legal entity that violates this section shall be fined One

Hundred Dollars (\$100.00) per occurrence.

§ 53. Watchers

A. Primary election. Each candidate in a primary election for the office of the Principal Chief, Deputy Principal Chief, and for the Council may submit up to four (4) names as their designated watchers at each precinct within a time to be prescribed by the Election Commission.

B. Runoff election. In the event of a runoff election, candidates in the runoff election may submit up to four (4) names as their designated watchers at each precinct within five (5) working days from date of certification of results of the primary election.

C. Selection of watchers. No candidate for any elective office in Cherokee Nation shall be a watcher. The selection of the watchers and their designated precincts shall be by random drawing of names submitted by candidates for each respective district to be assigned within those districts. The Election Commission may invite watchers to the precincts during any election. The Election Commission shall have the sole authority to determine the number of watchers in any given precinct. The selection of five (5) absentee watchers and two (2) alternate watchers shall be made for each day that absentee declarations are examined prior to and on the day of the election. No person shall serve as an absentee watcher for more than one (1) day. The selection of absentee watchers and alternates shall be by random drawing of five (5) names from the balance of names submitted by the candidates pursuant to subsections (A) and (B) of this section until the names of five (5) watchers and two (2) alternate watchers have been drawn.

D. Duties of watchers. Watchers shall be entitled to observe the ballot box, including a counting device and all printouts from the counting device, before the precincts are opened, during voting and after the precincts are closed. Watchers may be commissioned to observe counting device testing and to accompany personnel assigned to repair or maintain machines during the period of the election. In such case, the watchers shall be limited to observing the repair or maintenance work being performed and making a written record of such work. Watchers will have the ability to contact members of the Election Commission upon witnessing improper or questionable activities.

§§ 54 to 60. Reserved

ARTICLE II

VOTING GENERALLY

§ 61. Precinct and hours—Notice

The Election Commission shall establish the location of each precinct subject to approval by Council Resolution. The Election Commission shall promulgate regulations listing the approved locations for precincts, provided that said regulatory provisions listing approved locations may be amended, if needed. Each precinct shall be open during the hours from 7 a.m. to 7 p.m. on the day of the election. The Election Commission shall publicize the location of each precinct. In

considering the location of precincts the Election Commission shall, whenever practicable, locate precincts on Indian Country as defined under federal law, thereby allowing Cherokee Nation legal jurisdiction over said areas.

§ 62. Manner of voting generally

A. Secret ballot. Voting shall be by secret ballot.

B. Procedure for voting in person. Except as provided in 26 CNCA § 78 or as otherwise provided, any registered voter may vote by appearing at his or her designated precinct, announcing to precinct officials his or her name and address, signing the registry, marking a ballot and placing in the ballot box or counting device.

C. Absentee ballot. Any registered voter may at his or her request vote by absentee ballot as prescribed in Article III of this chapter.

D. In person absentee voting. Any voter may vote by utilizing an in-person absentee ballot at the Election Commission Office located at Tahlequah, Oklahoma during hours to be set by the Commission, which shall be at least from 9:00 a.m. to 5:00 p.m. on a minimum number of days immediately preceding any election provided for by this act and at any other locations or times that the Election Commission deems necessary and appropriate. As part of the application for an in-person absentee ballot, such voter shall swear or affirm that he or she has not voted a regular mail absentee ballot and that he or she will not vote at the regular polling place in the election for which the in-person absentee ballot is requested. Any voter who violates the provisions of this section shall be guilty of a crime.

The Election Commission shall develop rules and procedures to carry out the requirements of this section.

§ 63. Voting by persons with physical disabilities or language barriers

A. Inability to mark ballot. If a voter appears at his or her precinct and states that he or she, because of a physical disability or infirmity or language barrier, is unable to mark a ballot, the inspector shall recite the following oath:

"Do you solemnly swear or affirm that you are unable to mark your ballot for voting because of a (name of appropriate disability)?"

After taking the oath, the voter shall be permitted to be assisted by any person of his or her choice, at least eighteen (18) years of age, in voting his or her ballot.

B. Inability to enter building. If a voter is unable to enter the building due to physical disability or infirmity, he or she must send someone inside the precinct to inform a precinct official. Upon notification, the Inspector shall go to the voter in the parking area of the precinct, and recite the following oath:

"Do you solemnly swear or affirm that you are unable to enter the precinct because of a (name of appropriate disability)"?

A precinct official shall accompany the inspector with appropriate materials and a ballot, shall present the ballot to the voter after the voter has taken the oath. The voter may then mark his or her ballot, and return it to the precinct official, who shall deposit it in the ballot box or counting device inside without viewing the ballot.

C. Witness. All special assistance described herein shall be witnessed by the Precinct Inspector.

§ 64. Challenged ballots

A. Voting procedure. If the precinct voter list does not contain a voter's name, or if a precinct official should challenge the voter's right to vote for other reasons, said voter shall be allowed to vote only if the voter completes a voter registration application for a residence address within the district or as an at-large voter and signs a statement swearing or affirming that the voter is currently eligible to vote in said precinct and has not already cast a regular or absentee ballot for said election.

B. Preservation and counting. Each challenged ballot shall be placed in a secrecy envelope attached to the voter registration application and statement executed by the voter. Challenged ballots shall not be counted at the time the ballots are cast, but shall be maintained in a separate box marked "challenged ballot box." Following the close of the election, precinct officials designated by Election Commission regulation shall determine whether the person who cast a challenged ballot was entitled to vote in the precinct where the ballot was cast. If the person was so entitled, the ballot will be opened, counted, returned to the challenged ballot box and totaled with other votes before certification of the election. If the person was not entitled to vote, the ballot will not be counted, but will be returned to the challenged ballot box.

§ 65. Spoiled ballots

Should a voter spoil any ballot in his or her effort to mark the same, he or she shall fold the ballot and return it to the clerk. The clerk shall destroy said ballot or ballots in the presence of the voter and shall issue said voter another ballot in the same manner that the first one was provided. The voter shall execute a statement prescribed by the Election Commission in which the voter swears or affirms that he or she spoiled his or her original ballot or ballots, returned said ballot or ballots to the clerk, that the clerk destroyed the ballot or ballots in his or her presence and that he or she was issued a new ballot or ballots.

§ 66. Mutilated ballots

In the event a ballot is mutilated by the counting device and thus not counted during the counting process, then two (2) precinct officials shall be authorized to mark a substitute ballot in identical fashion, insofar as is possible. In the event a ballot is mutilated to such an extent that the two (2)

members cannot agree upon how it was marked, it shall be invalidated. Once so marked, the substitute ballot shall be entered for counting into the counting device. A written record of such action shall be made by the two (2) precinct officials.

§§ 67 to 70. Reserved

ARTICLE III

ABSENTEE VOTING

§ 71. Allowance of absentee voting

Absentee voting shall be allowed upon timely written request by a registered voter of Cherokee Nation in compliance with the requirements of this article.

§ 72. Requests for absentee ballots generally

A registered voter of Cherokee Nation who is unable to vote in person at his or her precinct may request an absentee ballot from the Election Commission. The request shall be in writing, preferably on a form prescribed by the Election Commission, and shall contain the following information:

1. Name;
2. Date of birth;
3. Address;
4. Cherokee Nation citizenship registration number; and
5. Signature.

§ 73. Time for filing of requests for absentee ballots—Furnishing of ballots generally

A. Timelines. Registered voters may request absentee ballots by mail or in person at the Election Services Office from the first Monday in February until the second Friday in May of the election year. Absentee ballots shall be mailed to persons requesting the ballot in a two-day period starting on the last Monday in May of the election year and ending on the Tuesday immediately following said Monday.

B. Runoff. In the event of a runoff, the Election Services Office shall automatically send an absentee ballot to all registered voters who were sent an absentee ballot for the primary election, except for registered voters whose absentee ballots in the primary were returned unopened due to bad addresses. Absentee ballot requests for a runoff election by persons who did not vote by absentee ballot in the general election must be received by the Election Services Office by the first

Monday of July of the election year. Absentee ballots for a runoff shall be mailed to persons requesting the ballot during a two-day period starting on the last Monday in June of the election year and ending on the Tuesday immediately following said Monday.

C. Limitation. No more than one (1) absentee ballot request per individual signature for each election date shall be accepted.

§ 74. Procedure upon rejection of application for absentee ballot

In the event an application for an absentee ballot is rejected for any reason, the Election Commission shall immediately notify said voter in writing of the rejection and the reason therefore.

§ 75. Transmittal of ballots to voters generally—Preparation of record of ballots issued

When the Election Commission receives an absentee ballot request, the Election Commission shall, after verification of the requesting voter's registration, transmit the ballot to said voter. A record shall be made of all absentee ballots issued, with the name, date of birth, voter's Cherokee Nation citizenship registration number, date of issuance and address of the voter to whom it was issued.

§ 76. Form of absentee ballot

Absentee ballots shall be identical to the ballots used in precinct voting but shall be stamped "absentee ballot."

§ 77. Material to accompany absentee ballot generally

A. Affidavit. Each absentee ballot or set of ballots shall be accompanied by an affidavit containing statements that the voter is qualified to vote, that the voter has personally marked the ballot(s), or in the case of a disability or illiteracy, has caused the ballot(s) to be marked in accordance with his or her wishes, that he or she has not exhibited the marked ballot(s) to any other person, and contain any other statements required by Election Commission regulations that are designed to ensure the integrity of the absentee voting process.

B. Secrecy envelopes. Each absentee ballot or set of ballots shall be accompanied by envelopes designed to ensure the secrecy of the ballot, including an inner secrecy envelope for the ballot, designed to be devoid of any identifying information at the time of opening, and a return envelope addressed to the Election Commission.

C. Instructions. Each absentee ballot or set of ballots shall be accompanied by instructions for voting by absentee ballot, as prescribed by the Election Commission.

§ 78. Return of absentee ballot

A voter shall mark his ballot in permanent ink; seal the ballot in the secrecy envelope; fill it out completely and sign the affidavit or statement in the presence of a notary public; and return the documents in the return envelope via the United States mail to the Election Commission. Only those absentee ballots which are mailed to the Election Commission and which reach the Election Commission post office box in Tahlequah, Oklahoma no later than 7:00 p.m. on election day shall be counted; provided that personal delivery of an absentee ballot shall be accepted from the Wednesday prior to election day until election day only if the voter or a person designated by the voter delivers the ballot to the Election Services Office between the hours of 7:00 a.m. and 7:00 p.m. during those four (4) days. Voting in person at a precinct by a voter who has requested an absentee ballot shall be permitted, however, that voter must cast a challenged ballot to allow the Commission to determine whether an absentee ballot was cast. In the event that a valid absentee ballot was returned by the voter, the challenged ballot will not be counted. In the event that a valid absentee ballot was not returned by a voter, the challenged ballot will be counted.

The Election Commission is authorized and directed to reach agreements with the appropriate jurisdictions to ensure free notarization of the ballots to the greatest extent possible.

§ 79. Handling of returned absentee ballot generally

Upon receipt, an absentee ballot shall be placed in a secured absentee ballot box located at the United States post office. The absentee ballots shall be removed from the post office and taken to the Election Services Office by members of the Election Commission or their designees at the appropriate time to be verified and counted for the election.

§ 80. Handling of spoiled absentee ballot

Should a voter spoil an absentee ballot in his or her effort to mark the same, he or she may obtain a substitute ballot by calling the Election Services Office, properly identifying himself or herself and requesting a new ballot.

Each absentee ballot card shall be considered as a separate ballot for each of the races for each elected official and any question presented. Any spoiled absentee ballot cast that is returned spoiled as to one race shall be examined to determine if it was correctly voted as to the other races. If so, it shall be valid as to those races.

§ 81. Furnishing list of voters requesting absentee ballots to precincts

The Election Commission shall compile and provide a list of all voters who requested an absentee ballot to each precinct within their chosen district, together with other election materials and equipment.

§ 82. Crediting of absentee voters

The Election Service Office shall maintain a registry crediting each voter who has cast an absentee ballot with voting in said election.

§§ 83 to 90. Reserved

ARTICLE IV

COUNT AND RETURN OF VOTES—RECOUNTS AND RUNOFFS

§ 91. Processing of absentee ballot affidavits

A. Procedure. No earlier than 8:00 a.m. on the Monday immediately preceding the day of the election, the Election Commissioners or the Commission's designees shall commence examination of the affidavits accompanying the absentee ballots. The ballot box containing the envelopes containing the affidavits and absentee ballots shall be opened and the said envelopes shall be removed. For each affidavit verified as meeting the requirements of 26 CNCA § 77, the accompanying secrecy envelopes containing the absentee ballots shall be placed in a secured ballot box. Each ballot rejected due to error(s) in the affidavit shall be attached to the affidavit without being opened. Said rejected affidavits and ballots shall be labeled and placed in a separate locked box. The boxes containing the rejected absentee ballots shall be maintained at a secure location for two (2) years following the election.

B. Watchers. Absentee ballot watchers selected in accordance with 26 CNCA § 53 shall be present at all times during the processing of the aforementioned affidavits.

§ 92. Counting of absentee ballots

A. Procedure. Counting of the absentee ballots shall commence no earlier than 8:00 a.m. on the day of the election and shall continue until all such ballots have been counted. The ballot box shall be shaken to mix the envelopes, after which said box shall be opened, the envelopes removed, the ballots separated according to the office subject to the election if necessary for counting purposes, and the ballots counted according to law.

B. Watchers. Absentee ballot watchers selected in accordance with 26 CNCA § 53 shall be present at all times during the counting of the absentee ballots.

§ 93. Counting—certificate of votes and consolidated return—Preservation of materials—Certification of results

A. Counting. The ballots cast in person shall be counted and tallied by the counting device as the votes are cast on the day of the election. Absentee ballots shall be counted on election day in accordance with 26 CNCA § 92.

B. Precinct certificate of votes; consolidated return. The Election Commission shall establish the number of printouts of results needed for certification purposes, the procedure for counting of the votes, posting of the results for the precincts, consolidated return of election results and posting of such results. These procedures shall be developed and posted by the Commission no less than

ninety (90) days prior to election day.

C. Preservation of ballots and other election materials. After certificates of vote have been created, the ballot box shall be unlocked and all ballots and a copy of the signed precinct certificate of vote and a copy of the electronic results shall be placed in a transfer case. Said transfer case shall be sealed, and the Inspector shall return it, along with all other election materials and the originals of the certificate of vote, forthwith to the Election Commission. The Election Commission shall not disturb anything in the transfer case, and the case shall remain sealed at a secure location designated by and under the control of the Election Commission until opened by order of the Election Commission for recount purposes, or by order of the Supreme Court if necessary in an election appeal proceeding filed pursuant to 26 CNCA § 101. All ballots and other election materials shall be retained for a minimum period of two (2) years from the date of the election at which they were cast, under the supervision the Election Services Office; provided that after said two- (2) year period, the ballots may be destroyed by order of the Election Commission.

D. Certification of results. When the election outcome is final for all elective offices, the Election Commission shall certify the results and make such certification available to the public.

§ 94. Recounts

A. Person authorized to request recount. In elections for office, only a defeated candidate shall be permitted to request a recount.

B. Recount for issues or questions. For elections regarding issues or questions where no candidate is involved, recounts shall be authorized only when a registered voter who participated in the election presents a petition signed by a number of registered voters who participated in the election equal to one percent (1%) or more of the total votes cast for and against the issue.

C. Request for recount; notice. A written request for recount of any election results, including appeals of special elections on constitutional amendments must be filed with the Election Commission Chairperson at the Election Services Office no later than 5:00 p.m. on the first Wednesday following the election. The person filing the request shall serve a copy of the request on other candidates for the race in which the person was a candidate. When possible, service shall be made by personal delivery or facsimile transmission on date of filing; but if such service is not possible, service shall be made by mail on the date of filing.

D. Filing fee when recount sought. The request for recount shall be accompanied by a fee in the amount of Seven Hundred Fifty Dollars (\$750.00) per district for which a recount is requested, and Seven Hundred Fifty Dollars (\$750.00) for recount of absentee ballots. Fees shall be paid by cash, cashier's check, money order, or check made payable to the Election Commission. Said fees shall be non-refundable if a recount is conducted. If a recount is not conducted due to a finding by the Cherokee Nation Supreme Court that the ballots were not properly preserved, then the fee shall be refunded.

E. Location of recount. The recount shall be conducted in the Cherokee Nation Council chambers

or other appropriate facilities as determined by the Election Commission.

F. Time for recount. The recount shall occur no later than the first Friday following the election date.

G. Cherokee Nation Supreme Court determination regarding preservation of ballots prior to recount. It shall be the duty of the Cherokee Nation Supreme Court to attend all recounts. Prior to the recount, the Cherokee Nation Supreme Court shall hear evidence as to whether the ballots have been preserved by the Election Commission in the manner prescribed by law; whether they are the identical ballots cast by the voters; and whether the ballots have been exposed to the reach of unauthorized persons so as to afford a reasonable opportunity for tampering with or changing the ballots. The judgment of said Court regarding such questions shall be final and conclusive.

H. Conduct of recount. If the judgment of the Court is that the ballots have been properly preserved, then the actual, physical recount of the ballots shall be conducted immediately thereafter under the exclusive supervision of the Election Commission. The Election Commission shall conduct the recount, and shall select and supervise the persons performing the recount functions; provided that no employees of Cherokee Nation, except for staff of the Election Commission, no employee of a corporation, agency or other entity which is at least fifty-one percent (51%) owned by Cherokee Nation, and no Cherokee Nation official shall participate in a recount. The candidate seeking the recount and all other candidates for the elective office involved in the recount, persons having filed an initiative or referendum petition, or their designated representatives, shall be permitted to attend the recount. Once the actual physical recount is commenced under the supervision of the Election Commission, the Cherokee Nation Supreme Court will limit its role to answering questions regarding tribal law and insuring that tribal law is followed.

I. Automatic appeal where recount not possible. If the Cherokee Nation Supreme Court cannot determine that the ballots have been properly preserved, then no recount shall be conducted, and the fees paid by the candidate seeking the recount shall be refunded. The candidate may allege the failure of the Election Commission to properly preserve the ballots as partial grounds, but not the sole basis, for an election appeal, provided that the appeal is filed no later than the second Monday following the election date, and provided further that all other requirements of 26 CNCA § 101 shall be met.

J. Recount results. Following the recount, the Election Commission shall verbally announce the number of votes in favor of each candidate, initiative or referendum question, and the number of votes opposed to each candidate, initiative or referendum question. When the Election Commission prepares the final certificate of votes, the figures obtained during the recount shall be controlling over earlier figures if said earlier figures were different, and each member shall certify on the original certificate that a recount was held, the date of the recount, and that the Election Commission and the Cherokee Nation Supreme Court confirmed the accuracy of the results. The certified recount results shall be the final official election results, and no further recounts shall be held.

§ 95. Runoffs

A. Principal Chief and Deputy Principal Chief. There shall be a runoff for the offices of Principal Chief and Deputy Principal Chief for the two (2) top candidates in each of the respective offices unless one (1) candidate for each of the respective positions should obtain a simple majority of votes, comprised of more than fifty percent (50%) of the total votes cast for the respective office.

B. Council districts seats. In Council elections there shall be a runoff for the two (2) top candidates for the particular seat unless one (1) candidate should obtain a simple majority of votes, comprised of more than fifty percent (50%) of the total votes cast for the respective seat.

C. Tied Council runoff elections. In any Council election race where a runoff results in a tie, the final winner shall be selected by lot. The Election Commission Secretary shall, in full view of those present, clearly write or print the name of each candidate involved in the tie on separate pieces of paper that are identical in color and size and fold each paper so that the names are not visible. The Secretary shall place the papers in a container selected by the Election Commission. The Election Commission Chairperson or his or her designee shall draw one (1) paper and the name of the candidate on that paper shall be declared the winner. The Secretary shall then expose the other name or names not drawn to all witnesses present. The drawing shall occur at a public Election Commission meeting in the presence of the candidates involved or their designees.

§§ 96 to 100. Reserved

ARTICLE V

CHALLENGES TO ELECTION RESULTS

§ 101. Procedure for election appeals generally

A. Person authorized to appeal. Only a defeated candidate shall be permitted to file an appeal in appeals of elections for office. For elections on issues or questions when no candidate is involved, recounts shall be authorized only when a registered voter who participated in the election presents a petition signed by a number of registered voters who participated in the election equal to one percent (1%) or more of the total votes cast for and against the issue.

B. Filing fees. An appeal petition shall not be accepted for filing unless accompanied by a non-refundable fee in the form of either a cashier's check or money order in the amount of Five Hundred Dollars (\$500.00). Fees shall be used to defray actual costs. Fees must be paid from personal or campaign funds, and may not be paid from funds of Cherokee Nation or any of its entities.

C. Bond for petition alleging fraudulent voting. A petition alleging fraudulent precinct voting must be filed with a cash bond of Five Hundred Dollars (\$500.00). If fraudulent absentee voting is also alleged, the petition must be filed with a separate cash bond in the amount of One Thousand Dollars (\$1,000.00). Said bonds shall be used to guarantee the payment of any and all liabilities or judgments arising as a result of the petition that was filed.

D. Appeal petition. An appeal petition challenging the validity of an election outcome, including appeals of initiative and special referendum elections, shall be filed with the Cherokee Nation Supreme Court no later than the second Monday following the election date which is the subject of the appeal. The petition must be in writing and must include the petitioner's name, address and Cherokee Nation registration number; the relief requested; and specific statement regarding each alleged violation of this title or of any election procedures adopted by the Election Commission in force at the time of the alleged violation, including the date of the alleged violations, the identity of the person or persons involved in the alleged violations and the precinct where the violation occurred. If fraudulent voting is alleged, the petition shall also state the specific acts constituting the alleged fraud, identify each precinct where the alleged fraud occurred, the estimated number of fraudulent votes cast at each specified precinct location. If fraudulent absentee ballot voting is alleged, the petition shall also state the specific acts constituting the alleged fraud, and estimated number of fraudulent votes cast by absentee ballot. If the appeal petition does not contain the required information, or if the allegations do not allege sufficient violations to affect an election outcome, the petition shall be deemed frivolous by the Cherokee Nation Supreme Court and shall be dismissed.

E. Answer; scheduling of hearing. The Election Commission shall file a complete copy of all documentation from the underlying proceedings, including a transcription with the Cherokee Nation Supreme Court. The Cherokee Nation Supreme Court shall set the matter for hearing on a date no later than three (3) working days after the date of the filing of the petition; provided that the hearing may be continued to a later designated date for good cause not more than three (3) days from date of the originally scheduled hearing. The Court shall cause the notice of the hearing to be personally served or sent by facsimile transmission to the petitioner, the Election Commission and any other parties to the proceeding; and a copy shall also be mailed on the date that the notice is filed.

§ 102. Conduct of appeal hearings

All election appeal hearings held by the Cherokee Nation Supreme Court shall be governed by the following rules of procedure, which shall supersede all inconsistent general rules of procedure established by the Cherokee Nation Supreme Court:

1. Legal counsel. The petitioner may be represented by counsel at his own expense; no Cherokee Nation funds shall be used for legal fees of a person challenging an election and the Election Commission may be represented by its designated legal counsel.
2. Hearing. The Cherokee Nation Supreme Court shall consider the record on appeal provided by the Commission, and may consider any additional evidence which it deems relevant to a determination on the merits. The Court shall hear oral arguments consistent with the conduct of civil appellate proceedings. A stenographic record of the proceedings and testimony shall be required.
3. Burden of proof. The decision shall require the invalidation of election results and a new

election only if the petitioner proves by preponderance of the evidence that substantial violations of this title or of any election procedures adopted by the Election Commission in force at the time that the alleged violations occurred and that said violations affected or had a strong likelihood of affecting the election outcome.

D. Decision. The Cherokee Nation Supreme Court may verbally announce its decision. The decision shall also be placed in writing, and each Justice shall indicate his or her agreement or disagreement with the decision by placing his or her signature in the appropriate place thereon. The decision shall be issued no later than two (2) days following the date of the hearing and shall be served on the parties by mail, facsimile transmission or in person. The decision shall include appropriate relief based on the alleged violation. Such relief may include the following; validation or correction of voting results; validation or correction of election outcomes; an order that the petitioner is lawfully entitled to have his or her name appear on the runoff ballot or an order certifying a candidate as the successful candidate; or invalidation of the election for a specific office or offices and the requirement of a new election in the cases where it is impossible to determine the correct election outcome with mathematical certainty. In any case where fraud is proven on the part of a candidate, the candidate shall be declared ineligible for the office for which he or she was a candidate. The decision of the Cherokee Nation Supreme Court shall be final.

E. Civil liability of unsuccessful petitioner who alleged fraud. In all cases where a petition is filed that alleges fraud, if after a hearing the allegations are not found to be reasonably sustained by competent evidence, then, the petitioner shall be civilly liable in damages to the Election Commission and to any candidate affected by said claims if a party to the proceeding and for all damages sustained, including a reasonable attorney fees and all reasonable and proper costs of conducting such contest.

§ 103. New election where determination of contest impossible

In the event that on appeal the Cherokee Nation Supreme Court rules that an election for a particular office or offices is invalid, the Election Commission Chairperson shall notify the Principal Chief of said decision. The Principal Chief shall then order a new election to be held as soon as practical between the same candidates that participated in the election with the invalidated election results; provided that any candidate found guilty of fraud shall not be a candidate in the new election; provided further, that the above shall not apply to elections resulting in tie votes, which elections shall be determined as provided by 26 CNCA § 95(C).

TITLE 27

ENVIRONMENTAL QUALITY

CHAPTER 1

ENVIRONMENTAL PROTECTION COMMISSION

§ 100. Short title

This Title shall be known and may be cited as the Cherokee Nation Environmental Quality Code and supersedes and supplements all conflicting provisions or laws of Cherokee Nation.

§ 101. Establishment of the Cherokee Nation Environmental Protection Commission

A. Establishment. Cherokee Nation hereby creates the Cherokee Nation Environmental Protection Commission (CN EPC).

B. Governing body: appointment; terms; vacancies. The CN EPC shall be governed by a Board of Commissioners (Board), which shall be composed of five (5) Commissioners (except in a meeting called to overrule a veto by the Principal Chief under 27 CNCA § 606B(H), in which case all Commissioners must be present for a quorum) all of whom shall be citizens of Cherokee Nation. The Commissioners shall be appointed by the Principal Chief of Cherokee Nation with the advice and consent of the Council of Cherokee Nation. Each Commissioner shall serve for a term of four (4) years, provided that, in order to stagger the term of office, one (1) of the original Commissioners shall be appointed for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years. Any vacancy on the Board, howsoever caused, will be filled by appointment by the Principal Chief of Cherokee Nation with the consent of the Council of Cherokee Nation, provided that the replacement serves only the amount of time remaining in the term of the original appointee.

C. Chairperson; quorum; meetings. The Commissioners shall elect a Chairperson from among themselves. The business of the Board will be conducted at meetings of the Board duly called and noticed and at which a quorum is present. A quorum shall consist of a majority of those Commissioners duly appointed and confirmed. Any substantive action of the CN EPC must be approved by the affirmative votes of a majority of the duly appointed and confirmed Commissioners and must be recorded in writing.

§ 102. Regulations

A. Adoption of rules and regulations. The CN EPC is hereby authorized and directed to promulgate and publish any and all rules and regulations which it deems necessary to carry out, implement and enforce the goals, purposes and provisions of this Title. Said rules and regulations may include, without limitation, standards, tests, methods and procedures to be followed in permitting, permit renewal, inspection, permit revocation or suspension proceedings, and other enforcement actions pursuant to this Title, the establishment of fines and/or penalties which may be imposed by the CN EPC for violations of this Title, including the revocation and/or suspension of any permit issued under the regulations authorized by this section, orders of the CN EPC, and/or the conditions of any permit issued hereunder, and the rules and procedures to be followed in any hearings conducted before the CN EPC. The rules and regulations adopted pursuant to this section may be amended, modified or replaced from time to time in the discretion of the CN EPC, subject to the provisions of subsection (B) of this section.

B. Consistency with chapter; approval by Principal Chief. The rules and regulations, and any

amendments, modifications or replacements thereof, shall be consistent with the goals, purposes and provisions of this Title and the Constitution of Cherokee Nation. Provided, however, that prior to becoming effective, such rules and regulations, and any amendments, modifications or replacements thereof, shall be first submitted to and approved in writing by the Principal Chief of Cherokee Nation.

§ 103. Personal jurisdiction

For purposes of enforcing the provisions of the Cherokee Nation Environmental Act, Cherokee Nation shall have jurisdiction over all persons who by their actions violate the provisions of the Cherokee Nation Environmental Act.

§ 104. Territorial jurisdiction

For purpose of enforcing the provisions of the Cherokee Nation Environmental Act, the Cherokee Nation shall have jurisdiction in the territorial boundaries of Cherokee Nation as defined in the Patent of 1838, and other places determined to be Indian Country within Cherokee Nation jurisdiction.

The CN EPC shall have jurisdiction to regulate and enforce the provisions of this title with respect to any activity conducted on trust land or in Indian Country within Cherokee Nation to the fullest extent allowed by law.

§ 105. Repealed by LA 31–04, eff. July 16, 2004

§ 106. EPA authorization

Cherokee Nation authorization by EPA. The CN EPC with the approval of the Principal Chief shall establish Tribal Implementation Programs (Tribal Authorization) to the extent allowed by federal law and may, where appropriate, establish programs for which there is no corresponding federal law or program.

§ 107. Severability

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

§ 108. Applicability

This title shall apply to all causes within the jurisdiction of Cherokee Nation.

§ 109. Review of Commission actions

Any affected party may seek review in the District Court of Cherokee Nation of any final order or

decision of the CN EPC. The CN EPC may establish procedures and requirements for filing motions to reconsider, administrative appeals and other administrative remedies, and may designate some procedures as prerequisites to filing an appeal in District Court.

An affected party may file a written appeal from any final order or decision of the CN EPC in the District Court of Cherokee Nation within fifteen (15) days after the date of notice of such order or decision. The notice shall inform the affected party that he or she has the right:

1. to inspect the documents relative to the order; and
2. to appeal the order or decision pursuant to this section.

§ 110. Removal of Commissioners

Commissioners shall only be removed for cause, and shall be entitled to a hearing by the Supreme Court 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.

CHAPTER 2

DEFINITIONS AND GENERAL PROVISIONS

§ 201. Definitions

For purposes of this title:

1. "**Administrator**" means the person designated as administrator of the CN EPC.
2. "**Affected party**" means Cherokee Nation or any Department thereof. It shall also include any person or entity applying for or holding a permit or subject to regulation under this title and any citizen of Cherokee Nation, if such person, entity or citizen is directly and substantially impacted by an action or decision of the CN EPC and can demonstrate standing. The CN EPC may adopt rules which include other classes of persons or entities within the meaning of "affected party".
3. "**CN EPC**", "**Commission**" and "**EPC**" means the Environmental Protection Commission of Cherokee Nation.
4. "**Environment**" includes the air, land, wildlife, cultural and archaeological resources, and waters of the Nation.
5. "**Environmental Code**" means the Cherokee Nation Environmental Code and shall refer to Title 27 CNCA § 100 et seq.
6. "**Jurisdiction**" means jurisdiction of Cherokee Nation over lands of Cherokee Nation and over such other lands, air and water as may be allowed by law.

7. **"Lands of Cherokee Nation"** means tribal lands and those lands under the jurisdiction of Cherokee Nation, including but not limited to the territory legally described in the Treaties of 1828, 1835 and 1838 and the Cherokee Nation Patent issued in 1846, other such lands acquired by Cherokee Nation since 1838. For purposes of this title, the term "lands" shall include the earth, air and waters associated with such lands.

8. **"Nation"** means Cherokee Nation.

9. **"Nonpoint source"** means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined.

10. **"Person"** means any individual, trust, joint stock company, corporation, government, partnership, association, organization, agency or any other legal entity, or an agent, employee, representative, assignee or successor thereof.

11. **"Pollutant"** includes but is not limited to dredged spoil, solid waste, incinerator residue, medical waste, sewage, garbage, sewage sludge, munitions, chemicals, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste.

12. **"Pollution"** means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;

13. **"Waste"** means any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate or tend to pollute or contaminate, any air, land or waters of the Nation.

14. **"Waters of the Nation"** means all streams, lakes, ponds, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon Cherokee Nation or any portion thereof, and shall include under all circumstances waters which are contained within the boundaries of, flow through or border upon this Nation or any portion thereof.

§ 202. Supplemental definitions

The CN EPC is authorized to supplement these definitions and all other definitions of this Cherokee Nation Environmental Act with Commission definitions established by regulations and adopted by the Principal Chief. Within these definitions there will be one (1) particular department

designated as the Lead Department for purposes of permitting and enforcement within any section of the act.

§ 203. Rules and adoption by reference

A. The Commission shall have the authority to promulgate rules, adopt requirements by reference, establish implementation programs, require permits or licenses, and take appropriate enforcement actions as necessary to prevent pollution and ensure that the following minimum requirements are met in Indian Country:

1. federal standards and requirements under Section 112 of the Federal Clean Air Act, 42 U.S.C. § 7412, for hazardous air pollutants and for the prevention and mitigation of accidental releases of regulated substances under 42 U.S.C. § 7412(r);
2. federally-approved water quality standards of adjacent states and nations;
3. drinking water standards established by federal law;
4. requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6921 et seq., Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., Clean Water Act, 33 U.S.C. § 1294 et seq., Endangered Species Act, 16 U.S.C. § 1531 et seq., National Environmental Policy Act, 42 U.S.C. § 4321 et seq. and other federal environmental laws.

B. The Commission may promulgate rules that incorporate by reference and/or modify appropriate environmental requirements established by the federal government or neighboring states or nations. The Commission may adopt requirements in addition to, or more stringent than, those under federal law or laws of adjoining states.

C. Requirements adopted by the Commission shall be enforceable through licenses, permit conditions, administrative proceedings or court actions without a showing of actual harm or intent.

§ 204. Authorities

The Commission may establish, implement and enforce programs and requirements that cover any potential or actual source of pollution and any activity, including but not limited to:

1. point source discharges, land application of wastes or chemicals, surface impoundments and other facilities for treatment, storage or disposal of wastewater, animal wastes or sludge;
2. groundwater, wells, underground injection control, underground and aboveground storage tanks and pipelines;
3. drinking water, water use, dams and hydrologic modifications;
4. stormwater, nonpoint source pollution and best management practices;

5. water quality, water quality standards and certifications, wetlands, protection of instream flow and water planning;
6. air quality, source controls and emission standards, and noxious odors or gases;
7. storage, facility siting, treatment, disposal and transportation of hazardous waste, solid waste, pesticides, toxic substances and other pollutants;
8. dredge and fill, mining, oil and gas extraction and forestry practices;
9. environmental assessments, reviews and impact statements;
10. inspections, sampling, compliance, enforcement and administrative hearings;
11. indoor air quality, asbestos, lead-based paint, radon and required disclosures and remediation of habitable structures contaminated or rendered dangerous by manufacturing of illegal drugs, other chemicals or harmful materials;
12. protection or regulation of fish and wildlife; and
13. any program or activity conducted in cooperation with or funded by federal, state, local or tribal governments.

§ 205. Inspections and records

- A. Any duly authorized representative of the Commission shall have the power to enter at reasonable times upon any private or public property for the purpose of sampling, inspecting and investigating conditions relating to pollution, damage to natural resources, compliance with rules, orders and laws of the Nation, or the possible pollution of any air, land, resources or waters of the Nation or the environment or relating to any other environmental or permitting responsibility authorized by law.
- B. The Commission may require the establishment and maintenance of records and production of reports relating to any regulated activity. Copies of such records shall be submitted to the Commission upon request. Any authorized representative of the Commission shall be allowed access at reasonable times to examine such reports or records.
- C. The Commission may apply to and obtain from the District Court, an order authorizing an administrative warrant to enforce access to premises for sampling, investigation, inquiry and inspection related to requirements of this title, pollution complaint, Commission-issued orders or permits, and any rules promulgated by the Commission. Failure to obey an administrative warrant of the District Court may be punished by the District Court as a contempt of court.

§ 206. Pollution unlawful

A. It shall be unlawful for any person to cause pollution of any air, water, land or resources of the Nation, or to place or cause to be placed any wastes or pollutants in a location where they are likely to cause pollution of any air, water, land or resources of the Nation. Any such action is hereby declared to be a public nuisance.

B. If the Commission finds that any of the air, land, resources or waters of the Nation have been, or are being, polluted, they may issue an order requiring such pollution to cease within a reasonable time, and/or requiring such manner of treatment or of disposition of the sewage or other polluting material as may in their judgment be necessary to prevent further pollution.

C. It shall be the duty of the person to whom such order is directed to fully comply with such order. Said order may be issued ex-parte in an emergency, or otherwise in compliance with administrative procedures set forth in this title.

§ 207. Administrative proceedings

A. If upon inspection or investigation, or whenever the Commission determines that there are reasonable grounds to believe that any person is in violation of this title or any rule promulgated thereunder or of any order, permit or license issued pursuant thereto, the Commission may give written notice to the alleged violator of the specific violation and of the alleged violator's duty to correct such violation immediately or within a set time period or both and that the failure to do so will result in the issuance of a compliance order.

B. In addition to any other remedies provided by law, the Commission may, after service of the notice of violation, issue a proposed compliance order to such person. A proposed compliance order shall become a final order unless, no later than fifteen (15) days after the order is served, any respondent named therein requests an administrative enforcement hearing.

The proposed compliance order may, pursuant to subsection (K) of this section:

1. assess an administrative penalty for past violations of this title, rules promulgated thereunder, or the terms and conditions of permits, or licenses issued pursuant thereto; and
2. propose the assessment of an administrative penalty for each day the respondent fails to comply with the compliance order.

Such proposed order may specify compliance requirements and schedules, mandate corrective action, assess damages for injuries to natural resources of the Nation and/or require mitigation of damage that has occurred.

C. Failure to comply with a final compliance order, in part or in whole, may result in the issuance of an assessment order assessing an administrative penalty as authorized by law, or a supplementary order imposing additional requirements, or both. Any proposed order issued pursuant to this subsection shall become final unless, no later than seven (7) days after its service,

any respondent named therein requests an administrative enforcement hearing.

D. Notwithstanding the provisions of subsection (A) and (B) of this section, the Commission, after notice and opportunity for an administrative hearing, may revoke, modify or suspend the holder's permit or license in part or in whole for cause, including but not limited to the holder's:

1. flagrant or consistent violations of this title and/or rules promulgated thereunder, or of final orders, permits or licenses issued pursuant thereto;
2. reckless disregard for the protection of the public and the environment as demonstrated by noncompliance with environmental laws and rules resulting in endangerment of human health or the environment; or
3. actions causing, continuing, or contributing, to the release or threatened release of pollutants or contaminants to the environment.

E. Whenever the Commission finds that an emergency exists requiring immediate action to protect the public health or welfare or the environment, the Commission or their designee may without notice or hearing issue an order, effective upon issuance, requiring that such action be taken as deemed necessary to meet the emergency. Any person to whom such an order is directed shall comply therewith immediately but may request an administrative enforcement hearing thereon within fifteen (15) days after the order is served. A hearing shall be held as promptly as possible after receipt of a request. A hearing may be held at any time the Commission, in their discretion, may deem appropriate. On the basis of the hearing record, the Commission may sustain, modify or rescind such order.

F. Except as otherwise expressly provided by law, any notice of violation, order, or other instrument issued by or pursuant to authority of the Commission may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by certified mail return-receipt requested directed to such person at his last-known post office address as shown by the files or records of the Nation. Proof of service shall be made as in the case of service of a summons or by publication in a civil action.

G. Every certificate or affidavit of service made and filed shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

H. Any order issued by the Commission shall become final upon service.

I. Any party aggrieved by a final order may petition the Commission for rehearing, reopening or reconsideration within ten (10) days from the date of the entry of the final order. Any party aggrieved by a final order may petition for judicial review thereof.

J. 1. Unless specified otherwise in this title, any penalty assessed or proposed in an order shall not exceed Five Thousand Dollars (\$5,000.00) per day of noncompliance.

2. The determination of the amount of an administrative penalty shall include, but not be limited to, the consideration of factors such as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the respondent from the violation, the history of such violations and respondent's degree of culpability and good faith compliance efforts. For purposes of this section, each day, or part of a day, upon which such violation occurs, shall constitute a separate violation.

K. Any order issued pursuant to this section may require that corrective action be taken. If corrective action must be taken on adjoining property, the owner of such adjoining property shall not give up any right to recover damages from the responsible party by allowing corrective action to occur.

L. The Commission may delegate the authority to issue orders or take other appropriate actions under this chapter to the Administrator.

§ 208. Violations and penalties

A. Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, the Cherokee Nation Environmental Quality Code or who violates any order, permit or license, or rule promulgated by the Commission pursuant to the Cherokee Nation Code:

1. shall be guilty of a crime and upon conviction thereof may be punished by a fine of not less than Two Hundred Dollars (\$200.00) for each violation and not more than Five Thousand Dollars (\$5,000.00) for each violation or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. Each day a violation continues may be considered a separate crime;

2. may be punished in civil proceedings in District Court by assessment of a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each violation, and for each day that the violation continues;

3. may be assessed an administrative penalty not to exceed Five Thousand Dollars (\$5,000.00) per day of noncompliance; and

4. may be subject to injunctive relief granted by a District Court. A District Court may grant injunctive relief to prevent a violation of, or to compel compliance with, any of the provisions of this title or any rule promulgated thereunder or order, license or permit issued pursuant to this title.

B. Nothing in this chapter shall preclude the Commission from seeking penalties in District Court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of this title.

C. Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorney fees and costs associated with the collection of

such penalties.

D. For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

E. The Commission may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this title, any rule promulgated thereunder, or any order, license or permit issued pursuant thereto. No bond shall be required of the Commission for such suits.

F. 1. The Commission may bring an action in a court of competent jurisdiction for injunctive relief to redress or restrain a violation by any person of this title, any rule promulgated thereunder, or any order, license, or permit issued pursuant thereto, for recovery of any administrative or civil penalty assessed pursuant to this title, and for recovery of natural resource damages, costs of mitigation and corrective action.

2. The District Court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to, mandatory or prohibitive injunctive relief, interim equitable relief, punitive damages, assessment of natural resource damages, costs of corrective action and mitigation, and costs of any measures necessary to protect public health, safety and welfare or the environment.

3. In any judicial action in which the Commission seeks injunctive relief and alleges by verified petition that:

a. the defendant's actions or omissions constitute a violation of this title or a rule, order, license or permit; and

b. the actions or omissions present an imminent and substantial endangerment to health or the environment if allowed to continue during the pendency of the action;

the Commission shall be entitled to obtain a temporary order or injunction to prohibit such acts or omissions to the extent they present an imminent and substantial endangerment to health or the environment. Such temporary order or injunction shall remain in effect during the pendency of the judicial action until superseded or until such time as the Court finds that the criteria of subparagraphs a and b of this paragraph no longer exist. If a temporary order or injunction has been issued without prior hearing, the Court shall schedule a hearing within twenty (20) days after issuance of the temporary order to determine whether the temporary order should be lifted and a preliminary injunction should issue.

G. Except as otherwise provided by law, administrative and civil penalties, costs and natural resource damages recovered pursuant to this title shall be paid into the Environmental Quality Revolving Fund established in this chapter. Allowable expenditures from the fund shall include operational and program costs of the Commission and environmental programs, reimbursement of costs and fees related to the enforcement action, emergency response and projects that enhance the

environment or benefit the Nation's natural resources.

H. In determining the amount of a civil penalty the Court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.

I. In addition to or in lieu of any administrative enforcement proceedings available to the Commission, the Commission may take or request civil action or request criminal prosecution, or both, as provided by law for any violation of this title, rules promulgated thereunder, or orders issued, or conditions of permits, licenses, certificates or other authorizations prescribed pursuant thereto.

§ 209. Environmental Quality Revolving Fund

There is hereby created a revolving fund to be designated the "Environmental Quality Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Commission or environmental programs from appropriations, administrative penalties, fees, charges, gifts and monies from any other source that are not designated for deposit to any other fund authorized by this Title. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended for the sole purpose of implementing and enforcing this Title.

CHAPTER 3

CHEROKEE NATION ENVIRONMENTAL POLICY

§ 301. Purpose

The purposes of this chapter are to establish and implement a Cherokee Nation policy which will encourage productive and enjoyable harmony between human beings and their environment; to promote efforts which will prevent or eliminate damage to natural resources and the environment and to enrich the understanding of the ecological systems and natural resources important to Cherokee Nation.

§ 302. Policies and goals

A. The Council of Cherokee Nation, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, declares that it is the continuing policy of Cherokee Nation, in cooperation with federal, state and local governments, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations.

B. In order to carry out the policy set forth in this title, it shall be the continuing responsibility of Cherokee Nation to use all practicable means, consistent with other essential considerations of Cherokee law, policy, and customs, to improve and coordinate plans, functions, programs, and resources to the end that Cherokee Nation may:

1. fulfill the responsibility of each generation of human beings as trustees of the environment for succeeding generations;
2. assure for all human beings safe, healthful, productive and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation of Cherokee Nation natural resources;
4. preserve important historic, cultural and natural aspects of Cherokee Nation heritage;
5. analyze potential environmental effects of proposed actions and their alternatives and promote public understanding and scrutiny;
6. enhance the quality of renewable resources and achieve their maximum value and yield through recycling and other methods of conservation;
7. provide civil and criminal remedies and sanctions in favor of Cherokee Nation against any persons who violate this chapter or any regulations adopted hereunder and, to the maximum extent possible, enforce these remedies and sanctions against such persons;
8. prohibit the improper storage, transport, generation, burial or disposal of any solid, liquid or gaseous waste, or nuclear, hazardous or toxic refuse, by-product, waste or material, or any other chemical or polluting material or agent, within the jurisdiction of Cherokee Nation, or that could affect lands, air, water, natural resources or people of Cherokee Nation;
9. provide for regulation and taxation of interests, actions and omissions that adversely affect the environment of Cherokee Nation;
10. utilize whenever possible, means of development, job creation, construction and resource use that are environmentally friendly and reflective of tribal culture and history.

§ 303. Implementing regulations

The CN EPC is authorized and directed to promulgate rules and regulations, which shall be adopted by the Principal Chief or otherwise promulgated in compliance with the Administrative Procedure Act, 1 CNCA § 101 et seq., implementing the policies and goals of this Title.

§ 304. Cooperation of Cherokee Nation Departments

The Council of Cherokee Nation authorizes and directs that, to the fullest extent possible:

1. the policies, regulations and laws of Cherokee Nation shall be interpreted and administered in accordance with the policies, procedures, and regulations adopted pursuant to 27 CNCA § 303; and

2. all Departments of Cherokee Nation undertaking activities regulated by this Title shall:

a. utilize a systematic, interdisciplinary approach and to ensure the integrated use of natural and social sciences in planning and in decision-making which may have an impact on the environment, natural resources and public health;

b. identify and develop methods and procedures which will ensure that presently unquantified environmental and cultural amenities and values will be given appropriate consideration in decision-making along with economic and technical considerations consistent with the regulations adopted under this title; and

c. include in all recommendations, reports and proposals for legislative actions, projects and programs identified in the regulations adopted under this title or identified by resolution or order of the CN EPC, a statement by the responsible official on:

i. environmental impacts of the proposed action and reasonable alternatives;

ii. any adverse effects on lands, resources, culture, water, air or other aspects of the environment of Cherokee Nation which cannot be avoided should the proposal be implemented;

iii. alternatives to the proposed action, and a comparison of the impacts and benefits of the proposal in comparison to the alternatives;

iv. the relationship between local short-term use of the environment and the maintenance and enhancement of long-term productivity, sustainable communities and a cohesive, distinct tribal culture; and

v. any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

The responsible Department shall submit pertinent information to the CN environmental offices and contract with those offices for preparation of such statement, or obtain authorization of the CN EPC or Principal Chief to prepare the statement themselves or utilize outside consulting services. Prior to finalizing any statement, the preparer should consult with and obtain the comments of any Cherokee Nation, federal, or state or local agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views from appropriate Indian tribes or nations, and federal, state, and/or local agencies which are authorized to develop and enforce environmental standards or may be directly impacted by the proposed action, shall be made available to the CN EPC.

4. study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
5. make available to other Indian tribes and nations, states, and federal agencies and offices advice and information useful in restoring, maintaining, and enhancing the quality of their environment;
6. initiate and utilize ecological and cultural information in the planning and development of projects affecting tribal resources or the environment.

§ 305. Conformity of administrative procedures

All Departments of Cherokee Nation shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance herein, and report findings to the CN EPC, and take all measures as may be necessary to bring their authority and policies into conformity with the intent, purpose and procedures set forth in this chapter.

§ 306. Statutory obligations

Nothing in 27 CNCA § 303 or 27 CNCA § 304 shall in any way affect the specific statutory obligations of any Department:

1. to comply with criteria or standards of environmental quality;
2. to coordinate or consult with any other department or intergovernmental agency; or
3. to act, or refrain from acting contingent upon the recommendations or certification of any other Department.

§ 307. Policy supplementary

The policies and goals set forth in this chapter are supplementary to those set forth in existing or future authorizations of Departments of Cherokee Nation.

CHAPTER 4

AIR QUALITY

§ 401. Short title

This chapter shall be known and may be cited as the Cherokee Nation Clean Air Act.

§ 402. Purpose

It is the purpose of the Cherokee Nation Clean Air Act to provide the means to achieve and maintain atmospheric purity necessary for the protection and enjoyment of human, plant or animal life and property in this Nation.

§ 403. Reserved

§ 404. Definitions

As used in the Cherokee Nation Clean Air Act:

1. "**Accidental release**" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.
2. "**Administrator**" means the Administrator of Environmental Quality Programs.
3. "**Air contaminants**" means the presence in the outdoor atmosphere of fumes, aerosol, mist, gas, smoke, vapor, particulate matter or any combination thereof that creates a condition of air pollution.
4. "**Air pollution**" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as tend to be or may be injurious to human, plant or animal life or to property, or which interfere with the comfortable enjoyment of life and property, excluding, however, all conditions pertaining to employer-employee relations.
5. "**Ambient air**" means the surrounding outdoor air.
6. "**Commission**" means the Cherokee Nation Environmental Protection Commission.
7. "**Emission**" means the release or discharge of any air contaminant or potential air contaminant into the ambient air.
8. "**Federal Clean Air Act**" means the federal Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, including the federal Clean Air Act Amendments of 1990.
9. "**Hazardous air pollutant**" means any air pollutant listed and regulated pursuant to 42 U.S.C. § 7412(b).
10. "**Hearing officer**" means a person appointed to preside at public hearings held pursuant to this chapter.
11. "**Person**" means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, tribe, state, trust, estate, municipality or any other legal entity, or their representative, agent or assign.
12. "**Regulated substance**" means any substance, including extremely hazardous substances,

listed and regulated pursuant to 42 U.S.C. § 7412(r)(3).

13. "**Small business stationary source**" means a stationary source as defined in 42 U.S.C. § 7661f(c).

14. "**Toxic air contaminant**" means any substance determined to be highly toxic, moderately toxic, or of low toxicity pursuant to criteria set forth by rule. The term shall not be construed to include pollutants for which a primary and secondary ambient air quality standard has been promulgated under the federal Clean Air Act to the extent of the criteria for which they are listed.

15. "**Trade secret**" means information, including but not limited to a formula, pattern, compilation, program, device, method, technique or process, that:

a. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

b. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The term "**trade secret**" shall not be construed to include data concerning the amount, emission rate or identification of any air contaminant emitted by any source, nor shall it include the contents of any proposed or final permit.

§ 405. Powers and duties

The Environmental Protection Commission is hereby designated the administrative agency for the Cherokee Nation Clean Air Act. The Commission is empowered to:

1. establish programs necessary to implement the Cherokee Nation Clean Air Act and protect the Nation's air, resources and people;

2. establish a permitting program that will contain the flexible source operation provisions required by 42 U.S.C. § 7661a(b)(10);

3. prepare and develop a general plan for proper air quality management in the Nation;

4. enforce the laws, rules and orders of the Commission and Nation;

5. advise, consult and cooperate with other agencies, communities, cities, counties, industries, tribes, states, the federal government, citizens and affected groups, in the prevention and control of new and existing air contamination sources within the Nation;

6. encourage and conduct studies, seminars, workshops, investigations and research relating to air pollution and its causes, effects, prevention, control and abatement;

7. collect and disseminate information relating to air pollution, its prevention and control;
8. encourage voluntary cooperation by persons, communities, cities, counties, industries, states, tribes or other affected groups in restoring and protecting air quality within the Nation;
9. represent the Nation in any and all matters pertaining to plans and procedures in relation to the control of air pollution;
10. provide technical, scientific or such other services as may be appropriate and feasible, for the purpose of carrying out the provisions of the Cherokee Nation Clean Air Act;
11. identify, propose and implement grants or such other funds or gifts provided by or with the with consent of the Commission and Principal Chief, for the purpose of carrying out the functions of the Cherokee Nation Clean Air Act;
12. bring appropriate court action to enforce the Cherokee Nation Clean Air Act and other provisions of Cherokee Nation laws, rules and final orders of the Commission, and to obtain injunctive or other relief as may be determined appropriate;
- 13, 14. Reserved.
15. take such action as may be necessary to abate alleged pollution upon receipt of evidence that a source of pollution or a combination of sources of pollution is presenting an immediate, imminent and substantial endangerment to the health of persons. The Commission may issue emergency orders, subpoena witnesses and documents, require submission of information or take other action in an administrative proceeding, or may proceed directly to Court to obtain relief;
16. periodically enter and inspect at reasonable times, any source, facility or premises permitted or regulated by the Commission, for the purpose of obtaining samples or determining compliance with the Cherokee Nation Clean Air Act, any rule promulgated thereunder or permit condition, or to examine any records kept or required to be kept pursuant to the Cherokee Nation Clean Air Act or other applicable law. Such inspections shall be conducted with reasonable promptness and shall be confined to those areas, sources, facilities or premises reasonably expected to emit, control, or contribute to the emission of any air contaminant or other source of pollution;
17. require the submission or the production and examination, within a reasonable amount of time, of any information, record, document, test or monitoring results or emission data, including trade secrets necessary to determine compliance with the Cherokee Nation Clean Air Act, rules promulgated thereunder, any permit condition, or any order of the Commission. The Commission shall hold and keep as confidential any information declared by the provider to be a trade secret and may only release such information upon authorization by the person providing such information, or as directed by court order. Any documents submitted pursuant to the Cherokee Nation Clean Air Act and declared to be trade secrets, to be so considered, must be plainly labeled by the provider, and be in a form whereby the confidential information may be easily removed intact without disturbing the continuity of any remaining documents. The remaining document, or

documents, as submitted, shall contain a notation indicating, at the place where the particular information was originally located, that confidential information has been removed. Nothing in this section shall preclude an in-camera examination of confidential information by an Administrative Law Judge during the course of a contested hearing;

18. maintain and update an inventory of air emissions from stationary sources; and

19. carry out all other duties, requirements and responsibilities necessary and proper for the implementation of the Cherokee Nation Clean Air Act and the federal Clean Air Act, 42 U.S.C. § 7401 et seq.

§ 406. Controlled open burning

A. For purposes of this section, "**open burning**" means the burning of non-hazardous combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

B. Persons who wish to conduct open burning on tribal lands shall provide notification of the planned open burn to the Environmental Programs Group at least ten (10) days prior to the burning. The notification shall be on a form developed by the Commission.

C. The Commission shall have the authority to promulgate rules regarding open burning as necessary.

§ 407. Rules and regulations

A. The Commission is hereby authorized, after public rulemaking hearing and approval, to:

1. Promulgate, amend or repeal rules for the prevention, control and abatement of air pollution and for establishment of health and safety tolerance standards for discharge of air contaminants to the atmosphere; and

2. Promulgate such additional rules including but not limited to permit fees, as it deems necessary to protect the health, safety and welfare of the public and fulfill the intent and purpose of these provisions.

B. The Commission may prescribe additional requirements to protect health, environment, communities, wildlife, welfare and property through rulemaking, through conditions in any permit or authorization or compliance schedule, or through any order.

§ 408. Delegation of authority

The Commission may delegate such authority as it deems appropriate to the EPC Administrator or other appropriate Cherokee Nation staff.

§ 409. Variances

A. Any person seeking a variance from any provision of the Cherokee Nation Clean Air Act, or from any applicable air quality rule, shall do so by filing a petition for variance with the Commission. The Commission may deny, grant or conditionally approve any request.

B. The Commission may, in its discretion, determine whether or not an administrative hearing is necessary in granting a variance. The Commission shall notify the petitioner of the time and place of any administrative hearing. The burden of proof shall be on the petitioner.

C. The Commission may, but is not required to, grant individual variances beyond the limitations prescribed in the Cherokee Nation Clean Air Act or Commission rules, whenever it is found, upon presentation of adequate proof, that compliance with any provision of the Cherokee Nation Clean Air Act, or any rule promulgated thereunder, will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people, the environment or to public health. The Commission may also propose rules applicable to such variances.

D. In determining under what conditions and to what extent a variance from the Cherokee Nation Clean Air Act or any rule promulgated thereunder may be granted, the Commission may give due recognition to the progress which the person requesting such variance shall have made in eliminating or preventing air pollution. In such a case, the Commission shall consider the reasonableness of granting a variance conditioned upon such person effecting a partial abatement of the particular air pollution over a period of time which it shall consider reasonable under the circumstances.

E. If the Commission deems proper, such an incremental compliance schedule may be imposed and shall contain a date or dates certain by which compliance with otherwise applicable rules or provisions of the Cherokee Nation Clean Air Act shall be achieved. The Commission may also include provisions whereby a penalty of up to Five Thousand Dollars (\$5,000.00) per day, or the maximum amount otherwise allowed by law, may be assessed for failure to achieve compliance by the date(s) specified in the compliance schedule or other violations.

F. The Commission may prescribe requirements to protect health, environment, communities, wildlife, welfare and property, as conditions of granting any variance. The person who receives such variance shall comply with such conditions or the variance shall become null and void, unless and until otherwise ordered by the Commission.

G. Any variance granted pursuant to the provisions of this section shall constitute a final order, shall be in writing, and shall be granted for a period of time not to exceed three (3) years. Periodic reports that specify the progress which such person shall have made toward compliance shall be submitted to the Commission. A variance may, for good cause shown, be extended on a year-to-year basis by affirmative action of the Commission.

H. Nothing in this section shall be construed to preclude the informal disposition of any matter by

stipulation, agreed settlement, consent order or default.

§ 410. Violations

A. In addition to any other remedy provided for by law, the Commission may issue a written order to any person whom the Commission has reason to believe has violated, or is presently in violation of, the Cherokee Nation Clean Air Act or any rule promulgated by the Commission, any order of the Commission, or any condition of any permit issued by the Commission pursuant to the Cherokee Nation Clean Air Act, and to whom the Commission has served, no less than fifteen (15) days previously, a written notice of violation. The Commission shall provide the person a reasonable opportunity to eliminate such violations, but may, however, reduce the fifteen- (15) day notice period as in the opinion of the Commission may be necessary to render the order reasonably effectual.

B. The Commission shall use reasonable efforts to provide any person alleged to be in violation with advance notice of intent to issue an order and of the opportunity to request an evidentiary hearing or to informally appear before the Commission. An order may require compliance immediately or within a specified time period or both. The order, notwithstanding any restriction contained in subsection (A) of this section, may also assess an administrative penalty for past violations occurring no more than five (5) years prior to the date the order is issued by the Commission, and for each day or part of a day that such person fails to comply with the order.

C. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations, and may impose such requirements, procedures or conditions as may be necessary to correct the violations. The Commission may order any environmental contamination or threat to public health or welfare, when caused by the violations, to be corrected by the person or persons responsible. The Commission or the Nation may also take reasonable actions to correct violations and contamination or to eliminate any threat, and may seek reimbursement by the responsible parties through administrative or court proceedings.

D. Any penalty assessed in the order shall not exceed Five Thousand Dollars (\$5,000.00) per day for each violation or the maximum established in the Environmental Quality Code. In assessing such penalties, the Commission shall consider the seriousness of the violation or violations, any good faith efforts to comply, and other factors determined by rule to be relevant.

E. An order issued after hearing or waiver of hearing shall become a final order upon issuance or on a date specified by the Commission. An order issued without a prior hearing shall become final unless no later than fifteen (15) days after the order is served the person or persons named therein request in writing an enforcement hearing.

F. In the case of an emergency where public health or the environment is in imminent danger, the order may be effective immediately but reasonable efforts to give notice to the person(s) subject to the order must be documented prior to issuance.

G. Upon request for a hearing, the Commission shall promptly schedule the enforcement hearing

before an authorized representative for the Commission or the full Commission, and notify the respondent.

§ 411. Reserved

§ 412. Comprehensive permitting program—Issuance, denial or renewal

A. Upon the effective date of permitting rules promulgated pursuant to the Cherokee Nation Clean Air Act, it shall be unlawful for any person to construct any new source, or to modify or operate any new or existing source of emission of air contaminants except in compliance with a permit issued by the Commission, unless the source has been exempted or deferred or is in compliance with an applicable deadline for submission of an application for such permit.

B. The Commission shall have the authority and the responsibility to implement a comprehensive permitting program for the Nation consistent with the requirements of the Cherokee Nation Clean Air Act. Such authority shall include but shall not be limited to the authority to:

1. Expediently issue, reissue, modify and reopen for cause, permits for new and existing sources for the emission of air contaminants, and to grant a reasonable measure of priority to the processing of applications for new construction or modifications. The Commission may revoke, suspend, deny, and refuse to issue or to reissue a permit:

a. upon a determination that any permittee or applicant is or would be in violation of any substantive provisions of the Cherokee Nation Clean Air Act, or any rule promulgated thereunder, or any permit issued pursuant thereto, or any local, regional or national air quality plan, or

b. when the Commission determines that the emissions or activity will pose an unreasonable threat to health, safety property or the environment;

2. Refrain from issuing a permit when issuance has been objected to by the Environmental Protection Agency in accordance with Title V of the federal Clean Air Act;

3. Revise any permit for cause or automatically reopen it to incorporate newly applicable rules or requirements if the remaining permit term is greater than three (3) years; or incorporate insignificant changes into a permit without requiring a revision;

4. Establish and enforce reasonable permit conditions which may include, but not be limited to:

a. emission limitations for regulated air contaminants,

b. operating procedures when related to emissions,

c. performance standards,

d. provisions relating to entry and inspections, and

e. compliance plans and schedules;

5. Require, if necessary, at the expense of the permittee or applicant:

a. installation and utilization of continuous monitoring devices,

b. sampling, testing and monitoring of emissions as needed to determine compliance,

c. submission of reports and test results, and

d. ambient air modeling and monitoring;

6. Issue:

a. general permits covering similar sources, and

b. permits to sources in violation, when compliance plans, which shall be enforceable by the Commission, are incorporated into the permit;

7. Require, at a minimum, that emission control devices on stationary sources be reasonably maintained and properly operated;

8. Require that a permittee certify that the facility is in compliance with all applicable requirements of the permit and to promptly report any deviations therefrom to the Commission;

9. Issue permits to sources requiring permits under Title V of the federal Clean Air Act for a term not to exceed five (5) years, except that solid waste incinerators may be allowed a term of up to twelve (12) years provided that the permit shall be reviewed no less frequently than every five (5) years;

10. Specify requirements and conditions applicable to the content and submittal of permit applications; set by rule, a reasonable time in which the Commission must determine the completeness of such applications; and

11. Determine the form and content of emission inventories and require their submittal by any source or potential source of air contaminant emissions.

C. Rules of the Commission may set de minimis limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee, or be subject to public review. Any source so exempted, however, shall remain under jurisdiction of the Commission and shall be subject to any applicable rules or general permit requirements.

D. The Commission shall notify, or require that any applicant notify, all nations or states whose air quality may be affected and that are contiguous to Cherokee Nation, or are within fifty (50) miles

of the source of each permit application or proposed permit for those sources requiring permits under Title V of the federal Clean Air Act, and shall provide an opportunity for such nations or states to submit written recommendations respecting the issuance of the permit and its terms and conditions.

E. No person, including but not limited to the applicant, shall raise any reasonably ascertainable issue in any future proceeding, unless the same issues have been raised and documented before the close of the public comment period on the draft permit, unless the Commission or Court finds good cause exists to allow the same.

F. A change in ownership of any facility or source subject to permitting requirements under this section may require such action, including but not limited to permit modification or a new permit, as the Commission in its discretion shall determine appropriate. If transferred, any permit applicable to such source at the time of transfer shall be enforceable in its entirety against the transferee in the same manner as it would have been against the transferor, as shall any requirement contained in any rule, or compliance schedule set forth in any variance or order regarding or applicable to such source. Provided, however, no transferee in good faith shall be held liable for penalties for violations of the transferor unless the transferee assumes all assets and liabilities through contract or other means. For the purposes of this subsection, good faith shall be construed to mean neither having actual knowledge of a previous violation nor constructive knowledge which would lead a reasonable person to know of the violation. It shall be the responsibility of the transferor to notify the Commission in writing within ten (10) days of the change in ownership.

G. Operating permits for new sources. Operating permits may be issued to new sources without public review upon a proper determination by the Commission that:

1. The construction permit was issued pursuant to the public review requirements of the Code and rules promulgated thereunder; and
2. The operating permit, as issued, does not differ from the construction permit in any manner which would otherwise subject the permit to public review.

§ 413. Permit fees—Environmental Programs Revolving Fund

A. Upon the effective date of the Cherokee Nation Clean Air Act a schedule of permit fees may be adopted requiring the owner or operator of any source required to have a permit to pay to the Commission:

1. A fee sufficient to cover the reasonable cost of reviewing and acting upon any application for a construction or operating permit for any new source or for the modification of any existing source;
2. An annual operating permit fee sufficient to cover the reasonable costs, both direct and indirect, of implementing and enforcing the permit program authorized by the Cherokee Nation Clean Air Act and/or the federal Clean Air Act, including, but not to be limited to:

- a. the costs of reviewing and acting upon any permit renewal,
- b. emissions and ambient monitoring, for those costs incurred under the permitting program,
- c. preparing generally applicable rules or guidance,
- d. modeling, monitoring, analyses and demonstrations,
- e. preparing inventories and tracking emissions, and
- f. inspections and enforcement.

B. The fees authorized in this section shall be set forth by rule.

C. Any fee not received by the Commission within the prescribed time period allotted for payment, unless a lesser amount shall be provided for by rule, shall be subject to a one and one-half percent (1 1/2%) per month penalty.

D. There is hereby created the Environmental Programs Revolving Fund, a subaccount which shall consist of all fees collected by the Commission as authorized by the Cherokee Nation Clean Air Act.

§ 414. Implementation and enforcement of federal emission standards—Oil and gas well and equipment emissions

A. The Commission shall have the authority to establish a program for the implementation and enforcement of the federal emission standards and other requirements under 42 U.S.C. § 7412 for hazardous air pollutants and for the prevention and mitigation of accidental releases of regulated substances under 42 U.S.C. § 7412(r). The Commission may promulgate rules which establish emission limitations for hazardous air pollutants which are more stringent than the applicable federal standards, upon a determination that more stringent standards are necessary to protect the public health or the environment.

B. The Commission shall have the authority to establish programs for control of the emission of toxic air contaminants not otherwise regulated by a final emission standard under 42 U.S.C. § 7412(d), and/or for the control of any other air contaminants, emissions or pollution.

C. Emissions from any oil or gas exploration or production well with its associated equipment, and emissions from any pipeline compressor or pump station may be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

D. The Commission may list oil and gas production wells with their associated equipment as an area source category or may establish an area source category for oil and gas production wells

located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of one million (1,000,000) if the Commission determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

E. Nothing in this section shall be construed to limit authority established elsewhere in the Cherokee Nation Clean Air Act or other provisions of the Cherokee Nation Code.

§ 415. Reserved

§ 416. Violations—Penalties

Any person who knowingly and willfully:

1. Violates any applicable provision of the Cherokee Nation Clean Air Act or federal Clean Air Act or any rule or standard or order promulgated thereunder;
2. Violates any order issued or permit condition prescribed pursuant to the Cherokee Nation Clean Air Act or federal Clean Air Act;
3. Violates any emission limitation or any substantive provision or condition of any permit;
4. Makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan or other document except for monitoring data, required pursuant to the Cherokee Nation Clean Air Act to be either filed or maintained;
5. Fails to notify or report as required by the Cherokee Nation Clean Air Act rules promulgated thereunder or orders or permits issued pursuant thereto;
6. Fails to install any monitoring device or method required to be maintained or followed pursuant to the Cherokee Nation Clean Air Act; or any rule, order or permit issued thereunder,
7. Tampers with or renders inaccurate any monitoring device; or
8. Falsifies any monitoring information required to be maintained or submitted to the Commission pursuant to the Cherokee Nation Clean Air Act;

shall be subject to the administrative, civil and criminal penalty provisions of the Environmental Quality Code.

§ 417. Civil actions

A. The Commission shall have the authority to commence a civil action for a permanent or temporary injunction or other appropriate relief, or to require abatement of any emission or

correction of any contamination, or to seek and recover a civil penalty in any of the following instances:

1. Whenever any person has violated or is in violation of any applicable provision of the Cherokee Nation Clean Air Act, or any rule promulgated thereunder;
2. Whenever any person has commenced construction, modification or operation of any source, or operates any source in violation of the requirement to have a permit, or violates or is in violation of any substantive provision or condition of any permit issued pursuant to the Cherokee Nation Clean Air Act; or
3. Whenever any person has violated any order of the Commission or any requirement to pay any fee, fine or penalty owed to the Nation pursuant to the Cherokee Nation Clean Air Act.

B. In any court proceeding, the Commission shall be entitled to recover reasonable attorney fees, expenses, penalties, fines costs of collection and an appropriate fee of up to fifty percent (50%) for collecting delinquent fees, penalties or fines. Any funds resulting from such actions shall be utilized by the Commission for environmental programs related to air quality, planning, assistance to communities, research related to health effects and environmental education.

CHAPTER 5

HISTORICAL AND CULTURAL PRESERVATION

Reserved for Future Use

CHAPTER 6

SOLID WASTE

GENERAL PROVISIONS

STORAGE TANK ACCOUNTABILITY AND REGULATORY SYSTEM (STARS)

GENERAL PROVISIONS

§ 601. Short title

This chapter shall be known and may be cited as the Cherokee Nation Solid Waste Code.

§ 602. Purpose

It is the purpose of the Cherokee Nation Solid Waste Code to regulate the collection, transportation, processing and disposal of solid waste in a manner that will:

1. Protect the public health, safety and welfare;
2. Protect the environment of Cherokee Nation;
3. Conserve valuable land and other natural resources;
4. Enhance the beauty and quality of the environment; and
5. Encourage recycling of solid waste.

§ 603. Definitions

As used in the Cherokee Nation Solid Waste Code:

1. **"Affiliated person"** means:

- a. any officer, director, partner or sole shareholder of the applicant;
- b. any person employed by the applicant as a general or key manager or who directs operations of the site, transfer station, or facility addressed by the application; or
- c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity.

2. **"Disclosure statement"** means a written statement by the applicant which contains:

- a. the full name, business address, and social security number of the applicant, and all affiliated persons;
- b. the full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or which is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations;
- c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations;
- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant and affiliated persons in the ten (10) years immediately preceding the filing of the application. Such action shall include, without limitations, any permit denial or any sanction imposed by a tribe, a state regulatory agency or the United States Environmental Protection Agency; and
- e. a listing of any other tribe, federal and state environmental agency that has or has had regulatory responsibility over the applicant.

3. "**Disposal site**" means any place, including, but not limited to, landfills, transfer stations, surface disposal sites and burial areas, at which solid waste is dumped, abandoned, or accepted or disposed of by incineration, land filling, land application, composting, shredding, compaction, baling or any other method, or by processing by pyrolysis, resource recovery or any other method, technique or process designed to change the physical, chemical or biological character or composition of any solid waste so as to render such waste safe or nonhazardous, amenable to transport, recovery or storage or reduced in volume.

4. "**Dwelling**" means a permanently-constructed, habitable structure designed and constructed for full-time occupancy in all weather conditions, which is not readily mobile. The term shall include, but is not limited to, traditional housing and manufactured homes.

5. "**Final closure**" means those measures for providing final capping material, proper drainage, perennial vegetative cover, maintenance, monitoring and other closure actions required for the site by statute, rule, permit or order.

6. "**Hazardous waste**" means any solid waste, or a combination of solid wastes, which meets the criteria to be considered hazardous under 40 C.F.R. 261.3, or which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. cause, or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or

b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; or

c. any substance listed by the United States government as hazardous.

7. "**History of noncompliance**" means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation, or a demonstrated pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact if a permit were issued.

8. "**Inert waste**" means any solid waste that is insoluble in water, chemically inactive, that will not leach contaminants, or is commonly found as a significant percentage of residential solid waste.

9. "**Integrated solid waste management plan**" means a plan that provides for the integrated management of all solid waste within the planning unit and embodies sound principles of solid waste management, natural resources conservation, energy production, and employment-creating opportunities.

10. "**Lithified earth material**" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. The term "lithified earth material"

shall not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

11. "**Maximum horizontal acceleration in lithified earth material**" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

12. "**Monofill**" means a landfill which is used to dispose of a single type of specified nonhazardous industrial solid waste, except for other nonhazardous industrial solid wastes which are not readily separable from the specified waste.

13. "**Nonhazardous industrial solid waste**" means any of the following wastes deemed by Administrator to require special handling:

a. unusable industrial or chemical products;

b. solid waste generated by the release of an industrial product to the environment; or

c. solid waste generated by a manufacturing or industrial process.

The term "**nonhazardous industrial solid waste**" shall not include waste that is regulated as hazardous waste or is commonly found as a significant percentage of residential solid waste.

14. "**Person**" means any individual, corporation, company, firm, partnership, association, trust, state agency, tribe, government instrumentality or agency, institution, county, any incorporated city or town or municipal authority or trust in which any governmental entity is a beneficiary, venture, or other legal entity however organized.

15. "**Recycling**" means to reuse a material that would otherwise be disposed of as waste, with or without reprocessing.

16. "**Seismic impact zone**" means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years.

17. "**Solid waste**" means all putrescible and nonputrescible refuse in solid, semisolid, or liquid form, or contained gaseous material, including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid or semisolid commercial and industrial waste including explosives, biomedical wastes, chemical wastes, mining wastes, herbicide and pesticide wastes.

18. "**Solid waste landfill**" means, but is not limited to, municipal solid waste landfills as defined in federal regulations.

19. **"Solid waste management system"** means the system that may be developed for the purpose of collection and disposal of solid waste by any person engaging in such process as a business or by any municipality, authority, trust, county or by any combination thereof at one or more disposal sites.

20. **"Solid waste planning unit"** means any district, Indian community, county, incorporated city or town, municipal authority or trust in which any governmental entity is a beneficiary, or other legal entity however organized, which the Administrator determines to be capable of planning and implementing an integrated solid waste management program.

21. **"Transfer station"** means any disposal site, processing facility or other place where solid waste is transferred from a vehicle or container to another vehicle or container for transportation, including but not limited to a barge or railroad unloading facility. It does not include:

a. a facility such as an apartment complex or a manufacturing plant, where solid waste that is transferred has been generated by the occupants, residents, or facility functions;

b. a citizens' collection station; or

c. a solid waste collection system which leaves waste in enclosed containers along the collection route for later transport.

22. **"Waste reduction"** means to reduce the volume of waste being generated and/or requiring disposal.

§ 604. Policy

Cherokee Nation declares it to be the policy of the Nation that solid waste generated on lands under the Nation's jurisdiction or imported should be treated, stored and disposed of so as to minimize the present and future threat to human health and the environment, and that pollution prevention, waste reduction and recycling should be encouraged.

§ 605. Powers and duties

A. The EPC is empowered to promulgate rules, require and issue permits, and issue orders:

1. applicable to the permitting, posting of security, construction, operation, closure, maintenance and remediation of solid waste disposal sites, borrow pits and dredge and fill areas;

2. establishing requirements for disposal, transfer, transport, treatment and storage of solid waste in ways that ensure public health and safety and protection of the environment to the greatest extent possible;

3. encouraging or requiring methods of pollution prevention, waste reduction, conservation, avoidance, minimization or mitigation of impacts, and recycling;

4. requiring sampling or the submission of laboratory reports or analyses performed by certified laboratories for the purposes of compliance monitoring and testing, and for other purposes required for the regulation of sludge;

5. requiring the submission by any applicant, owner or operator of a solid waste facility of detailed site plans, compliance audits, environmental assessments or other reports prepared by an engineer or qualified consulting firm approved by the EPC, as a condition of granting a permit or allowing continued operations, and as a requirement in any order or consent agreement;

6. requiring disclosure of information and filing of reports by any owner, operator or applicant, and requiring certifications or licenses for operators;

7. addressing the transportation of solid waste. Such rules shall not be less stringent than those of the United States Department of Transportation or the United States Interstate Commerce Commission;

8. regulating borrow and storage areas for soils, and storage of chemicals or other materials;

9. developing comprehensive solid waste management rules and best management practices;

10. overseeing development of a nationwide integrated solid waste management plan with input from the public, other tribes, states, municipal and county governments and regional solid waste planning and management entities;

11. establishing administrative permit and enforcement procedures;

12. establishing standards and requirements for the remediation of groundwater, surface waters, or contaminated soils resulting from releases, spills or any other activity;

13. implementing and enforcing provisions of the Solid Waste Code and applicable regulations pursuant to Chapter 12 of the Cherokee Nation Environmental Quality Code; and

14. enforcing the provisions of applicable federal laws and regulations including, but not limited to, those related to landfills in 40 C.F.R. Part 258.

B. The EPC may establish by rule a schedule of fees to be charged for copies, applications for permits, licenses and other authorizations, inspections and other environmental services involved in the regulation of solid waste. Fees charged pursuant to this section shall be paid into the Environmental Quality Revolving Fund. The EPC in setting fees shall consider appropriate factors such as facility size and capability, type of facility and type and amount of waste accepted, stored, treated, transferred or disposed.

C. The EPC may, but is not obligated to, authorize a variance from specific requirements if the applicant demonstrates that compliance will be met by substituted technology which equals or

exceeds the protection otherwise accorded and the variance will not result in a hazard to the health, environment and safety of the people of this Nation or their property. Any variance shall be upon express condition that, in the event of the failure of the substituted technology to conform to requirements, the applicant shall be required to incorporate the technology, process or procedure established under the rules.

§ 606. Authority to administer and implement federal laws and programs

The EPC and Administrator are hereby designated and authorized to take all actions necessary or appropriate to administer, implement and enforce the federal Solid Waste Disposal Act (Public Law 89–272), Clean Water Act Section 404 program, Resource Conservation and Recovery Act, Surface Mining Control and Reclamation Act and other mining laws, Comprehensive Environmental Response, Compensation and Liability Act, and Superfund Amendments and Reauthorization Act, as these laws exist or may be amended.

§ 607. Cherokee Nation Recycling Initiative

A. The Council recognizes and declares that it is necessary for the public interest, health and economic welfare to encourage and promote the recycling and reuse of recoverable materials. The recycling and reuse of recoverable materials can substantially reduce production and disposal costs, save tribal lands, conserve natural resources and protect the environment.

B. The Legislature declares that the goal of the Cherokee Nation Recycling Initiative is that the Cherokee Nation government, Cherokee Nation-related entities and each Cherokee Nation community should develop and operate a recycling program. Due to the importance of the paper industry to Cherokee Nation's economy, each recycling and reuse program should at a minimum include the collection of waste paper.

§ 608. Permit required—Exemptions

A. Except as otherwise specified in this section:

1. No person shall dispose of solid waste at any site or facility other than a site or facility for which a permit for solid waste disposal has been issued by the EPC;
2. No person shall own or operate a site or facility at which solid waste is disposed other than a site or facility for which a permit for solid or hazardous waste disposal has been issued by the EPC; and
3. No person shall knowingly transport solid waste to an unpermitted site or facility.

B. A person is not prohibited from disposing of solid waste from his or her household upon his or her property provided such disposal does not otherwise create a nuisance or a hazard to the public health or environment or does not violate any other applicable laws, rules, orders or ordinances. Provided, however, disposal areas for more than fifty (50) tires, junk cars or similar wastes shall be

subject to the permit requirements of this chapter.

C. The EPC shall issue a permit to be effective for the life of a given site or operation, but may require periodic renewal or modify the permit as appropriate. Each person who operates a landfill disposal site shall submit information on an annual basis at such times and in such form as the EPC shall require, sufficient to allow the EPC to know the remaining landfill life and ensure compliance with financial assurance requirements are met.

D. Information and data submitted in support of a permit application or a permit modification application shall be prepared and sealed by a professional engineer licensed to practice in Oklahoma or Arkansas unless a waiver of this requirement is obtained.

E. The EPC shall not issue any permit for the siting or expansion of an asbestos monofill which will be located closer than five hundred (500) yards from any occupied residence. No asbestos monofill shall be constructed within three (3) miles of the corporate boundaries of any city or town or within one (1) mile of a designated scenic river.

F. Disposal sites approved by the EPC to receive only solid waste shall not accept for disposal any biomedical waste or waste classified as hazardous waste.

G. No permit shall be required for a disposal site constructed pursuant to an order issued by the EPC in an effort to remediate an abandoned or inactive waste site. Such disposal site shall only receive waste from the remediation project, and shall be designed, constructed, and operated in accordance with the standards established in applicable rules, statutes, permits or orders. Such standards shall not be less stringent than those which would apply to a federally-funded remediation project pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act.

H. The EPC shall not issue any permit for the siting of a new solid waste disposal site in any location that is:

1. within a locally fractured or cavernous limestone or cherty limestone bedrock;
2. within five (5) miles of any water well owned by a rural water district that is used or has the potential to be used to provide water to customers of the district; or
3. within any area judged to present unacceptable risks to any water supply or any other beneficial use of surface water or groundwater, or
4. Within a one-hundred (100) year floodplain.

I. The EPC may reject a permit application for siting of a new solid waste disposal site where it determines that it create an unacceptable risk to public health, safety or welfare, natural resources or the environment The applicant shall be entitled to a hearing and in any event shall have the burden of proof to show that such a risk would not exist.

J. The EPC may include conditions and terms in any permit to require restrictions on site location, types and amounts of wastes authorized, pretreatment and sorting, recycling, stormwater and discharge controls, retention times or other schedules, cover and revegetation, fencing, buffer zones, setbacks, fencing, reporting, recordkeeping, sampling, and any other condition or term deemed appropriate to avoid, minimize or mitigate environmental impacts or other unacceptable risks to public health, welfare and safety.

K. Where appropriate, the EPC may require both owner and operator to be listed as joint permittees or may require separate permits for the owner(s) of the property, owner(s) of the business and/or the operator(s) of the business.

§ 609. Disclosure statement upon application—Revocation, or refusal to issue, amend, modify, renew or transfer permit—Failure to disclose or stating false information—Penalty

A. All applicants for the issuance or transfer of any solid waste permit, license, certification or operational authority shall file a disclosure statement with their applications, including if applicable the most recent annual and quarterly reports required by the Securities and Exchange Commission, information regarding legal proceedings in which the applicant has been involved, and such other information relating to the competency, reliability, or responsibility of the applicant and affiliated persons as the EPC may require.

B. The EPC is authorized to revoke or to refuse to issue, amend, modify, renew or transfer a permit for the disposal of solid waste from or to any person or an affiliated person who:

1. is not in substantial compliance with any final EPC order or final order or judgment of a court of record issued pursuant to the provisions of the Cherokee Nation Solid Waste Code or any other portion of the Cherokee Nation Environmental Code; or

2. is not in substantial compliance with any final EPC order or final order or judgment of a court of record secured by any state or federal agency, as determined by that agency, relating to the storage, transfer, transportation, treatment or disposal of any solid waste; or

3. has evidenced a history of a reckless disregard for the protection of the public health and safety or the environment through a history of noncompliance with state or federal environmental laws, including without limitation the rules of the EPC regarding the storage, transfer, transportation, treatment or disposal of any solid or hazardous waste.

C. The application shall be signed under oath by the applicant.

D. The EPC may suspend or revoke a permit issued pursuant to the Cherokee Nation Solid Waste Code to any person who has failed to disclose or states falsely any information required pursuant to the provisions of this section. Any person who willfully fails to disclose or states falsely any such information, upon conviction, shall be guilty of a misdemeanor and may be punished as set forth in Chapter 12 of the Cherokee Nation Environmental Code.

E. The EPC may suspend, revoke, refuse to issue, refuse to renew or refuse to transfer a solid waste or other permit for good cause at any time. Good cause shall include, but is not limited to, a determination that there is insufficient information upon which to base a decision that adequate protection will be provided for the environment or public health if a permit is issued, or available information indicates that the activity would pose an unacceptable risk of adverse impacts.

§ 610. Availability of administrative permit hearing

Any interested person may request an administrative permit hearing on a proposed permit application for a new permit or for the major modification of an existing permit involving a fifty percent (50%) or more increase in permitted capacity for storage, treatment or disposal including but not limited to incineration.

§ 611. Appeal of issuance of permit—Stay of time restraints

The filing of a proceeding appealing the issuance of a permit authorizing the construction and operation of a solid waste disposal facility shall stay any time restraints specified in the permit relating to the term or expiration of the permit.

§ 612. Nonhazardous industrial solid waste landfills—Permit—Restrictions

A. The EPC may issue a permit for a landfill disposal site, which is not a hazardous waste facility, which accepts nonhazardous industrial solid waste, only under the following circumstances:

1. the landfill is located outside of areas of principal groundwater resource or recharge areas as determined and mapped by the Oklahoma Geological Survey or is on a proposed site on property owned or operated by a person who also owns or operates a hazardous waste facility or solid waste facility, on or contiguous to property on which a hazardous waste facility or solid waste facility is operating pursuant to a permit and the site is designed to meet the most environmentally protective solid waste rules promulgated by the EPC and includes a leachate collection system; or
2. the landfill complies with all siting and public participation requirements as though the solid waste landfill were a hazardous waste landfill; or
3. the site is proposed and designed as a nonhazardous industrial solid waste landfill which will be owned, operated, or owned and operated by an industry or manufacturer for its exclusive noncommercial use.

B. 1. New landfills which accept nonhazardous industrial solid waste shall not be constructed nor shall such existing landfills be expanded which are located within a seismic impact zone unless the applicant demonstrates that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

2. No nonhazardous industrial solid waste landfill shall be located within five (5) miles of a known epicenter of an earthquake of more than 4.0 on the Richter Scale or a number V on the modified Mercalli Scale as recorded by the Cherokee Nation Geological Survey.

C. 1. Before sending waste identified as nonhazardous industrial solid waste for disposal in a solid waste landfill, a certification that the waste is not a hazardous waste shall be submitted to the holder of the landfill permit with a copy to the Administrator. Such certification shall be made by:

a. the original generator,

b. a person who identifies and is under contract with a generator and whose activities under the contract cause the waste to be generated,

c. a party to a remediation project under an order of the EPC, state or federal agency, or

d. a person responding to an environmental emergency.

2. The EPC may require the certifier to substantiate the certification by appropriate means, when it is reasonable to believe such waste may be hazardous. Such substantiation may include Material Safety Data Sheets, an explanation of specific technical process knowledge adequate to identify that the waste is not a hazardous waste, or laboratory analysis.

D. Any generator seeking to exclude a specific nonhazardous industrial solid waste, which is also an inert waste, from the provisions of this section may petition the EPC for a regulatory exclusion. The generator shall demonstrate to the satisfaction of the EPC that the waste is inert and that it may be properly disposed.

§ 613. Site closure plan—Financial security

A. All disposal site owners shall provide a closure plan to the EPC for approval which defines operational phases and includes cost estimates, and plans and specifications for final closure. A site may be closed in phases according to a closure plan approved by the EPC.

1. Owners of landfills that receive household solid waste, defined as Municipal Solid Waste Landfill Facilities in the federal regulations adopted under Subtitle D of the federal Solid Waste Disposal Act, and owners of nonhazardous industrial waste landfills shall provide for the maintenance and monitoring of such works for thirty (30) years.

2. Generator-owned and -operated private industrial nonhazardous monofills and landfill disposal sites may apply to the EPC for a variance from the thirty (30) year postclosure monitoring or other closure requirements, provided that no variance may allow for requirements that are less stringent than those under applicable federal law.

3. Disposal sites other than land disposal sites shall have a closure plan which would accomplish the removal and proper disposal of any remaining waste and the elimination of potential

environmental health hazards.

B. Financial assurance for costs of closure and any postclosure shall be provided in accordance with 40 C.F.R. Part 258 and any applicable EPC rules.

C. The Nation shall be the sole beneficiary of any such assurance and shall have a security interest therein.

D. When financial assurance is required, it shall remain in effect until closure and any postclosure is completed.

§ 614. Vegetation plan

The owner or operator of any solid waste landfill, over fifty feet (50') in height above natural surface contours that accepts more than two hundred (200) tons per day of solid waste, or any disposal site which disturbs more than one (1) acre of land, must submit a vegetation plan to the EPC for approval. The vegetation plan shall address establishment and maintenance of appropriate vegetative cover for the purposes of erosion and dust control and aesthetic enhancement. The vegetation plan shall be implemented in waste disposal areas that have been undisturbed for ninety (90) days. The EPC shall promulgate rules relative to the contents of the vegetation plan.

§ 615. Scales—Fees, exemptions—Expenditure of funds—Recycling project contracts—Annual report

A. 1. Owners or operators of solid waste disposal sites shall install and maintain scales or volumetric measuring equipment. Such scales or equipment shall be installed on or within five (5) miles of the landfill disposal site and shall be tested and certified.

2. The owner or operator shall upon receipt weigh or record the volume of all waste received and record the weight or volume in writing. These records shall be maintained at the site and must be provided to the EPC upon request.

3. The owner or operator of a solid waste disposal site shall collect any additional fees that may be established by the EPC pursuant to this Code as trustee for the Nation and shall prepare and file with the Administrator of the EPC quarterly returns indicating:

a. the total tonnage of solid wastes received for disposal at the gate of the site, and

b. the total amount of the fees collected.

4. Not later than thirty (30) days after the end of the quarter to which such a return applies, the owner or operator shall mail to the Administrator of the EPC the return for that quarter together with the fees collected during that quarter as indicated on the return.

5. If the owner or operator misrepresents, or fails to properly measure or record the amount of

waste received or fails to remit fees within sixty (60) days after the last day of the quarter during which they were collected, the disposal site's permit shall be summarily suspended by order and the EPC shall initiate the process of revoking the permit and may require closure of the landfill.

C. 1. The Administrator of the EPC shall expend funds collected pursuant to the provisions of this section solely for the administration and enforcement of the provisions of the Cherokee Nation Environmental Code, the development of solid waste technical assistance programs, environmental education programs and educational curricula, development of a nation-wide solid waste plan, recycling and litter prevention programs, and other environmental improvements.

§ 616. Development of plan

To the extent feasible, the EPC and Environmental Programs should work with Cherokee Nation citizens and the Tribal Council to ensure that each district has a plan that will provide a solid waste management system to adequately handle solid wastes generated or existing within the boundaries of such district.

STORAGE TANK ACCOUNTABILITY AND REGULATORY SYSTEM (STARS)

§ 661. Short title

Sections 661 through 675 of this Title shall be known and may be cited as the Storage Tank Accountability and Regulatory System or STARS.

§ 662. Legislative intent—Public policy

The Council finds that the release of hazardous substances and petroleum from storage tanks into the surface water, groundwater, air and subsurface soils of this Nation poses a potential threat to the natural resources, health, safety and welfare of the residents of this Nation and to the economy of this Nation.

Therefore the Council declares it is the public policy of this Nation to protect the public health, safety, welfare, the economy and the environment from the potential harmful effects of storage tanks used to store hazardous substances and petroleum. In order to implement this policy, it is the intent of the Council to establish a program for the regulation of storage tank systems.

§ 663. Definitions

As used in STARS:

1. "**Abandoned system**" means a storage tank system which:

a. has been taken permanently out of service as a storage vessel for any reason or is not intended to be returned to service,

- b. has been out of service for one (1) year or more prior to April 21, 1989, or
 - c. has been rendered permanently unfit for use as determined by the Commission.
2. "**Administrator**" means the Administrator of the Cherokee Nation Environmental Protection Commission.
 3. "**Commission**" means the Cherokee Nation Environmental Protection Commission.
 4. "**Corrective action**" means action taken to monitor, maintain, minimize, eliminate or clean up a release from a storage tank system.
 5. "**Corrective action plan**" means the plan submitted to the regulatory program of the Commission detailing the method and manner of corrective action to be taken for a release.
 6. "**Council**" means the Cherokee Nation Tribal Council.
 7. "**Environment**" means any chemical, physical or biological component of the earth, including but not limited to water, water vapor, air, land (surface or subsurface), fish, birds and other wildlife, vegetation, and all other natural resources.
 8. "**Facility**" means any location or part thereof containing one (1) or more storage tanks or systems.
 9. "**Hazardous substance**" shall include:
 - a. any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, but not including:
 - i. any substance regulated as a hazardous waste under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C. § 6903, or
 - ii. any substance regulated as a hazardous waste under the Cherokee Nation Environmental Code;
 - b. a mixture of hazardous substances and petroleum, providing the amount of petroleum is of a de minimis quantity;
 - c. substances identified as such in 40 C.F.R. Parts 117 and 302; and
 - d. any other substances so designated by the Commission.
 10. "**Operator**" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release or a violation of the STARS or of a rule promulgated hereunder.

11. **"Owner"** means:

a. in the case of a storage tank system in use on November 8, 1984, or brought into use after that date, any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, or

b. in the case of a storage tank system in use before November 8, 1984, but no longer in service on that date, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its use.

The term **"owner"** does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank system.

12. **"Permit"** means any registration, permit, license or other authorization issued by the Commission to operate a storage tank system.

13. **"Person"** means any tribe, tribal entity, individual, trust, firm, joint stock company or limited liability company, federal agency, including a government partnership, association, the state or any state agency, municipality, county or other political subdivision of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government or any other legal entity.

14. **"Petroleum"** means ethylene glycol-based antifreeze, crude oil, crude oil fractions, and refined petroleum fractions, including motor fuel, jet fuel, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oil which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). "Petroleum" also means a mixture of petroleum and hazardous substances; provided, the amount of the hazardous substances is of a de minimis quantity.

15. **"Pipeline facilities"** means new and existing pipe rights-of-way and any equipment, facilities or buildings regulated under any applicable federal, tribal or state law, including but not limited to:

a. the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C.App. § 1671 et seq. (repealed; see 49 U.S.C. § 60101 et seq.),

b. the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. § 2001 et seq. (repealed; see 49 U.S.C. § 60101 et seq.),

c. Oklahoma Hazardous Liquid Transportation System Safety Act, 52 O.S. § 47.1 et seq.,

d. Cherokee Nation Environmental Code, 27 CNCA § 100 et seq., or

e. intrastate pipeline facilities.

16. **"Regulated substances"** means hazardous substances, petroleum and any substance otherwise designated by the Commission or this act;

17. **"Release"** means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of regulated substances from a storage tank system into the environment of the Nation. The term "release" includes but is not limited to suspected releases identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner.

18. **"Storage tank system"** means any one or combination of tanks, including underground or aboveground piping and equipment connected thereto, that is used to contain an accumulation of regulated substances, and shall include such tanks regardless if located aboveground or underground.

19. **"Tank"** means a stationary vessel designed to contain an accumulation of regulated substances, which is constructed of primarily non-earthen materials that provide structural support.

20. **"Transporter"** means any person who transports, delivers or distributes any quantity of regulated substance from one point to another for the purpose of wholesale or retail gain.

§ 664. Exemptions and case-by-case determinations

A. The provisions of STARS do not apply to:

1. septic tank systems otherwise approved by the Commission or exempted under regulations promulgated by the Commission;

2. surface impoundments, pits and lagoons that are otherwise covered in a permit issued by the Commission and/or are subject to other provisions of the Cherokee Nation Environmental Code;

3. stormwater and wastewater collection systems;

4. row-through process tank systems;

5. liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

6. hydraulic lift tank systems;

7. storage tank systems with a capacity of less than one hundred ten (110) gallons;

8. storage tank systems with a de minimis concentration of regulated substances including but not limited to swimming pools and coffins;

9. storage tank systems that serve as emergency backup tanks, provided that such backup tanks

hold regulated substances for only a short period of time and are expeditiously emptied after each use;

10. storage tank systems with a capacity of one thousand one hundred (1,100) gallons or less used for noncommercial agricultural or residential purposes;

11. Storage tank systems and residential tanks for noncommercial use for storing heating oil for consumptive use on the premises where stored; and

12. storage tank systems storing hazardous wastes regulated under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C. § 6921 et seq., or substances regulated as hazardous wastes under Cherokee Nation hazardous waste laws.

B. The Commission may require any facility, structure or activity to comply with STARS, rules promulgated hereunder, Commission guidelines, notification requirements, restrictions, appropriate Commission orders, and may require any facility, structure, activity or person to obtain a permit prior to constructing, installing or operating any facility, whenever it determines that it is necessary or appropriate to protect the environment or public health, safety or welfare.

§ 665. Environmental Programs designated to administer certain federal programs

Cherokee Nation Environmental Programs and the Commission are hereby designated and empowered to administer subtitle I of Title VI of the Solid Waste Disposal Act and Section 205 of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 6991 et seq. The Commission's jurisdiction shall include, but is not limited to:

1. underground and aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below;

2. point source and nonpoint source discharges of pollutants to waters of the Nation from storage tank facilities and related activities;

3. site remediation and the off-site disposal of contaminated soil, media, or debris; and

4. underground and aboveground storage tanks containing hazardous substances and other substances or facilities not otherwise listed.

§ 666. Powers and duties

A. In addition to other powers and duties prescribed by law, the Commission and its duly authorized representatives shall have the power and duty to:

1. issue, renew, deny, modify, suspend, refuse to renew and revoke permits for storage tank systems and related activities pursuant to the provisions of STARS and rules promulgated pursuant thereto;
 2. promulgate and enforce rules to implement the provisions of STARS, including but not limited to rules setting permit fees;
 3. establish minimum standards and schedules for storage tank systems;
 4. by order, permit, rule or other lawful process require any owner or operator of a storage tank system within this Nation to:
 - a. submit such reports and information concerning the storage tank system as may be determined necessary by the Administrator pursuant to the provisions of STARS or rules promulgated thereto,
 - b. perform tests, install release detection devices, and where appropriate, monitor the environment to ensure that pollution is not occurring,
 - c. make timely reports to the Administrator of pollution or releases,
 - d. temporarily or permanently cease operation of a storage tank system, modify and immediately remove or control any regulated substance that is found to be causing pollution when such cessation, removal or control is determined to be necessary by the Commission,
 - e. provide an alternate or temporary drinking water source to any person deprived of drinking water if it is found that such owner or operator is responsible for polluting the drinking water source beyond applicable drinking water standards, or where no such standard exists, such standard as the Department of Environmental Quality shall determine,
 - f. take full corrective action if such owner or operator is found to be responsible for the release, and
 - g. take appropriate action to temporarily relocate residents affected by the release;
 5. establish and enforce administrative penalties for violations pursuant to the provisions of STARS and the Cherokee Nation Environmental Code, including but not limited to the authority to close a facility found to pose an imminent threat to the health, safety or the environment, a facility operating without a proper permit, or a facility with operating tanks for which permit fees have not been paid;
 6. institute and maintain or intervene in any action or proceeding where deemed necessary by the Commission pursuant to the provisions of STARS to protect the health, safety and welfare of any resident of this Nation or the environment.
- B. The Administrator and Environmental Programs shall have the following powers and authority:

1. register storage tank systems, establish a database, accept payment of fees and hire such personnel as are necessary for implementing this act to the extent funding shall allow;
2. enter at any reasonable time upon any public or private property for the purpose of inspecting and investigating a storage tank system and taking such samples as may be necessary to determine compliance with the provisions of STARS, and rules promulgated thereto;
3. issue informal letters requesting compliance, issue notices of violation, refer matters to the Commission when formal enforcement action may be appropriate;
4. exercise any authority of the Commission when such authority has been delegated to them by the Commission;
5. draft and propose rules, schedules, forms, permits and other documents for the Commission;
6. request issuance of an administrative warrant or search warrant as may be necessary from the District Court where such public or private property is located to allow entry, inspection, sampling, or copying;
7. have access to and copy any records required to be maintained pursuant to the provisions of STARS or rules promulgated thereunder,
8. inspect any equipment, practice or method, which is required by the provisions of STARS or rules promulgated thereto;
9. have access to and inspect any monitoring stations or conduct tests to identify any actual or suspected release of a regulated substance;
10. employ or designate personnel to conduct investigations and inspections, to make reports of compliance with the provisions of STARS and rules promulgated thereto;
11. report to the Attorney General of Cherokee Nation, U.S. Department of Justice, or any other appropriate law enforcement entity with jurisdiction, any act committed by an owner, operator or employee of a facility which may constitute a violation of the provisions of STARS or rules promulgated thereto; and
12. operate the Storage Tank Program, in coordination with the Commission, in lieu of the federal government upon approval by the Environmental Protection Agency.

§ 667. Registration, fees and permit applications

A. All persons who already own, operate or use aboveground or underground storage tanks on lands under the jurisdiction of Cherokee Nation on the effective date of this act shall register such tanks with the Administrator no later than August 1, 2005. If registered before August 1, 2005, and

otherwise in compliance with applicable requirements, such existing tanks are not required to have an individual permit issued under STARS until January 1, 2007 unless the Commission otherwise determines a permit is appropriate.

B. All persons wishing to install, construct, operate or use a storage tank after August 1, 2005, shall first submit a permit application and any required permit fees to the Administrator prior to any installation, construction, operation or use.

C. The Commission may establish a schedule of fees for issuance of any permit, registration or authorization required pursuant to the provisions of STARS or rules promulgated thereunder. The fees shall be in an amount to cover the costs of the Commission in administering STARS.

D. The Administrator will notify persons submitting permit applications in a timely manner whether additional information, fees, engineering plans, inspections, sampling and/or laboratory analyses will be required.

E. All permit fees, penalties and other monies collected under this Code shall be deposited into the Environmental Quality Revolving Fund established under 27 CNCA § 209 and may only be used for environmental programs and protection of natural resources.

§ 668. Operation without permit prohibited—Application form—Denial, refusal to issue, suspension or revocation—Financial responsibility coverage

A. Except as otherwise provided by STARS, no storage tank system or facility shall be installed, used or operated without first obtaining a permit from the Commission. All businesses or persons proposing to own, install, use, locate or operate a storage tank on lands owned by the Nation, held in trust by the United States for the Nation, or otherwise in Indian Country subject to the Nation's jurisdiction, shall comply with the permit requirements and other requirements of STARS and the Cherokee Nation Environmental Code.

A storage tank system is not required to be permitted if the tank system:

1. does not contain or has not contained a regulated substance; or
2. has been permanently closed or has not been in operation since January 1, 1974.

B. No person shall deposit a regulated substance into a storage tank system unless the system is operating pursuant to a permit issued by the Commission.

C. Any person who sells a storage tank system shall notify the owner or operator, or both, of the tank of the permit requirements of STARS and the Cherokee Nation Environmental Code.

D. The application form for a permit shall be provided by and filed with the Administrator. In addition to other information requested by the Commission, the application shall include the type of financial responsibility coverage utilized to comply with the requirements of STARS and by

rule of the Commission and the type of leak detection method employed.

E. 1. Permits shall be issued by the Commission for a period not to exceed three (3) years, but may be issued for a shorter duration.

2. A permit issued pursuant to the provisions of STARS may only be transferred with the prior approval of the Commission.

3. Any permittee or applicant for permit subject to the provisions of the STARS shall be deemed to have given consent to any duly authorized employee or agent of the Commission to access, enter, inspect or monitor the tank system or facility in accordance with the provisions of STARS. Refusal to allow such access, entry, or inspection may constitute grounds for the denial, nonrenewal, suspension, or revocation of a permit. Upon refusal of access, entry, inspection, sampling or copying pursuant to this section, the Commission or a duly authorized representative may make application for and obtain an administrative warrant or a search warrant from the District Court where the facility is located to allow such entry, inspection, sampling or copying.

4. The owner or operator of a storage tank system shall display the permit in a location or manner in which the permit can easily be visible to any person depositing a regulated substance into a storage tank even after normal business hours.

F. Any permit or other fees collected pursuant to STARS shall be deposited in the Cherokee Nation Environmental Quality Revolving Fund and may only be used for environmental programs and protection of natural resources.

G. The Commission may deny approval of a permit application, or refuse to reissue, suspend or revoke a permit issued pursuant to STARS if the Commission finds, after notice and a hearing, that the applicant or permittee has:

1. fraudulently or deceptively obtained or attempted to obtain a permit;

2. failed to comply with any provision or requirement of STARS, the Cherokee Nation Environmental Code and rules, or any order of the Commission;

3. not maintained in effect the financial responsibility requirements established by this section and by rules of the Commission; or

4. the Commission otherwise finds such action appropriate in fulfilling its duties to protect the public, natural resources and environment.

H. Any person owning or operating a storage tank system containing a regulated substance who is not otherwise exempted by law or rule of the Commission, shall obtain and have in effect financial responsibility coverage for taking corrective action and for compensating third parties for physical injury and property damage caused by releases arising from operating storage tank systems. Financial assurance shall be sufficient to restore property to its previous condition or comparable

condition. Proof of financial assurance shall be a prerequisite to obtaining a permit.

§ 669. Rules governing storage tank systems

A. The Commission shall promulgate rules, guidelines and schedules of fees governing storage tank systems. Until such time as superceded, the following minimum requirements and provisions apply:

1. standards and requirements of 40 C.F.R. Part 280;
2. release detection methods or equipment adequate to identify releases from storage tank systems, or both detection methods and equipment shall be installed and maintained;
3. written procedures to follow when release detection methods or equipment or both such methods and equipment records indicate any loss or gain which is not explainable by spillage, temperature variations or other known causes, shall be prepared and maintained;
4. in the event of any release, owners and operators of storage tank systems must report to the Administrator and/or the designated agent(s) of the Administrator within twenty-four (24) hours, or another reasonable time period specified by the Cherokee Nation Environmental Protection Commission, as required by STARS or regulations promulgated thereunder;
5. records documenting actions taken in accordance with paragraphs 1 through 3 of this subsection shall be prepared and maintained;
6. notice shall be promptly given to landowners whose property has been or may be affected by a release, and such landowner shall be afforded a meaningful opportunity to have input into any activities impacting such landowners' property;
7. adjacent property owner(s) whose property has been contaminated by a release may remediate his or her own property under the same requirements as the tank owner or operator responsible for remediating the release, if the release is not otherwise promptly remediated, and the owner or operator shall reimburse such adjacent property owner(s) unless otherwise ordered by the Commission or a court with jurisdiction.

B. Minimum schedules and standards may be established and imposed by the Administrator and the Commission in the form of written guidelines for the design, construction, installation, operation, maintenance, repair, monitoring, testing, inspection, release detection, performance, abandonment and closure of storage tank systems, as may be necessary to protect human health, safety and welfare and the environment. Said written schedules and standards shall be enforceable as rules until otherwise modified, superceded or revoked by the Commission or a court of competent jurisdiction. Copies of all written guidelines must be provided or made available to the public upon request.

C. In promulgating rules establishing schedules and standards pursuant to this section, the

Commission may distinguish in such standards between requirements appropriate for new tanks, existing tanks and for abandoned tanks. In making such distinctions, the Commission may consider such factors as:

1. location of the tanks;
2. soil and climate conditions;
3. uses of the tanks;
4. history of maintenance;
5. age of the tanks;
6. national industry codes;
7. hydrogeology;
8. water table;
9. size of the tanks;
10. quantity of regulated substances periodically deposited in or dispensed from the tank;
11. the compatibility of the regulated substance and the materials of which the tank is fabricated; and
12. any other factors as deemed appropriate or necessary by the Commission.

D. The Commission may promulgate rules establishing different requirements for different areas or regions of the Nation if the Commission finds that more stringent rules are necessary:

1. to protect specific waters or other resources of the Nation including but not limited to those waters of the Nation designated for additional protection in Cherokee Nation's water quality standards; or
2. because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

E. In promulgating rules pursuant to the provisions of STARS, the Commission shall consider all relevant federal standards and regulations on storage tank systems and shall not promulgate any rule less stringent than federal requirements.

§ 670. Releases from storage tank systems—Reporting

A. Until the Environmental Protection Commission may adopt rules that differ, the following minimum requirements apply to releases from storage tank systems:

1. Owners and operators of underground storage tank systems must report to the Administrator and/or the designated agent(s) of the Administrator within twenty-four (24) hours, or such other reasonable time period as is specified by the Cherokee Nation Environmental Protection Commission. Underground storage systems must comply with substantive and procedural requirements of 40 C.F.R. Part 280 including, but not limited to, the procedures in 40 C.F.R. § 280.52;

2. Owners and operators of aboveground storage tank systems must report to the Administrator and/or the designated agent(s) of the Administrator within twenty-four (24) hours, or such other reasonable time period as is specified by the Cherokee Nation Environmental Protection Commission.

B. In the event of a discharge of a "pollutant" to "waters of the Nation" or in the event that "pollution" may occur, as those terms are defined in 27 CNCA § 201, a release must be immediately reported to the Administrator regardless of its source. The initial report may be by telephone or in person, but shall be followed with a written report within forty-eight (48) hours.

C Nothing in STARS shall be deemed to supercede reporting requirements elsewhere in the Cherokee Nation Environmental Code or rules promulgated thereunder.

§ 671. Release from storage tank system—Corrective action

A. No owner or operator, employee or agent of such owner or operator, or transporter shall knowingly allow a release from a storage tank system to occur or continue to occur without reporting the release to the Administrator within twenty-four (24) hours upon discovering such a release.

B. The owner or operator of a storage tank system shall immediately take all corrective actions necessary to prevent or halt a release or a threatened release of regulated substances from a storage tank system and to abate and remove any such releases subject to applicable federal and Nation requirements. Any corrective action taken by a tank owner or operator or authorized by the Commission shall be in compliance with all applicable tribal, state and federal statutes and rules for the protection of air quality and water quality and for the transportation and disposal of any waste.

C. If there is a release from a storage tank system, the Commission may:

1. after notice and hearing, order the owner or operator to take reasonable and necessary corrective actions;

2. without notice and hearing, issue an administrative order stating the existence of an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order

shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the Commission shall be afforded a hearing within ten (10) days after receipt of the emergency order. On the basis of such hearing, the Commission shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the District Court.

D. 1. The Commission or the Nation may take corrective action if:

a. an owner or operator of the storage tank system cannot be identified,

b. an identified owner or operator cannot or will not comply with an order issued by the Commission,

c. an administrative or judicial proceeding is pending and the Commission determines corrective action is necessary to protect the public health, safety and welfare or the environment until the administrative or judicial proceeding is resolved, or

d. the Commission determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize or mitigate damage to the public health and welfare or the environment. Before taking an action under this paragraph, the Commission shall make all reasonable efforts, taking into consideration the urgency of the situation, to order an owner or operator to take corrective action and notify the owners of real property as specified by 27 CNCA § 673.

2. The owner or operator is liable for the cost of corrective action taken by the Commission or Nation, including the cost of investigating the release and administrative and legal expenses, if:

a. the owner or operator has failed to take a corrective action ordered by the Commission or otherwise required, or

b. the Commission has taken corrective action in an emergency.

3. Reasonable and necessary expenses incurred by the Commission or Nation in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered in a civil action. A certification of expenses by the Nation or Commission shall be prima facie evidence that the expenses are reasonable and necessary. The Commission or Nation shall be entitled to apply for and receive payment from the Indemnity Fund or any other program on behalf of an eligible person for an eligible release upon any site upon which the Commission or Nation has taken corrective action. Such payments shall be deemed to be reimbursement of the eligible person. Expenses that are recovered under this subsection shall be deposited in the Environmental Quality Revolving Fund.

E. In addition to corrective action, persons liable for the release shall be responsible for any damage caused to natural resources, costs associated with alternative drinking water supplies if needed, emergency response, and restoration of the area to its previous state to the extent possible.

F. Any order issued by the Commission pursuant to this section shall not limit the liability of the owner or operator or both such owner or operator for any injury, damages, or costs incurred by any person as a result of the release. The owner or operator shall not avoid any liability as a result of such release by means of a conveyance of any right, title or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement.

This subsection does not:

1. prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability;
2. prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

Except as otherwise provided by law, if there is more than one person liable, such persons shall be jointly liable for any injury, damages, or costs.

§ 672. Emergency response plans, coordination and incidental powers

The Commission, Administrator and their authorized representatives shall have the authority to:

1. require the preparation and submission of an emergency response plan to include but not be limited to spills or releases of regulated substances and any other waste or pollutant, require certain plans be implemented, and review/approve/disapprove emergency response plans;
2. create and implement an internal coordinated management system between all Cherokee Nation programs, corporations and business entities; and
3. exercise any and all incidental powers that may be necessary and proper to administer STARS and other programs necessary to protect the Nation's resources, public health and safety, and the environment.

§ 673. Inspections and investigations—Violations—Notice—Failure to take corrective action—Hearings—Orders—Access to real property

A. If upon inspection or investigation, or whenever the Commission determines that there are reasonable grounds to believe that a storage tank system is in violation of STARS or of any rule promulgated thereunder or of any order of the Commission, the Commission shall give written notice to the alleged violator specifying the cause of complaint. Such notice shall require that corrective action be immediately initiated.

B. 1. If corrective action is not taken in response to the notice issued pursuant to subsection (A) of

this section, the Commission shall initiate proceedings and hold a hearing to determine if:

- a. the alleged violator should be found in violation of Commission rules, permit conditions or orders, or any applicable laws or regulations,
- b. any permit issued to the alleged violator should be modified, suspended, revoked or not reissued,
- c. an application for a permit should be denied or subject to special conditions,
- d. what actions should be taken, who should take such actions, and a schedule for such actions, in order to avoid, alleviate or remedy any risk to public health, safety or welfare or any damage to the environment or the Nation's resources, or
- e. whether any other appropriate relief should be granted.

3. After hearing, the Commission shall make findings of fact and conclusions of law, and enter its order reflecting its decision in the matter. The order of the Commission shall become final and binding on all parties unless appealed to the District Court within sixty (60) days.

C. The Commission shall provide notice and an opportunity for hearing to:

1. the surface owner of real property where any corrective action is to be taken if such person is not the owner or operator of the storage tank system; and
2. the owner of real property adjacent to the location of the corrective action if such real property owner will be adversely affected by the corrective action.

The notice shall advise such real property owner or owners that the corrective action is to be taken and that the owner's cooperation will be required for that action to be taken. The Commission shall give the owner or owners of such real property, as the case might be, an opportunity for hearing and to present evidence on the matter.

D. The Commission is vested with the adjudicative authority to enter orders allowing a tank owner or operator or staff of Cherokee Nation access to property not owned by such tank owner or operator when necessary to investigate, remediate or perform corrective action as the result of a release. An order granting access to a third non-governmental party shall only be entered upon a determination that access cannot be obtained by any other means and that the tank owner or operator seeking access has made a good faith effort to obtain access. The Commission shall determine the reasonable compensation, if any, to be paid to the owner of the property which is to be accessed for the use of the property to investigate, remediate or perform corrective action as the result of a release. An order granting access to property shall be upon such terms as to reasonably minimize the impact of the access upon the owners' use of the property and to protect the rights of the property owner.

§ 674. Penalties

A. Facilities, activities and persons alleged to be in violation of any provisions of STARS or any rule promulgated or order issued pursuant to the provisions of STARS shall be subject to the general enforcement provisions of the Cherokee Nation Environmental Code. Provided, however, nothing herein shall be construed as limiting administrative, civil or criminal remedies that may be sought by the Commission, the Nation, or any interested person against persons responsible for violations or damage to natural resources or property.

B. The Commission or any court of competent jurisdiction may order such equitable relief necessary or appropriate to redress or restrain a violation by any person of a provision of STARS or any rule promulgated or order issued pursuant thereto, including but not limited to:

1. enjoining further releases;
2. ordering facilities temporarily or permanently closed or activities halted;
3. ordering the design, construction, installation or operation of alternate facilities;
4. ordering the removal of facilities, contaminated soils and the restoration of the environment;
5. fixing and ordering compensation for any public or private property destroyed, damaged or injured;
6. except as otherwise provided by law, assessing and awarding damages in an amount necessary to restore any property or resources to its previous condition and punitive damages; and
7. ordering reimbursement to the Nation or any other governmental entity from any person whose acts caused governmental expenditures if not already reimbursed.

§ 675. Records, reports and information—Public inspection—Confidentiality—Disclosure to federal or tribal representatives

A. Any records, reports or information obtained pursuant to STARS shall be available to the public except as provided in subsection (B) of this section.

B. Upon a showing satisfactory to the Commission by any person that records, reports or information, or a particular part thereof is made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the Commission shall consider such record, report or information or particular portion thereof, confidential.

C. Nothing in this section shall be construed to prevent disclosures of such report, record or information to federal or tribal representatives as necessary for purposes of administration of any federal or tribal laws or when relevant to proceedings pursuant to STARS.

D. Information concerning groundwater quality and the presence or concentration of substances in soils or groundwater, or any other condition potentially posing a risk to public health or safety, shall not be considered confidential by the Commission.

CHAPTER 7

TOXIC AND HAZARDOUS SUBSTANCE CONTROL

GENERAL PROVISIONS

INDOOR RADON ABATEMENT

GENERAL PROVISIONS

§ 701. Findings, policy and intent

A. Findings. Cherokee Nation finds that:

1. Human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;
2. Among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution, use, or disposal may present an unreasonable risk of injury to health or the environment.

B. Policy. It is the policy of Cherokee Nation that:

1. Data developed under federal programs with respect to the effect of chemical substances and mixtures on health and the environment should be used to protect human beings within Cherokee Nation;
2. Adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and
3. Authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this section to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment within Cherokee Nation.

C. Intent of Cherokee Nation. It is the intent of Cherokee Nation that the CN EPC shall carry out this chapter in a reasonable and prudent manner, and that the CN EPC shall consider the environmental, economic, and social impact on the Nation of any action the CN EPC takes or proposes to take under this chapter.

§ 702. Definitions

As used in this chapter:

1. "**Chemical substance**" means any organic or inorganic substance of a particular molecular identity, including:
 - a. any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature; and
 - b. any element or uncombined radical.
2. "**Commerce**" means trade, traffic, transportation, or other commerce:
 - a. between a place within the boundaries of the Cherokee Nation and any place outside of Cherokee Nation or
 - b. which affects trade, traffic; transportation, or commerce within the Cherokee Nation.
3. "**Distribute**" and "**distribution**" when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture mean to sell, or the sale of, the substance, mixture, or article.
4. "**Environment**" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.
5. "**Health and safety study**" means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this chapter.
6. "**Instrumentalities**" means any departments or organizations of the Cherokee Nation offering or providing services to citizens of the Cherokee Nation.
7. "**Manufacture**" means to import into the territory of Cherokee Nation, produce or manufacture.
8. "**Mixture**" means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

9. **"New chemical substance"** means any chemical substance which is not included in the chemical substance list compiled and published in federal guidelines and programs.

10. **"Process"** means the preparation of a chemical substance or mixture, after its manufacture, for distribution:

a. in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

b. as part of an article containing the chemical substance or mixture.

11. **"Processor"** means any person who processes a chemical substance or mixture.

12. **"Standards for the development of test data"** means those standards used for testing under federal EPA guidelines and programs.

§ 703. Testing of chemical substances and mixtures

Testing requirements. The CN EPC may utilize the lists and results of the tests required of the federal EPA under 15 U.S.C. § 2603 and 15 U.S.C. § 2604 for purposes of controlling toxic and hazardous substances within Cherokee Nation.

§ 704. Regulation of hazardous chemical substances and mixtures

A. Scope of regulation. If the CN EPC finds that there is a reasonable basis to conclude that the manufacture, processing, distribution, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment, the CN EPC shall by the rules and regulations adopted by 27 CNCA § 702 apply one (1) or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements:

1. A requirement:

a. prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture, or

b. limiting the amount of such substance or mixture which may be manufactured, processed, or distributed within the jurisdiction of Cherokee Nation;

2. A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture within the jurisdiction of Cherokee Nation;

3. A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or

processor or by any other person who uses, or disposes of such substance or mixture within the jurisdiction of Cherokee Nation.

The CN EPC regulations promulgated under this section are to supplement federal law, and, as such, federal laws and regulations concerning toxic and hazardous substances will serve as a minimum standard for Cherokee Nation.

B. Promulgation of subsection (A) rules.

1. In promulgating any rule or regulations pursuant to 27 CNCA § 702 under subsection (A) of this section with respect to a chemical substance or mixture, the CN EPC shall consider and publish a statement with respect to:

- a. the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture;
- b. the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture;
- c. the benefits of such substance or mixture for various uses and the availability of substitutes for such uses.

2. When prescribing a rule under subsection (A) the CN EPC shall in compliance with the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq.:

- a. publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule;
- b. allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available;
- c. provide an opportunity for an informal hearing in accordance with paragraph 3 of this subsection;
- d. promulgate, if appropriate, a final rule based on the matter in the rule-making record; and
- e. make and publish with the rule the finding described in subsection (A) of this section.

3. Informal hearings required by subparagraph c of paragraph 2 may be conducted by the CN EPC in accordance with the following requirements:

- a. Subject to subparagraph b of this paragraph, an interested person is entitled:
 - i. to present such person's position orally or by documentary submissions (or both), and

ii. if the CN EPC determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under clause ii of subparagraph b) such cross-examination of persons as the Administrator determines:

(I) to be appropriate, and

(II) to be required for a full and true disclosure with respect to such issues.

b. The CN EPC may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. Such rules or rulings may include:

i. the imposition of reasonable time limits on each interested person's oral presentations, and

ii. requirements that any cross-examination to which a person may be entitled under subparagraph a of this paragraph be conducted by the CN EPC on behalf of that person in such manner as the CN EPC determines:

(I) to be appropriate, and

(II) to be required for a full and true disclosure with respect to disputed issues of material fact.

c. A tape recording shall be taken of any oral presentation made, and cross-examination conducted in any informal hearing under this subsection. Such transcript shall be available to the public upon payment of cost of such transcription cost.

C. Effective date.

1. The CN EPC shall specify in any rule under subsection (A) of this section the date on which it shall take effect, which date shall be as soon as feasible.

2. The CN EPC may declare a proposed rule under subsection (A) of this section to be effective upon its publication in the *Cherokee Phoenix* and until the effective date of final action taken, respecting such rule if the CN EPC determines that:

a. the manufacture, processing, distribution, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date; and

b. making such proposed rule so effective is necessary to protect the public interest.

D. Polychlorinated biphenyls (PCB's). Disposal of PCB's within Cherokee Nation shall meet at a minimum the federal requirements in 15 U.S.C. § 2605(e) and such additional requirements as may be established by the CN EPC.

§ 705. Imminent hazards

A. Actions authorized and required. The CN EPC may commence a civil action in Cherokee Nation District Court or the appropriate district court of the United States:

1. for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture;
2. for relief (as authorized by subsection (B) of this section) against any person who manufactures, processes, distributes, or uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture; or
3. for both such seizure and relief.

B. Relief authorized.

1. The Cherokee Nation District Court in which an action under subsection (A) of this section is brought shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk associated with the chemical substance, mixture, or article involved in such action.

2. In the case of an action under subsection (A) of this section against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings for forfeiture of contraband as provided by the federal drug enforcement policies.

C. Venue and consolidation. An action under subsection (A) of this section may be brought in Cherokee Nation District Court or in any United States district court within the jurisdiction of which the substance, mixture, or article is found and federal law allows.

§ 706. Inspections and subpoenas

A. In general. For purposes of administering this chapter, the CN EPC, and any duly designated representative of the CN EPC, may inspect any establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution and any conveyance being used to transport chemical substances, mixtures, or such articles in connection with distribution in commerce within Cherokee Nation. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

B. Scope.

1. Except as provided in paragraph 2, an inspection conducted under subsection (A) of this section shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this chapter applicable to the chemical substances or mixtures within such premises or conveyance have been complied with.

2. No inspection under subsection (A) of this section shall extend to:

a. financial data;

b. sales data (other than shipment data);

c. pricing data;

d. personnel data; or

e. research data (other than data required by this chapter or under a rule promulgated thereunder), unless the nature and extent of such data are described with reasonable specificity in the written notice required by subsection (A) of this section for inspection.

§ 707. Prohibited acts

It shall be unlawful for any person to:

1. fail or refuse to comply with any rule promulgated or order issued under this chapter;

2. use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in violation of Cherokee Nation or federal laws.

3. fail or refuse to:

a. establish or maintain records,

b. submit reports, notices, or other information, or

c. permit access to or copying of records, as required by this chapter or a rule thereunder; or

4. fail or refuse to permit entry or inspection as required by 27 CNCA § 706.

§ 708. Penalties

Civil.

1. Any person who violates any provision of 27 CNCA § 707 shall be liable to Cherokee Nation for a civil penalty in an amount not to exceed Five Thousand Dollars (\$5,000.00) for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of 27 CNCA § 707.

2. a. A civil penalty for a violation of 27 CNCA § 714 shall be assessed by the CN EPC by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with the Cherokee Administrative Procedure Act, 1 CNCA § 101 et seq. Before issuing such an order, the CN EPC shall give written notice to the person to be assessed a civil penalty under such order of the CN EPC proposal to issue such order and provide such person an opportunity to request, within fifteen (15) days of the date the notice is received by such person, such a hearing on the order.

b. In determining the amount of a civil penalty, the CN EPC shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

3. Any person who requested in accordance with subparagraph a of paragraph 2 a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the District Court of Cherokee Nation. Such a petition may only be filed within the thirty- (30) day period beginning on the date the order making such assessment was issued.

§ 709. Specific enforcement and seizure

A. Specific enforcement. The District Court of Cherokee Nation shall have jurisdiction over civil actions to:

1. restrain any violation of 27 CNCA § 707;

2. restrain any person from taking any action prohibited by the toxic and hazardous waste sections of this chapter or rules and regulations set forth under this chapter;

3. compel the taking of any action required by or under this chapter:

a. to give notice of such fact to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture,

b. to give public notice of such risk of injury, and

c. to either replace or repurchase such substance or mixture, whichever the person to which the requirement is directed elects.

B. Seizure. Any chemical substance or mixture which was manufactured, processed, or distributed in violation of this chapter or any rule promulgated or order issued under this chapter or any article containing such a substance or mixture shall be deemed contraband and shall be liable to be proceeded against, for the seizure and condemnation of such substance, mixture, or article, in the District Court of Cherokee Nation or in any district court of the United States within the jurisdiction of which such substance, mixture, or article is found. Such proceedings of the District Court of Cherokee Nation shall conform as nearly as possible to proceedings in forfeiture of controlled dangerous substances deemed contraband pursuant to 21 CNCA § 2101 et seq.

§ 710. Judicial review

The review process shall be through the courts of Cherokee Nation.

INDOOR RADON ABATEMENT

§ 711A. National goal

The long-term goal of Cherokee Nation with respect to radon levels in buildings is that the air within buildings in Cherokee Nation should be as free of radon as the ambient air outside of buildings.

A. Purpose. The purpose of 27 CNCA §§ 711A to 711C is:

1. to require instrumentalities and related departments of the Cherokee Nation including but not limited to citizens such as the Cherokee Nation Housing Authority, Historical Society, Indian Health Services, Headstart, other tribal facilities and Cherokee Nation departments to develop an effective departmental policy for dealing with radon contamination that utilizes any CN EPC guidelines and standards to ensure that occupants of housing covered by 27 CNCA §§ 711A to 711C are not exposed to hazardous levels of radon; and
2. to require Cherokee Nation and its departments to assist the CN EPC in reducing radon contamination.

B. Standards. In developing the policy, Cherokee Nation, its instrumentalities, and its departments may utilize any guidelines, information, or standards established by the US EPA for:

1. testing residential and nonresidential structures for radon;
2. identifying elevated radon levels;
3. identifying when remedial actions should be taken; and
4. identifying geographical areas that are likely to have elevated levels of radon.

§ 711B. Model construction standards and techniques

The CN EPC may promulgate regulations to incorporate the model construction standards and techniques developed by the federal EPA into all Cherokee Nation Housing Authority projects and Cherokee Nation projects by October 1, 1994.

§ 711C. Education

The CN EPC may, using the available information and resources established in 15 U.S.C. § 2661 et seq., develop an educational program concerning the dangers and solutions of radon which might affect all human beings living within the borders of Cherokee Nation.

CHAPTER 8

PESTICIDE APPLICATION NOTIFICATION SYSTEM

§ 801. Short title

This act shall be known and may be cited as the Pesticide Application Notification System Act.

§ 802. Purpose

The application and the control of the use of various pesticides is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be affected with the public interest. The Rules of pesticide application notification and recordkeeping are stated in this rule for the purpose of protecting the immediate and future health and welfare of the Cherokee Nation citizens.

§ 803. Definitions

For purposes of this chapter:

1. "**Applicator**" means any person engaging in the application of pesticides or employment of devices.
2. "**Cherokee Nation**" means the Cherokee Nation government and all of its entities, including businesses wholly-owned by Cherokee Nation.
3. "**Device**" means any instrument subject to the United States Environmental Protection Agency regulation intended for trapping, destroying, repelling, or mitigating insects or rodents, or mitigation of fungi, bacteria, or weeds, or other pests designated by the board, but not including equipment used for the application of pesticides when sold separately.
4. "**Pest**" means any organism harmful to man including, but not limited to insects, mites, nematodes, weeds and pathogenic organisms. Pathogenic organisms include viruses, mycoplasma bacteria, rickettsia, and fungi.

5. **"Pesticide"** means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest. A pesticide may be a chemical substance, biological agent (such as a virus or bacterium), antimicrobial, disinfectant or device used against any pest.

6. **"Pesticide application"** means the way in which pesticides are delivered to their target pests.

7. **"Use"** means transportation, storage, mixing, application, safe handling, waste and container disposal, and other specific instructions contained on the label and labeling.

§ 804. Establishment of policies

By July 1, 2011 policies will be developed and implemented requiring the following:

1. Notice of pesticide application.

a. General notification of pesticide use will be provided to the Cherokee Nation Environmental Programs department no less than forty-eight (48) hours prior to application on any Cherokee Nation-owned or -operated facility. The written notification must be provided to Cherokee Nation Environmental Programs with the following information:

i. name and address of facility to be treated;

ii. location of the application;

iii. date of the application;

iv. name, address and phone number of applicator company;

b. After completion of a pesticide application, the following information is to be provided to the appropriate facility personnel:

i. address of the facility being treated, specific area(s) treated by the product and for whom the pesticide was applied;

ii. name, address and telephone number of company making application (if applicable);

iii. name and license number of person making the application;

iv. complete brand name and EPA registration number of pesticide product used;

v. year, month, day, and time of application;

vi. target pest(s);

vii. quantity of pesticide used;

viii. method of application;

ix. MSDS sheet for pesticide applied.

2. Exemptions from 48-hour notification.

a. emergency pesticide applications required by the public health officials;

b. disinfectants, sanitizers, deodorizers, or microbial agents used for general cleaning purposes;

c. the use of baits and traps used for pest control.

3. Pesticide contractors.

a. It shall be unlawful for any person to act, operate, or do business or advertise as a commercial, noncommercial, certified applicator, temporary certified applicator, service technician, or private applicator unless the person has obtained a valid applicator's license issued by the Oklahoma State Board of Agriculture, or similar license issued under the authority of a different state, for the category of pesticide application in which the person is engaged.

b. When Cherokee Nation uses contractors to apply pesticides on its behalf, all contractors will ensure full compliance with the notification requirements of this Plan. Where a contractor is to apply pesticides on behalf of Cherokee Nation, the contractor must complete a notification in accordance with this plan a minimum of forty-eight (48) hours prior to the proposed date for application. It is the responsibility of the contractor to complete the notification in accordance with this plan.

4. Penalties.

a. Failure to notify the Cherokee Nation's Environmental Programs staff as required by law shall result in the following actions:

i. First offense—a written warning from the Environmental Programs staff designed to educate the applicator;

ii. Second offense—a written warning from the Environmental Programs Department and a fine of Fifty Dollars (\$50.00);

iii. All subsequent infractions shall result in a fine of Five Hundred Dollars (\$500.00) per violation.

b. Any violations may be reported to the applicator's state licensing authority for investigation.

CHAPTER 9

WATER QUALITY CODE

GENERAL PROVISIONS

DISCHARGE ELIMINATION AND CONTROL

WATER SUPPLY SYSTEMS

WASTE STORAGE, TREATMENT, TRANSPORTATION AND DISPOSAL

§ 900. Short title

The provisions of this chapter shall be known as the Cherokee Nation Water Quality Code.

§ 901. Declaration of policy and authority

This chapter recognizes the authority of the Cherokee Nation Environmental Protection Commission to take all actions necessary to implement the goals and policies of the Nation to:

1. restore, maintain and improve the chemical, physical and biological integrity of waters of Cherokee Nation;
2. utilize area-wide planning and management to control sewage and other discharges;
3. assert and defend the Nation's legal rights and claims to waters and related natural resources;
4. monitor and ensure that the United States and surrounding states and nations take meaningful action to protect water quality and comply with applicable laws for the protection of resources, whenever their actions or inaction may harm the Nation's waters or resources;
5. hold anyone who has, without authorization, used or damaged the Nation's waters or related natural resources accountable for restoring the same to their original condition and/or compensating the Nation for such damage or unauthorized use;
6. identify and protect waters and resources of the Nation with special cultural or historical significance, and develop and enforce such standards and antidegradation provisions as may be appropriate for such purposes;
7. engage in planning and participate in decision-making to assure that the Nation's waters and related natural resources are developed in a manner consistent with the goal of long-term, sustainable use and protection for future generations;
8. prohibit the discharge of toxic pollutants in toxic amounts and, to the extent practicable eliminate, or effectively control, the discharge of pollutants from any source;

9. require environmental review of proposed activities which may cause individual or cumulative adverse impacts to water quality, natural resources, public health, lands, recreation, cultural or historical values, air, quality of life, or other aspects of the Nation's environment;

10. require projects to be modified to avoid adverse impacts if possible, to minimize unavoidable impacts, and provide full mitigation for unavoidable impacts;

11. prohibit or restrict activities which may cause or contribute substantially to a violation of water quality standards or a violation of federal law.

§ 902. Definitions

For purposes of this chapter:

1. "**Administrator**" means the person designated as Administrator of the CN EPC.
2. "**Affected party**" means any person or entity applying for or holding a permit under this chapter, and any citizen of Cherokee Nation, but only if such person, entity, or citizen is directly and substantially impacted by an action or decision of the CN EPC. The CN EPC, in the regulations adopted pursuant to 27 CNCA § 102, may include other classes of persons within the meaning of "**Affected party**". The Nation and any department thereof may be an affected party.
3. "**CN APA**" means the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq.
4. "**CN EPC**" means the Environmental Protection Commission of the Cherokee Nation.
5. "**Cherokee Nation District Court**" means the trial court of Cherokee Nation.
6. "**Citizen of Cherokee Nation**" means a citizen of Cherokee Nation as defined by law.
7. "**Commission**" means the Environmental Protection Commission of Cherokee Nation.
8. "**Council of Cherokee Nation**" means the legislative body of Cherokee Nation.
9. "**Discharge**" includes but is not limited to any addition of any pollutant to waters of the Nation from any point source and includes any discharge of a pollutant or pollutants from any source.
10. "**Disposal system**" means pipelines or conduits, pumping stations and force mains and all other devices, construction, appurtenances and facilities used for collecting, conducting or disposing of wastewater, including treatment systems.
11. "**Drainage basin**" means all of the water collection area adjacent to the highest water line of a reservoir which may be considered by the Commission to be necessary to protect adequately the waters of the reservoir. The area may extend upstream on any watercourse to any point within six

hundred (600) feet of the highest water line of the reservoir.

12. "**Effluent limitation**" means any established restriction on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the nation, including schedules of compliance.

13. "**Environment**" includes but is not limited to the air, land, wildlife, cultural and archaeological resources, and waters of the Nation.

14. "**Environmental Code**" means the Cherokee Nation Environmental Quality Code and shall refer to 27 CNCA § 100 et seq.

15. "**Indirect discharge**" means the introduction of pollutants to a treatment works from a nondomestic source.

16. "**Indian**" means a person who is a citizen or is eligible for citizenship in a federally-recognized Indian tribe or nation.

17. "**Indian country**" means as defined by federal statutory and case law.

18. "**Indian tribe or nation**" means a federally-recognized Indian tribe or nation.

19. "**Jurisdiction**" means jurisdiction of Cherokee Nation over the territory legally described in the treaties of 1828, 1835 and 1838 and the Cherokee Nation patent issued in 1846, and other such lands acquired by Cherokee Nation since 1838.

20. "**Lands of Cherokee Nation**" means tribal lands and those lands under the jurisdiction of Cherokee Nation.

21. "**Nation**" means Cherokee Nation.

22. "**Nonpoint source**" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined.

23. "**Person**" means any individual, trust, joint stock company, corporation (including a government corporation), partnership, association, government or any other legal entity or an agent, employee, representative, assignee or successor thereof.

24. "**Point source**" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants or wastes are or may be discharged. The term "**point source**" does not include stormwater discharges and return flows from normal agricultural practices, but may include those associated with agri-industry practices such as concentrated animal feeding operations.

25. **"Pollutant"** includes but is not limited to dredged spoil, medical waste, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemicals, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste.

26. **"Pollution"** means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property.

27. **"Pretreatment"** means reduction of the amount of pollutants, or alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or introducing into a treatment works.

28. **"Public water supply"** means water supplied to the public for domestic or drinking purposes.

29. **"Restricted lands"** means lands held which are restricted against alienation as provided by the federal law.

30. **"Sludge"** means nonhazardous solid, semi-solid, or liquid residue generated by the treatment of domestic sewage or wastewater by a treatment works, or water by a water supply system, or manure, or such residue, treated or untreated, which results from industrial, nonindustrial, commercial, or agribusiness activities or processes.

31. **"Schedule of compliance"** means a schedule of remedial measures including but not limited to an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

32. **"Storm water"** means rain water runoff, snow melt runoff, and surface runoff and drainage.

33. **"Supreme Court"** means the appellate court of Cherokee Nation.

34. **"Treatment works"** means any facility used for the purpose of treating or stabilizing wastes or wastewater.

35. **"Tribal lands"** means lands held by Cherokee Nation regardless of whether those lands are held in fee simple, restricted or trust status.

36. **"Trust lands"** means lands held in trust by the United States of America for the benefit of Cherokee Nation or Indians living within the territorial jurisdiction of Cherokee Nation.

37. **"Waste"** means any liquid, gaseous or solid or semi-solid substance, or thermal component,

whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate or tend to pollute or contaminate, any air, land or waters of the Nation.

38. **"Water supply system"** means a water treatment plant, water wells, and all related pipelines or conduits, pumping stations and mains and all other appurtenances and devices used for distributing drinking water to the public and, as such, shall be synonymous with waterworks.

39. **"Waters of the Nation"** means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, navigable or non-navigable, which are contained within, flow through, or border upon Cherokee Nation or any portion thereof.

§ 903. Powers and duties of Commission

A. The Commission shall have the power and duty to:

1. develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of this Nation;
2. require the submission of plans, specifications and other data in connection with the issuance of permits required pursuant to this chapter;
3. require monitoring and testing of waters and discharges, and the submission of reports or laboratory analyses performed by certified laboratories or operators;
4. issue swimming and fishing advisories related to human and animal health hazards;
5. adopt standards of quality of the waters of the Nation and classifications of such waters, and promulgate other rules to protect, maintain and improve the best uses of waters in this Nation and establish such best management practices and conditions as may be necessary or appropriate for the prevention, control and abatement of pollution;
6. issue, continue in effect, revoke, amend, modify, condition, deny, renew, or refuse to renew permits, licenses, water quality certifications and other authorizations;
7. establish a schedule of fees for permits, studies, laboratory services or technical assistance and for recovering copy and other costs in response to open records requests;
8. establish, implement, amend and enforce a Water Quality Management Plan and total maximum daily loads;
9. issue, modify, or revoke orders requiring the construction of new disposal or treatment systems or the modification or extension of existing systems, or the adoption of other remedial measures to prevent, control or abate pollution; and

10. issue, modify, or revoke orders requiring other actions such as the Commission may deem necessary to enforce the provisions of this chapter and rules promulgated thereunder.

B. The Commission may, pursuant to resolution or a writing approved in a regular or special meeting of the Commission, delegate any authority to the Administrator except for final rulemaking decisions.

C. Except as specifically provided herein, duties and requirements pursuant to this chapter shall apply to all lands of Cherokee Nation, all waters of Cherokee Nation and all persons and activities subject to the authority and jurisdiction of Cherokee Nation.

§ 904. Unlawful acts

A. The following shall be unlawful and subject to enforcement provisions of this title, unless the proper entity has first obtained a permit or written authorization from the Commission:

1. point source discharges of pollutants to any waters of the Nation or placement of any wastes in a location where waters of the Nation may be polluted;
2. dredge and fill activities in or adjacent to waters of the Nation;
3. construction or operation of sewage or industrial treatment plants or lagoons;
4. land application or disposal of any waste, wastewater or sludge.

B. The Commission may establish specific exemptions to the requirements of this section by rule.

DISCHARGE ELIMINATION AND CONTROL

§ 905. Short title

This part shall be known and may be cited as the Discharge Elimination and Control Act.

§ 906. Duty of Commission to promulgate rules and set requirements for discharges

The Commission shall promulgate rules implementing or effectuating the Discharge Elimination and Control Act. Such rules may incorporate by reference any applicable rules, regulations and policies of the U. S. Environmental Protection Agency, U.S. Corps of Engineers, or any other appropriate entity, including but not limited to rules which:

1. allow the inclusion of technology-based effluent limitations and require water-quality-related effluent limitations in discharge permits;
2. establish, implement and enforce effluent limitations, prohibitions, pretreatment standards,

standards for the removal of toxic materials and pollutants, national standards of performance or more stringent standards, in the control of discharges, through permit terms and conditions or otherwise;

3. prohibit or control the discharge of pollutants into wells within the jurisdiction of the Nation;
4. ensure that the public and any other nation or state, the waters of which may be affected, receive notice of each application for a discharge permit and have the opportunity to submit written recommendations or comments;
5. establish management standards for sludge which are no less stringent than applicable federal regulations;
6. establish requirements for dredge and fill activities, mining and physical alterations of streams and lakes of the Nation; and
7. establish any requirements needed to obtain treatment as state or delegation of federal programs or requirements otherwise deemed necessary for comprehensive environmental programs; provided, that approval to effectuate treatment as a state is granted by the Principal Chief and the Council.

§ 907. Issuance of discharge permits—Availability of records, reports or other information

A. Pollutant discharge permits may include schedules of compliance and such conditions as the Commission may determine appropriate, including but not limited to terms and conditions which:

1. prevent, control or abate pollution, including but not limited to such water quality-related and technology-based effluent limitations as are necessary to protect water quality and existing and designated beneficial uses of the waters of the Nation;
2. set interim compliance dates which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality;
3. set terms and conditions for sludge, land application of wastewater and impoundments.

B. The Commission shall:

1. have authority to issue individual permits and authorizations under general discharge permits for pollutants and stormwater and sludge, subject to Commission veto or approval;
2. issue permits for fixed terms not to exceed five (5) years, but subject to modification prior to the expiration of term for purposes including but not limited to compliance with new standards or assuring protection of water quality;
3. have the authority to require in permits issued to publicly or privately owned treatment works

conditions requiring the permittee to give notice to the Commission of new introductions into such works, a substantial change in volume or character of pollutants, or other appropriate condition, and to require permits for any indirect discharges to such works;

4. have the authority to ensure compliance with all provisions of the Clean Water Act and with other applicable federal law;

5. have the authority to terminate or modify permits for cause, including but not limited to:

a. violation of any condition of the permit, including but not limited to conditions related to monitoring requirements, entry and inspections,

b. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts, or

c. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

6. have all necessary authority to implement and enforce duly promulgated rules, authority to implement and enforce a Nationwide pretreatment program, and to implement and enforce requirements applicable to dischargers into municipal separate storm sewer systems; and

7. have all necessary or incidental authority to investigate and abate violations of permits, administrative orders, rules, and laws of the Nation, to apply sanctions through administrative proceedings for violations, including but not limited to violations of requirements to obtain permits, terms and conditions of permits, effluent standards and limitations and water quality standards, and violations of requirements for recording, reporting, monitoring, entry, inspection and sampling.

C. Authorized employees or representatives of the Commission shall, upon presentation of credentials, have:

1. a right of entry to, upon, or through any private or public premises upon which an effluent or sludge source is or may be located or in which any records are required to be maintained;

2. access to at any reasonable time for the purposes of reviewing and copying any records required to be maintained;

3. authority to inspect any monitoring equipment, methods, disposal systems or other facilities or equipment which may be required; and

4. access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the Nation or to treatment systems discharging into waters of the Nation or for inspection and sampling of any sludge source, storage, beneficial use, reuse or disposal site.

D. Copies of records, plans, reports or other information required by the Commission shall be

submitted upon request and shall be subject to and made available for inspection at reasonable times to any authorized representative of the Commission upon showing of proper credentials. Any authorized representative of the Commission may examine any records or memoranda pertaining to discharges, treatment, or other limitations set by statute, permit, order or duly promulgated rules of the Commission.

§ 908. Discharge without permit unlawful

A. Except as otherwise provided in subsection (B) of this section, any point source discharge into waters of the Nation, or in a place likely to reach waters of the Nation, by or from any facility, activity, source or entity regulated by the Commission, shall be unlawful unless a permit has first been obtained from the Commission.

B. The Commission may promulgate rules applicable to discharges composed entirely of stormwater or other discharges that are known not to contain significant quantities of pollutants, require permits on a case-by-case basis, establish general permit terms, exempt categories of discharges, or provide a schedule for obtaining a permit.

C. Dilution shall not be considered a solution to pollution.

§ 909. Reserved

WATER SUPPLY SYSTEMS

§ 910. Short title

This part shall be known and may be cited as the Water Supply Systems Act.

§ 911. Cooperation with federal agendas

The Commission shall have authority to administer a Wellhead Protection Program and Public Water Supply Supervision Program for the Nation pursuant to the federal Safe Drinking Water Act, in cooperation with such other departments of the Nation as the Principal Chief may deem appropriate.

§ 912. Rules and standards

A. The Commission may promulgate rules as necessary to implement the provisions of this part pertaining to water supply systems and the treatment and distribution of water to the public, including but not limited to rules for:

1. the construction and extension of such systems;
2. specifications and directions as to the source, manner of storage, purification, treatment and distribution of water supplied to the public;

3. requirements for control tests, laboratory checks, operating records and reports, including the submission of water samples for testing or sample analyses as prescribed by the federal Safe Drinking Water Act and this chapter; and

4. permitting requirements.

B. The Commission shall recommend standards to the public for individual water supplies.

C. Such rules may provide for the exemption and conditions therefore, of specified categories of water supply systems from any of the requirements thereof, except for wastewater discharges, if the public health will not thereby be endangered.

§ 913. Reserved

§ 914. Waterworks—Filing of plans and surveys

Every person supplying, authorized to supply, or proposing to supply water to the public shall file with the Commission a certified copy of the plans and surveys of the waterworks, with a description of the source from which the water supply is derived. No additional source of supply or well shall thereafter be used without written authorization from the Commission.

§ 915. Investigations of sanitary quality of water

A. The Commission may investigate the sanitary quality of water supplied to the public if the Commission has reason to believe that such water supply is prejudicial to the public health or environment.

B. During such investigation, the person in charge of the water supply shall furnish the Commission all information requested relative to the source or sources from which the supply of water is derived, and the manner of storage, distribution and purification or treatment necessary or desirable for the determination of its sanitary quality.

§ 916. Orders

A. The Commission may issue an order requiring compliance with this chapter, rules of the Commission, and orders previously issued. Such orders may require a change in the source or sources of a public water supply, or in the manner of storage, distribution, purification or treatment of the supply before delivery to consumers, as may be necessary to safeguard the public health or environment.

B. The Commission or Administrator may issue an emergency orders as necessary to safeguard the health of the consumers or the environment.

C. Orders of the Commission or Administrator may require public water supply systems to notify

consumers of the problem with the supply and the action required by the order.

D. An order shall remain in full effect until it is rescinded by the Commission.

E. Orders and proceedings, unless otherwise specifically provided, shall be in compliance with general enforcement provisions of this chapter and the Administrative Procedure Act, 1 CNCA § 101 et seq.

§ 917. Groundwater supplies

A. The Council finds that a safe public groundwater supply is one of the most valuable natural resources in this Nation.

B. The Council recognizes and declares that the management, protection and conservation of groundwater supplies and the beneficial uses thereof are essential to the economic prosperity and future well-being of the Nation. As such, the public interest demands procedures for the development and implementation of management practices to conserve and protect public groundwater supplies.

§ 918. Wellhead and water supply protection program

A. The Commission may develop rules and programs to prevent pollution of public water supply systems, including but not limited to a wellhead protection program to assist communities, states, municipalities, rural water districts, nonprofit water corporations and other public groundwater suppliers in the conservation and protection of their public groundwater supplies. Such a program should provide guidelines for:

1. specifying the duties of local communities and governments in developing and implementing a wellhead protection program;
2. determining all potential and actual pollution sources which may have an adverse effect on public health;
3. taking into consideration potential sources of pollution when siting new wells or intake structures for public water supplies; and
4. developing contingency plans for pollution release containment, cleanup and the provision of alternative drinking water supplies for each public water system in the event of pollution.

B. The Commission may assist communities with long-term planning for meeting water supply needs from groundwater, surface water or other sources.

§ 919. Water supply protection education program

A. The Commission should develop and implement an education program concerning protection of

water supplies, including both groundwater and surface waters. In developing such program, the Commission shall consult with community leaders, public health agencies, water utilities, educational and research institutions, nonprofit organizations and any other person or agency the Commission deems necessary.

B. The program should provide public recognition of land uses and owners located within a public groundwater supply wellhead protection area, or within a watershed plan area, who demonstrate successful and committed efforts to protect drinking water supplies by implementing innovative approaches to pollution prevention and groundwater protection.

§§ 920 to 929. Reserved

WASTE STORAGE, TREATMENT, TRANSPORTATION AND DISPOSAL

§ 930. Short title

This part shall be known and may be cited as the Waste Storage, Treatment, Transportation and Disposal Act.

§ 931. Wastewater treatment or sewer systems

A. No person shall construct or let a contract for any construction work of any nature for a municipal treatment works, nonindustrial wastewater treatment system, sanitary sewer system or other sewage treatment works, or for any extension thereof, or make any change in the manner of nonindustrial wastewater treatment or make any change in the treatment, storage, use or disposal of sewage sludge without a permit issued by the Commission.

B. No permit shall be required for the construction or modification of a private individual sewage disposal system provided that such system is constructed or modified in accordance with other applicable requirements of the Nation.

C. An application for such permit shall include, but not be limited to, an engineering report, legal description of the site where the works or system is or is proposed to be located, and a legal description of the site where any discharge point is or is proposed to be located.

D. Upon approval of the engineering report, the applicant shall submit plans and specifications for the proposed system or the proposed extension or change of an existing system for review. Such plans and specifications shall be prepared by a professional engineer licensed to practice in the state of Oklahoma.

§ 932. Construction, operation and extension of treatment systems

A. The Commission may require permits and/or promulgate rules as necessary pertaining to the treatment, transportation, storage, use and disposal of wastewater, sewage sludge and other waste by wastewater treatment systems or treatment works.

B. The Commission may allow the exemption, and set conditions therefore, for specified categories of wastewater treatment systems or treatment works for small public sewage facilities if public health and the environment will not thereby be endangered. Provided, no exemption shall be allowed which is inconsistent with applicable minimum federal requirements for discharges or use, transportation or disposal of sludge.

§ 933. Requirements for public sewage disposal systems—Planning residential development

A. No public sewage system shall be constructed or operated unless such system, when constructed, complies with requirements prescribed by the Commission and has been inspected by an authorized person.

B. Any person, corporation or other legal entity which creates or intends to create an industrial or residential development outside the corporate limits of a city or town and within areas subject to the Nation's jurisdiction shall first file and obtain the Commission's approval of a plat and plans describing the methods of sewage disposal, water supply and stormwater management for such development. Approval shall be obtained prior to recording a plat, offering a lot or lots for sale or beginning construction within such development.

§ 934. Sludge

A. Rules of the Commission applicable to sewage sludge shall be at least as stringent as applicable federal regulations. Prior to promulgation of such rules, federal requirements shall apply, in addition to requirements established pursuant to this chapter.

B. Sludge or other wastes shall only be land applied pursuant to a permit or plan approved by the Commission and in a manner consistent with Commission rules, including appropriate limitations on the location, amount, frequency, content, manipulation, setbacks and prohibitions as the Commission may deem appropriate. When allowed, the following minimum requirements apply:

1. Annual land application of sludge or other waste shall only occur during the growing season at a rate not to exceed the target crop's ability to uptake nutrients and shall be consistent with results of recent soil tests;
2. Land application of sludge or waste that contains concentrations of heavy metals, pathogens or pollutants which may pose an environmental or public health risk is prohibited;
3. Sludge or waste applied to land shall be incorporated into the soil before the end of each working day;
4. Sludge or waste shall not be applied within four feet (4') of the highest seasonal water table nor applied to the land within five hundred feet (500') of a stream or body of water;
5. Sludge shall not be applied within the watershed of a designated outstanding resource water or

scenic river, or within one (1) mile of a surface public water supply or any water body that is already impaired by pollutants normally found in such sludge. For purposes of this section, until such time as the Commission may promulgate superceding rules, the term designated "**outstanding resource water**" or "**ORW**" shall include those streams and their tributaries that are currently designated ORW under state law;

6. Sludge or waste shall not be applied within five hundred feet (500') of any other public or private water supply; and

7. Sludge or waste shall not be land-applied in areas of karst topography.

C. Any use, storage or final disposition of sludge or wastes other than land application or disposal at a permitted facility shall require the approval of the Commission.

§ 935. Activities requiring permit—Construction of impoundments, land application, new outfalls or major changes

A. It shall be unlawful for any person to carry on any of the following activities with regard to wastewater or sludge without first securing a permit from the Commission:

1. The construction, installation, operation and closure of any industrial surface impoundment, industrial septic tank or treatment system, or the use of any existing unpermitted surface impoundment, septic tank or treatment system that is within the jurisdiction of the Nation and which is proposed to be used for the containment or treatment of industrial wastewater or sludge;

2. The construction, installation or operation of any industrial or commercial facility, the operation of which would cause an increase in the discharge of waste into the waters of the Nation or would otherwise alter the physical, chemical or biological properties of any waters of the Nation in any manner not already lawfully authorized;

3. The construction or use of any new outfall for the discharge of any waste or pollutants into the waters of the Nation; or

4. The land application of any nonindustrial or industrial wastewater and the land application of sludge or waste of any type.

B. Any major addition, extension, operational change or other change proposed for a facility permitted pursuant to subsection (A) of this section shall require the approval of the Commission and modification of the facility's permit prior to construction or implementation of such addition, extension or change.

C. The discharge of domestic sewage except to an authorized public or private disposal system or the surfacing of effluent from any domestic septic system shall be deemed pollution.

§ 936. Rules—Application

The Commission shall have authority to make rules for the control of pollution and sanitation on all property located within any watershed, reservoir or drainage basin subject to the Nation's jurisdiction, including but not limited to rules:

1. relating to the collection and disposal of domestic and industrial wastes within any reservoir or drainage basin;
2. prohibiting the dumping of garbage, trash or other wastes or contaminated material within any reservoir or drainage basin; and
3. providing that all wastes originating within any watershed, reservoir or drainage basin shall be disposed of in a manner approved by the Commission, and that the plans and specifications for any disposal system shall be approved by the Commission prior to the construction of any such system.

§ 937. Underground injection of hazardous and nonhazardous liquids

A permit must be obtained from the Commission prior to construction or use of any underground injection wells within the Nation's jurisdiction.

CHAPTER 10

SCENIC RIVERS

§ 1001. Short title

This act shall be known and may be cited as the Scenic Rivers Act.

§ 1002. Designation of scenic river areas

A. The Council finds that some of the free-flowing streams and rivers of the Nation possess such unique natural scenic beauty, cultural or historical significance, water conservation, fish, wildlife and outdoor recreational values of present and future benefit to the people of the Nation that it is the policy of the Council to preserve these areas.

For this purpose there are hereby designated certain "scenic river areas" to be preserved as a part of the Nation's diminishing resource of free-flowing, high quality, rivers and streams.

B. The areas of the Nation designated as "scenic river areas" shall include:

1. those portions of the following rivers designated as scenic rivers or outstanding resource waters in the 2003 Oklahoma Water Quality Standards, including Flint Creek, Illinois River, Barren Fork Creek, Lee Creek, and Little Lee's Creek;
2. such portions of other rivers as may be designated by the Council or by standards promulgated

by the Commission and approved by the Principal Chief.

C. The term "**scenic river area**" as used in the Scenic Rivers Act is defined as the stream or river and the public use and access areas located within the area designated.

§ 1003. Legislative intent

A. Once an area is designated as a "scenic river area", it is the intent of the Council that:

1. The stream or river be preserved in its free-flowing condition;
2. The stream or river shall not be impounded by any large dam or structure;
3. The stream or river and its tributaries shall be provided the highest level of water quality protection.

B. No agency or official of any government shall authorize or concur in plans of local, state, nation or federal agencies for the construction, operation, or maintenance of any dam or related project in any "scenic river area," except with the Council's consent and for documented needs of communities in the immediate vicinity of the "scenic river area" for their own domestic water supply.

C. No structures or alterations are allowed which may significantly interfere with the aesthetics and preservation of a designated stream as a scenic free-flowing stream.

§ 1004. Cooperation and support of people and agencies—Purpose of act

A. It is recognized by the Council that an effective program for preserving the scenic beauty of the free-flowing streams and rivers designated as "scenic river areas" necessarily involves the cooperation and support of the people in the areas of designated "scenic river areas", as well as the people using the "scenic river areas", and the agencies and governments administering these areas.

B. The primary purpose of the Scenic Rivers Act is to encourage the preservation of the areas designated as "scenic river areas" in their natural scenic state.

§ 1005. Littering and TMDLs

A. It is recognized by the Council that littering by people using the "scenic river areas" is one of the most immediate threats to the scenic beauty of our free-flowing streams and surrounding areas.

B. Any cross-deputized law enforcement officer, marshal, ranger, staff or members of the Oklahoma Scenic Rivers Commission, police or peace officer, game wardens, landowner in the area, or any other interested party may file a complaint to enforce the provisions of the Scenic Rivers Act or to enforce other applicable requirements to prevent and clean up pollution.

C. Any person who deliberately places, throws, drops, deposits or discards any garbage, trash, waste, rubbish, refuse, debris or other deleterious substance on or near a scenic river area shall be subject to monetary penalties and enforcement provisions of the CN Environmental Code for illegal pollution or discharges and any other applicable law.

D. For those impaired scenic river watersheds where a total maximum daily load (TMDL) for phosphorus or other pollutants is necessary, the Commission shall work with affected states, if possible, to allocate and enforce loadings for discharges of all types.

§ 1006. Notice and hearing as to designation of additional scenic areas

Before any plans for additional proposed "scenic river areas" are brought to the Council for consideration, the Commission shall give reasonable notice in newspapers of general circulation in every district in which land and streams that would be affected by the proposed "scenic river area" are situated. The notice shall include a map or drawing of the proposed area and shall give the time and place of a meeting, at which time and place the Commission shall present their plans for the proposed area.

§ 1007. Scenic rivers

A. The Council finds that the protection and development of the Nation's scenic river areas and adjacent and contiguous lands and quality of outstanding resource waters included within the Nation and subject to its jurisdiction should be provided for by properly planned and executed rules promulgated by the Commission respecting public services, land use, occupancy, structures, management practices in riparian areas, and other activities as required for the proper protection of the cultural, aesthetic, scenic, historic, archeological and scientific features of the said affected areas, or deemed necessary for the protection of the ecosystem and the environment from pollution, despoliation and destruction or waste of natural resources and all other factors adversely affecting the Nation's heritage or public health, safety and the general welfare.

B. The Commission shall be invested with the power to prepare and establish minimum standards for planning and other ordinances and rules for the implementation of the Scenic Rivers Act, and promulgate such rules and issue such orders as necessary to protect the public interest and to achieve the purposes of the Scenic Rivers Act.

C. The standards shall be developed and executed in such manner as to protect and enhance the values which caused the area to be named a scenic river area without, insofar as is consistent with said protection and enhancement, limiting other uses that do not substantially interfere with the protection, public use, and enjoyment of these values.

D. Primary emphasis in the standards shall be given to protecting the cultural, aesthetic, scenic, historic, archeological, and scientific features of the scenic river area with due consideration being given to the sustainable and orderly development of the lands adjacent and contiguous to the scenic river area.

E. Standards set pursuant to the provisions of the Scenic Rivers Act shall not be less rigid or exacting than those established by any other federal, state or local agency having jurisdiction in respect to the subject covered by the particular standard.

CHAPTER 11

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT [CN CERCLA]

Reserved for Future Use

CHAPTER 12

LEAD-BASED PAINT

§ 1201. Short title

This act shall be known and may be cited as the Cherokee Nation Lead-Based Paint Act.

§ 1202. Purpose

The purpose of the Cherokee Nation Lead-Based Paint Act is to provide for the authorization and administration of a lead-based paint program in accordance with requirements set forth by the federal Environmental Protection Agency. This program is established for the health, safety and welfare of Cherokee citizens in recognition of the health risks associated with the presence of lead in paint products.

§ 1203. Definitions

As used in the Cherokee Nation Lead-Based Paint Act:

1. **"Lead-based paint"** means paint with a lead content of 0.5% or greater (5000 ppm). Coatings of residential paint are considered to be lead-based if the lead content exceeds 1 mg/cm² or 0.5% by weight.
2. **"Program"** means the Cherokee Nation Lead-Based Paint Program as defined in 27 CNCA § 1204.

§ 1204. Lead-Based Paint Program

A. The Cherokee Nation Environmental Protection Program shall have the authority to act as the lead office in the development, implementation, and on-going facilitation of a Cherokee Nation Lead Based Paint program. The program shall be established in accordance with the Cherokee Nation Environmental Quality Code, and shall operate in accordance with criteria established by the federal Environmental Protection Agency for tribal nation lead-based paint programs.

B. The Lead Office shall have the authority to promulgate the necessary rules, regulations and operating procedure, in accordance with EPA criteria and Cherokee Nation law, to operate the program.

C. The Lead Office shall have the authority to pursue available sources of federal funding for the continued operation of the program.

§ 1205. Enforcement

The Cherokee Nation Lead-Based Paint Program shall be enforced in accordance with the Cherokee Nation Environmental Quality Code; the Cherokee Nation Marshal Service, the Cherokee Nation Environmental Protection Commission and the Lead Office shall be designated as the enforcement authorities for the program.

CHAPTER 13

HAZARDOUS WASTE CODE

§ 1301. Short title

This act shall be known and may be cited as the Cherokee Nation Hazardous Waste Code. Any reference herein to the "Code" shall refer to the Cherokee Nation Hazardous Waste Code unless the context clearly indicates otherwise.

§ 1302. Purpose and general provisions

The purpose of this code is to:

1. Establish the authority of the Cherokee Nation to enforce, as minimum requirements in Indian Country and on lands or waters of the Nation, all applicable requirements of federal law and regulations. For that purpose, until such time as the Nation may develop additional or more stringent requirements, the requirements of federal law and regulations applicable to hazardous waste, hazardous materials and hazardous substances are hereby adopted by reference;
2. Provide authority to appropriate entities within the Nation to take all actions necessary to develop, implement and enforce a comprehensive regulatory program for hazardous wastes and materials;
3. Provide authority to appropriate entities within the Nation to develop, implement and enforce requirements that are more stringent than or are in addition to federal requirements, to the full extent not prohibited by law.

§ 1303. Definitions

A. Unless otherwise defined in this code, rules promulgated hereunder, or otherwise applicable provisions of the Cherokee Nation Environmental Quality Code, definitions contained in applicable federal laws and regulations shall apply.

B. The following definitions shall be used:

1. "**Affiliated person**" means:

a. any officer, the Administrator, or partner of the applicant;

b. any person employed by the applicant as a general or key manager who directs the operations of the site or facility which is the subject of the application; and

c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity.

2. "**Cherokee community**" means a group of persons which is predominantly composed of citizens of Cherokee Nation and who reside in the same geographic area and meet or work together on common goals, regardless of whether or not such community is shown on maps published outside Cherokee Nation, listed as a town or city or otherwise recognized by persons outside Cherokee Nation.

3. "**Commission**" means the Cherokee Nation Environmental Protection Commission.

4. "**Council**" means the Cherokee Nation Tribal Council.

5. "**Demonstrated pattern of prohibited conduct**" means a series of conduct of the same or like character in violation of Cherokee Nation or federal environmental laws which, as a result of the applicant's or affiliated person's reckless disregard thereof, actually endangers, or reasonably has the potential to endanger, human health or the environment.

6. "**Disclosure statement**" means a written statement by the applicant which contains:

a. the full name, business address, and social security number of the applicant, and all affiliated persons;

b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant, and a description of the on-going organizational relationships as they may impact operations within Cherokee Nation;

c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental facility regulation;

d. a listing and explanation of any administrative, civil or criminal legal actions against the

applicant or any affiliated person which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal in the ten (10) years immediately preceding the filing of the application relating to the generation, transportation, storage, treatment, recycling or disposal of "hazardous waste" as defined by the Cherokee Nation Hazardous Waste Code or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act. Such actions shall include, without limitation, any permit denial or any sanction imposed by a Cherokee Nation regulatory authority or the United States Environmental Protection Agency; and

e. a listing of any federal environmental agency and any Cherokee Nation environmental agency outside this Cherokee Nation that has or has had regulatory responsibility over the applicant.

7. "**Disposal**" means the final disposition of hazardous waste.

8. "**Disposal site**" means the location where any final disposition of hazardous waste occurs. Disposal sites include but are not limited to injection wells and surface disposal sites.

9. "**Guarantor**" means any person other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to the Cherokee Nation Hazardous Waste Code.

10. "**Hazardous waste**" means waste materials and byproducts, either solid or liquid or containerized gases, which are:

a. to be discarded by the generator or recycled;

b. toxic to human, animal, aquatic or plant life; and

c. generated in such quantity that they cannot be safely disposed of in properly operated, Cherokee Nation-approved solid waste landfills or waste, sewage or wastewater treatment facilities.

The term "**hazardous waste**" may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludges, tank bottoms containing heavy metallic ions, toxic organic chemicals, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste. The term "**hazardous waste**" shall not include domestic sewage.

11. "**Hazardous waste facility**" means and includes treatment, storage, recycling and disposal facilities.

12. "**History of noncompliance**" means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation or demonstrate a pattern of prohibited conduct which could reasonably be expected to result in endangerment to human health or the environment if a permit were issued, as evidenced by findings, conclusions and rulings of any final agency order or final order or judgment of a court of record.

13. **"Multi-user on-site treatment facility"** means a treatment facility for hazardous waste generated by the co-owners of the facility and which meets the criteria specified by the Cherokee Nation Hazardous Waste Code.

14. **"Off-site treatment, storage, recycling or disposal"** means the treatment, storage, recycling or disposal at a hazardous waste facility of hazardous waste not generated by the owner of the facility.

15. **"On-site treatment, storage, recycling or disposal"** means the treatment, storage, recycling or disposal at a hazardous waste facility of hazardous waste generated by the owner of the facility.

16. **"Person"** means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, Cherokee Nation or local governmental instrumentality, agency or body or any other legal entity however organized.

17. **"Recycling"** means the reuse, processing, treating, or rerefining of hazardous waste into a product which is being or which has been sold for beneficial use. Hazardous waste which is intended for fuel is not deemed to be recycled until it is actually burned.

18. **"Regeneration" or "regenerated"** means the regeneration of spent activated carbon to render it reusable, and any treatment, storage or disposal associated therewith.

19. **"Site" or "proposed site"** means the surface area of a disposal site, or other hazardous waste facility, as applied for in the application for a permit for the facility.

20. **"Storage facility"** means any location where the temporary holding of hazardous waste occurs, including any tank, pit, lagoon, pond, or other specific place or area.

21. **"TSRD"** means treatment, storage, recycling or disposal.

22. **"Treatment"** means the detoxification, neutralization, incineration or biodegradation of hazardous waste in order to remove or reduce its harmful properties or characteristics.

23. **"Treatment facility"** means any location where treating or recycling of hazardous waste occurs.

§ 1304. Powers and duties

A. The Commission shall have the authority and power to:

1. issue permits, promulgate rules and issue orders relating to the construction, operation, closure, post-closure, maintenance and monitoring of hazardous waste facilities;

2. initiate and take appropriate enforcement actions;

3. make final decisions on permit applications;
4. make final decisions in all administrative appeals under this code;
5. Approve or disapprove methods of treatment, storage, transportation or disposal of hazardous waste and other wastes that are not specifically addressed by other parts of the Cherokee Nation Environmental Quality Code;
6. Require terms and conditions in permits, including terms limiting the duration of any permit;
7. Restrict or prohibit disposal practices including, but not limited to, any type of land disposal of any form of hazardous waste. Land disposal includes, but is not limited to landfills, surface impoundments, waste piles, deep wells, land treatment facilities, salt dome and bed formations and underground mines or caves;
8. Promulgate such rules as they deem necessary or appropriate to implement this code;
9. Establish a comprehensive regulatory program for hazardous waste and any other wastes not specifically regulated by other parts of the Cherokee Nation Environmental Quality Code;
10. Require monitoring, reports, remediation, environmental assessments and other actions they may deem appropriate to ensure the protection of public health, safety and welfare and the protection of the environment; and
11. Determine and enforce penalties for violation of the Cherokee Nation Hazardous Waste Code, permits, orders and rules promulgated thereunder;
12. Evaluate the benefit and establish rules or requirements for pollution prevention, waste reduction, recycling and labeling for any containers used for the disposal, storage, treatment, transportation of or disposal of hazardous waste;
13. Until such time as the Commission may promulgate rules, issue orders or otherwise establish requirements that are more stringent, the Commission and their duly authorized representatives shall have the authority to enforce as minimum requirements those contained in any applicable federal laws or regulations.

B. The Administrator or their designee shall have the authority to:

1. Provide the owner or operator of a hazardous waste facility a list of all materials which are acceptable for treatment, recycling, storage, transportation or disposal as a facility or in any part of Indian Country;
2. Conduct compliance inspections of hazardous waste facilities and recycling, transporting, and generating facilities;

3. Require submittal of information, including manifests or other forms, by persons proposing to own or operate a hazardous waste facility or who generate, store, treat, transport, recycle or dispose of hazardous waste within Cherokee Nation;
4. Develop, maintain, and monitor public records of the source and amount of hazardous waste generated in Cherokee Nation and the methods used to dispose of, recycle, or treat said waste or material;
5. Require and approve or disapprove disposal plans from all persons generating hazardous waste or shipping hazardous waste within, from, or into Cherokee Nation indicating the amount of hazardous waste generated, the handling, storage, treatment, and disposal methods, and the hazardous waste facilities used. The disposal plans shall be kept current by the persons generating or shipping hazardous waste and the Commission shall be advised within five (5) working days of any changes in the disposal plans;
6. Require reports from all persons generating hazardous waste, indicating the amount generated the treatment and disposal methods, and the treatment, disposal, and recycling sites used. Such reports are to be made on at least a quarterly basis;
7. Require periodic reports or manifest certifications regarding programs and efforts to reduce the volume or quantity and toxicity of such hazardous waste;
8. Require reports from all operators of hazardous waste facilities who receive hazardous waste for treatment or storage or disposal, listing the amount, transporter, and generator of all hazardous waste received. Such reports are to be made on at least a monthly or quarterly basis, as designated by the Commission;
9. Inform persons generating hazardous waste of available, alternative methods of disposal of such waste and assist the persons in developing satisfactory disposal plans;
10. Coordinate program activities with the U.S. Environmental Protection Agency;
11. Require the preparation and implementation of an emergency response plan for spills of hazardous waste, spills of hazardous materials or other spills of waste; and
12. Make information obtained by the Nation regarding hazardous waste facilities and sites available to the public in substantially the same manner, and to the same degree, as would be the case if the hazardous waste program in Cherokee Nation were being carried out by the U.S. Environmental Protection Agency.

§ 1305. The Commission shall develop rules and the Administrator shall have the authority to implement measures and requirements that

1. Establish requirements for any existing surface impoundment, landfill or other site where

hazardous waste has been generated, stored, treated, transferred or disposal of, where there exists a risk that hazardous waste may migrate into waters of the Nation or otherwise cause adverse impacts on public health, safety or the environment. Such rules or requirements may require closure, cleanup, restoration, or such protective actions as double liners and leachate detection and collection systems, or any other measures as the Commission may deem necessary to protect public health, safety and the environment;

2. Prohibit or restrict the use of any specific disposal methods or practices for specific hazardous waste material, substances or classes, as may be necessary to protect human health and the environment;

3. Identify areas within the Cherokee Nation which are unsuitable for specific hazardous waste disposal methods, and deny permits for such disposal methods in such areas;

4. Require groundwater or surface water monitoring or other appropriate studies for any landfill, surface impoundment, land treatment site, pile or any site where hazardous waste or other wastes are generated, stored, treated, transferred, transported, recycled or disposed;

5. Waive or modify general permit application and issuance requirements for research and development permits, except for financial responsibility and public participation requirements;

6. Require oil or any other recycling facilities using hazardous waste to have a hazardous waste facility permit;

7. Require and issue permits for any activity associated with generating, storing, treating, transferring, transporting or disposing of hazardous waste, including such conditions as may be accessory to protect public health, safety and the environment; and

8. Require and issue permits for the storage of hazardous waste is aboveground or underground tanks or any other containment system.

§ 1306. Adoption of federal requirements by reference

A. Except as may be specified otherwise in this Code or Commission rules, orders or permits issued under the authority of the Cherokee Nation Environmental Quality Code or Hazardous Waste Code, the following are adopted by reference as minimum requirements that shall be applicable in Indian Country and enforceable by the Commission and Administrator:

1. The Resource Conservation and Recovery Act (RCRA): 42 U.S.C. § 3251 et seq. (repealed; see 42 U.S.C. § 6901 et seq.);

2. The Toxic Substances Control Act (TSCA): 15 U.S.C. § 2601 et seq. (1976); and

3. The following provisions of 40 C.F.R.:

- a. Part 260—Hazardous waste management system: general,
- b. Part 261—Identification and listing of hazardous waste,
- c. Part 262—Standards applicable to generation of hazardous waste,
- d. Part 263—Standards applicable to transporters of hazardous waste,
- e. Part 264—Standards for owners and operators of hazardous waste treatment, storage, and disposal facilities,
- f. Part 265—Interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities,
- g. Part 266—Standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities,
- h. Part 268—Lead disposal restrictions,
- i. Part 270—EPA administered permit programs: the hazardous waste permit program,
- j. Part 273—Standards for universal waste management,
- k. Part 279—Standards for the management of used oil.

B. Nothing contained here shall be construed as allowing the Commission to establish standards or requirements that are less stringent than federal requirement.

§ 1307. Rules

A. In addition to other powers and duties specified by law, the Commission shall have the authority to promulgate rules which:

1. Prohibit the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required or which is operating under interim status;
2. Prohibit or restrict the storage of hazardous waste for which land disposal is prohibited, except to the extent that such storage is solely for the purpose of accommodation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal;
3. Prohibit or restrict the use of waste or used oil or other material used for dust suppression or road treatment, which is contaminated or mixed with dioxin or any other waste identified or listed by rules of the Commission as a hazardous waste except a waste identified solely on the basis of ignitability;

4. Require such monitoring and control of air emissions at hazardous waste treatment, storage and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment;
5. Regulate the production, burning, distribution, and marketing of fuel containing hazardous waste, and the commercial collection, storage, transportation, marketing, management, burning and disposal of used oil as may be necessary to protect human health and the environment including, but not limited to, labeling and recordkeeping requirements;
6. Control the listed or identified hazardous wastes which discharge through a sewer system to a publicly-owned treatment works for the protection of human health and the environment;
7. Provide in accordance with 42 U.S.C. § 6925(c) and (e) for the automatic termination of interim status for hazardous waste units failing to comply with applicable requirements for the submission of part B permit applications and certification of groundwater monitoring and financial responsibility compliance;
8. Require from applicants for permits and from owners and operators of hazardous waste facilities evidence of financial responsibility for corrective action as may be required or ordered under the authority of the Cherokee Nation Hazardous Waste Code;
9. Require that generators of hazardous waste establish and implement programs to reduce the volume or quantity and toxicity of such waste to the extent technologically feasible; and
10. Specify levels or methods of treatment which substantially diminish the toxicity of the waste or likelihood of its migration so as to minimize threats to human health and the environment.

B. The hazardous waste component of mixed waste and radioactive waste shall be regulated as hazardous waste. The radioactive waste component shall be regulated as radioactive waste. Both the hazardous waste requirements and the radioactive waste requirements shall apply if physical separation of the two components is not accomplished. If a conflict exists between the two requirements, the requirements most protective of human health and the environment shall take precedence.

C. Rules pertaining to standards for the transportation of hazardous waste and recyclable materials promulgated by the U.S. Department of Transportation shall be the minimum standards and requirements unless the Nation adopts more stringent standards and requirements to the extent allowed by federal law.

§ 1308. Prohibition of new disposal sites—Permits required

A. Any hazardous waste disposal site within Cherokee Nation that exists as of January 1, 2006, shall file an application for permit with the Administrator no later than March 1, 2006. The Commission may, in their sole discretion, deny an application for permit for such an existing disposal site. After January 1, 2006, no permits shall be issued for new hazardous waste disposal

sites in Cherokee Nation.

B. The construction or operation of a hazardous waste disposal site, receipt of hazardous wastes at a disposal site in Cherokee Nation or incineration of hazardous waste in Cherokee Nation after January 1, 2006, is hereby prohibited. Violation of the requirements in this section are subject to the general enforcement provisions of Chapter 2 of the Cherokee Nation Environmental Quality Code and, in addition, the Commission or any court with jurisdiction shall have the authority to order the closure of any unpermitted hazardous waste disposal site and require that all hazardous wastes be removed.

C. Except as otherwise provided by subsection (D) of this section or any rules of the Environmental Protection Commission, no person shall store, treat or dispose of hazardous waste materials or commence construction of or own or operate any premises or facility engaged in the operation of storing, treating or disposing of hazardous waste or storing recyclable materials, unless they first obtain and maintain a valid and appropriate hazardous waste facility permit. The provisions of this subsection shall not include remediation activities under an order of the Commission which would not require a federal hazardous waste permit from the Environmental Protection Agency if conducted pursuant to a federal order.

D. 1. The Commission may by rule provide for continued operation on an interim basis pending permit determination of a facility in existence on the effective date of any statutory or regulatory amendments that would subject the facility to a permit requirement pursuant to the Cherokee Nation Hazardous Waste Code.

2. The provisions for the allowance of continued operation on an interim basis shall not apply in the case of a facility for which a permit, under the Cherokee Nation Hazardous Waste Code, has been previously denied or for which authority to operate has been terminated.

E. Facilities engaged in recycling which are not required to be permitted pursuant to the provisions of the Cherokee Nation Hazardous Waste Code shall operate in an environmentally acceptable manner and in accordance with the rules regarding the manifest, transportation and treatment, storage and disposal standards, and generators in the event a hazardous waste is generated therefrom.

§ 1309. Permits—Limitation on persons eligible—Disclosure of information

A. The Commission shall not issue, renew, or transfer a permit for a hazardous waste facility for treatment, storage, recycling or disposal to any person who:

1. is not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by Cherokee Nation, any state or any federal agency relating to the generation, storage, transportation, treatment, recycling or disposed of "hazardous waste", as such term is defined by the Cherokee Nation Hazardous Waste Code, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act;

2. has evidenced a reckless disregard for the protection of the public and the environment as demonstrated by a history of noncompliance with environmental laws and rules resulting in endangerment of human health or the environment; or

3. has as an affiliated person any person who is described by paragraph 1 or 2 of this subsection.

B. 1. Except as provided in paragraph 2 of this subsection, all applicants for the issuance, renewal or transfer of any hazardous waste permit, license, certification or operational authority issued by the Commission shall file a disclosure statement with their applications.

2. If the applicant is a publicly-held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly-owned subsidiary of a publicly-held company, the applicant shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other relevant information as the Commission may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

C. The Commission is authorized to revoke, or to refuse to issue, to renew, or to transfer a permit for a hazardous waste facility for treatment, storage, recycling or disposal:

1. to any person who:

a. is not, due to the actions or inactions of the applicant or affiliated person, in substantial compliance with any final agency order or final order or judgment of a court relating to the environment:

b. is not, due to the actions or inactions of the applicant or affiliated person, in substantial compliance with any final agency order or final order or judgment of a court of record relating to the generation, storage, transportation, treatment, recycling or disposal of any "hazardous waste", as such term is defined by the Cherokee Nation Hazardous Waste Code, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act;

c. has evidenced a history of a reckless disregard for the protection of the public health and safety or the environment through a history of noncompliance with Cherokee Nation or federal environmental laws, including without limitation the rules of the Commission or the United States Environmental Protection Agency regarding the generation, storage, transportation, treatment, recycling or disposal of any "hazardous waste", as such term is defined by the Cherokee Nation Hazardous Waste Code, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act; or

d. has as an affiliated person any person who is described by paragraphs 1, 2 or 3 of this subsection.

2. in any circumstances in which the Commission believes it prudent or necessary in order to ensure the protection of public health or safety, the Nation's wildlife and other natural resources, or any component of the environment.

D. 1. An application for a permit for a TSRD facility or for renewal of a permit shall be signed under oath by the applicant.

2. The Commission may refuse to renew, or may suspend or revoke, a permit issued for a hazardous waste facility for treatment, storage, recycling or disposal to any person who has failed to disclose or states falsely any information required pursuant to the provisions of this section.

§ 1310. Special restrictions applicable in Indian Country

A. No permit shall be issued for a new TSRD which is proposed to be located:

1. Within eight (8) miles of the corporate limits of an incorporated city or town or of any Cherokee community;

2. Within a one hundred- (100) year floodplain;

3. Within one (1) mile of any stream or lake;

4. Within one (1) mile of a public or private water supply;

5. On any land held in trust or otherwise owned by the Nation unless such land is specifically designated for such purposes in the Cherokee Nation strategic land plan or amendments to such plan;

6. Within five (5) miles of the Cherokee Nation tribal complex, tribal courts or cultural grounds;

7. Within three (3) miles of a school, church, campground, cultural or recreational area, or other public gathering place;

8. Within one (1) mile of any inhabited residence unless the residence is owned by the facility owner;

9. Over any area of karst geology; or

10. In such location or circumstances that, in the judgment of the Commission, the proposed facilities, activities or wastes pose an unacceptable risk to public health, safety, wildlife or any aspect of the environment.

§ 1311. Disposal—Restrictions applicable to impoundments and landfills

A. The Commission shall not issue a permit for the treatment, disposal or temporary storage in a surface impoundment of any liquid hazardous waste which is not generated by the owners of the surface impoundment.

B. Except as otherwise specifically provided by law, the disposal of any liquid hazardous waste in a landfill or in a surface impoundment is prohibited.

C. The provisions of this section shall not prohibit:

1. the construction and operation of surface impoundments solely for the collection of rainfall runoff; or

2. the construction of impoundments solely for bioremediation or for the emergency retention of spills of substances which are or may become hazardous waste; provided all liquids and associated solids are removed for proper treatment or disposal.

§ 1312. Prohibited disposal—Treatment, storage recycling, or disposal (TSRD) sites

A. Nothing in this section shall be deemed to authorize TSRD sites or activities that are otherwise prohibited under other provisions of the Cherokee Nation Hazardous Waste Code.

B. The practice of plowing hazardous waste into the soil surface or otherwise land-applying hazardous waste for the purpose of disposal is prohibited.

C. A hazardous waste facility for on-site or off-site treatment, recycling or storage shall not be sited in or over a principal groundwater resource or recharge area.

D. The Commission may grant a variance to a hazardous waste treatment, recycling or storage facility to allow the siting over a principal groundwater resource or recharge area only upon the following conditions:

1. the request for variance, accompanied by plans certified by a professional engineer and a detailed rationale, shall be included in the permit application;

2. the Commission shall receive and consider comments on the appropriateness of the proposed variance at any formal public meeting or administrative permit hearing conducted on the draft permit or proposed permit;

3. the applicant shall bear the burden of establishing clearly and convincingly to the Commission that the design, construction and operation of the proposed facility will be such that the risk of a release of hazardous waste or hazardous waste constituents directly or indirectly to waters of the Nation is improbable and minimal; and

4. the permit application shall provide for the establishment and maintenance of a bond or other financial assurance in an amount sufficient to fully remediate and restore the environment and

resources should contamination occur.

§ 1313. Hazardous waste facility construction to be supervised

The design, testing and construction of a hazardous waste facility shall be conducted under the supervision of a professional engineer, duly registered in Oklahoma, with training and experience in suitable disciplines.

§ 1314. Issuance of permits—Suitability of facility—Administrative procedures

A. The Commission may issue a permit for a hazardous waste facility or activity requiring a permit upon proper application and determination by the Commission that the proposed site and facility are physically and technically suitable.

B. Upon a finding that a proposed hazardous waste facility is not physically or technically suitable, or upon finding that the proposed facility or operation poses an unacceptable risk to the public health, safety or environment, the Commission shall deny the permit.

C. An administrative permit hearing shall be available on an application for a new permit or for the modification of an existing permit involving a twenty-five percent (25%) or more increase in permitted capacity for storage, treatment or disposal.

D. The Commission may, upon determining that public health or safety requires emergency action, issue a temporary permit for treatment or storage of hazardous waste or recyclable material for a period not to exceed ninety (90) days without the prior notices and opportunity to request a public meeting or the administrative permit hearing required by this section. Any person aggrieved by such permit may seek judicial review.

§ 1315. New permits—Suitability of roads and bridges

A. In connection with any permit application, the Commission shall consider the roads and bridges that are to be used to provide access to the proposed waste facility, the likely effect on property values, development and uses in the area, and road classification plans.

B. If any county commissioner or local government official asserts that substantial detriment to the roads and bridges would occur, the Commission shall work with them to determine any reasonable measures necessary to upgrade the roads and bridges or prevent such detriment. The Commission may require the applicant for a hazardous waste facility to upgrade or pay for the upgrading of such roads and bridges or other appropriate measures as a prerequisite to receiving a permit or as an essential condition in a permit.

§ 1316. Permits—Application—Liability insurance—Bond—Financial responsibility—Operation of facility—Insolvency—Liability of guarantors

A. Except for emergency permits issued in accordance with this title, no permit shall be issued

except upon proper application, proof of sufficient liability insurance and financial responsibility, formal public meeting, if requested, and compliance with the requirements of the Cherokee Nation Environmental Quality Code including, but not limited to, requirements of the Cherokee Nation Hazardous Waste Code.

B. Liability insurance shall be provided by the applicant and shall apply to sudden and nonsudden bodily injury or property damage on, below or above the surface, as required by the rules of the Commission. Additional insurance shall be required as deemed necessary by the Commission to protect the Nation, Cherokee communities, property rights including but not limited to rights of owners or leaseholders of underground resources such as oil, gas, water or other mineral substances, natural resources and public health, safety and welfare. Adequate insurance shall be maintained for the period of operation of the facility through closure and postclosure, and at a minimum shall provide coverage for damages resulting from operation of the facility during operation and after closing, remediation and full restoration of damaged properties and resources. In lieu of liability insurance required by this or any other section of Cherokee Nation statutes or rules, an equivalent amount of cash, securities or alternate financial assurance of a type and in an amount acceptable to the Commission, may be substituted: provided, that such deposit shall be maintained for a minimum period of five (5) years after the date of last operation of the facility.

C. Prior to the issuance of any permit, the applicant shall post a bond or acceptable alternate financial assurance guaranteeing proper closure and guaranteeing the performance of closure and post-closure maintenance and monitoring functions. The applicant shall supplement the bond or financial assurance when requested by the Commission.

D. The Commission shall require additional insurance and security upon an application for expansion of the facility. The increase in insurance and security shall be in a sufficient amount to provide adequate coverage for damages resulting from such expansion during operation of the facility and after closing.

E. Prior to the issuance of any permit and at any time upon request of the Commission, the applicant shall produce evidence of the applicant's financial status or other qualifications indicating that the applicant is financially able and qualified to operate and maintain a hazardous waste facility and to comply with all applicable requirements.

F. The operation of a hazardous waste facility shall be under the supervision of a person meeting qualifications set by the Commission appropriate to the type of facility.

G. The Commission is authorized and shall require the construction of monitoring wells, pond liners, fencing, signs or other equipment deemed necessary by the Commission to ensure the suitable operation of the facility.

H. 1. In any case where the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code or if jurisdiction in any Cherokee Nation court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial

responsibility is required pursuant to this Code may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action taken pursuant to this section, such guarantor shall be entitled to claim all rights and defences which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.

2. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility for the owner or operator pursuant to this Code. Nothing in this subsection shall be construed to limit any other Cherokee Nation or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

§ 1317. Facilities that recycle hazardous waste—Permit requirements, exemption—Prohibition of burning certain hazardous waste as fuel

A. Facilities that recycle hazardous waste may be granted an exemption from specific requirements by the Commission with regard to those units exclusively used in the recycling process. Off-site hazardous waste recycling facilities are subject to the requirements specified by the Cherokee Nation Hazardous Waste Code and rules promulgated thereunder, for a permit, and shall also meet required design standards.

B. No hazardous waste having a heating value less than five thousand (5,000) British Thermal Units per pound shall be burned as fuel in any unit in Cherokee Nation permitted as a hazardous waste recycling unit.

C. No owner or operator of any unit in Cherokee Nation permitted as a hazardous waste recycling unit shall burn as fuel in such unit any substance which the owner or operator knows, or should know, contains hazardous waste which has a heating value of less than five thousand (5,000) British Thermal Units per pound which has been blended with other materials or wastes and produces a hazardous waste fuel with a heating value equal to or exceeding five thousand (5,000) British Thermal Units per pound.

§ 1318. Fees

A. The Commission shall establish a schedule of fees to be charged for applications for permits required under this Code. Such fees shall be deposited in the Environmental Quality Revolving Fund.

B. Any person disposing of liquid waste other than hazardous waste in an underground injection well shall pay a fee of not less than one cent (\$.01) per gallon for such disposal, provided that the total fee shall be not less than Ten Thousand Dollars (\$10,000.00) per year. Said fee shall be paid

to the Administrator on a quarterly basis within one (1) month following the close of each quarter for the waste disposed in that proceeding quarter. Said fees shall be deposited into the Environmental Quality Revolving Fund.

C. The Commission may direct a facility to waive the fees for hazardous waste received from certain sites undergoing response actions under the authority of the federal Comprehensive Environmental Response, Compensation and Liability Act. A fee waiver may only be granted for response actions financed through the Superfund Trust Fund that are conducted by the Commission or the federal Environmental Protection Agency, when the amount of the waiver will qualify towards the contributions required of Cherokee Nation for such actions.

D. The Commission may order a facility to waive fees for hazardous waste received from certain sites in Cherokee Nation undergoing remedial action that are being conducted as a result of:

1. a consent order approved by the Commission;
2. fulfilling the requirements of a compliance schedule issued by the Commission as a result of a permit; or
3. a brownfields action that has been approved by the Commission.

Such fee waivers may be granted for remedial actions only when the amount of the fee waiver will qualify toward the contributions required of Cherokee Nation in response actions financed through the Superfund Trust Fund. The Commission shall void all waivers for fees should the requirements of any Consent Order, Compliance Schedule, or Brownfields action not be fulfilled as stipulated.

E. Every hazardous waste treatment facility, storage facility, underground injection facility, disposal facility, or off-site facility that recycles hazardous waste subject to the provisions of the Cherokee Nation Hazardous Waste Code shall pay to the Administrator an annual fee on the amount of hazardous waste managed by such facility. The Commission shall establish a schedule of fees.

1. Until such a schedule is developed, the minimum fees shall be:
 - a. Nine Dollars (\$9.00) per ton for on-site or off-site storage, treatment or land disposal;
 - b. Four Dollars (\$4.00) per ton for off-site recycling, including regeneration; or
 - c. Ten Dollars (\$10.00) per gallon for on-site or off-site underground injection.
2. There shall be a minimum fee per facility as follows:
 - a. except as provided in subparagraph d of this paragraph, any person owning or operating an off-site hazardous waste treatment facility or disposal facility shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each fiscal year,

b. any person owning or operating an on-site hazardous waste treatment facility, storage facility, or disposal facility shall pay a total fee of not less than Twenty Thousand Dollars (\$20,000.00) each fiscal year. The annual fee for the on-site disposal of hazardous waste by underground injection shall not exceed Fifty Thousand Dollars (\$50,000.00).

c. any person owning or operating an off-site facility for the storage or recycling of hazardous waste shall pay a total fee of not less than Twenty Thousand Dollars (\$20,000.00) each fiscal year; provided, any such off-site recycling facility which consistently recycles fewer than ten (10) tons of hazardous waste per calendar month shall not be subject to this minimum annual fee. For the purpose of this subparagraph, storage includes physical separation or combining of wastes solely to facilitate efficient storage at the facility and/or efficient transportation, and

d. any person owning or operating an off-site facility which accepts hazardous waste exclusively for the purpose of conducting research and design tests shall pay a total fee of not less than Ten Thousand Dollars (\$10,000.00) each fiscal year.

3. The facility shall become liable for payment of the fee on each ton or gallon of hazardous waste at the time it is received. For purposes of on-site facilities, receipt is deemed to have occurred when the waste is first managed in any unit or manner that requires a hazardous waste permit.

F. Payment of the fees required by this section shall be due and paid quarterly to the Administrator for all hazardous waste received by the facility during the prior calendar quarter. Quarterly payments shall be due on the first day of the month of the following quarter.

G. All fees and other monies received by the Administrator pursuant to the provisions of this Code shall be expended solely for purposes related to protection of the environment, implementing environmental programs and protection of Cherokee Nation natural resources.

§ 1319. Permit issuance notice—Notice of remediation of related action taken—Interference with remediation

A. Upon issuance of any permit issued pursuant to the requirements of the Cherokee Nation Hazardous Waste Code, the Commission shall file a recordable notice of the permit in the Cherokee Nation Realty office. The notice shall contain the legal description of the site as well as the terms under which the permit was issued.

B. The Commission shall file a recordable notice of remediation or related action taken pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act in the Cherokee Nation Realty office. The notice shall contain a legal description of the affected property and shall identify all engineering controls used to ensure the effectiveness of the remediation.

C. When remediation of contaminated property is performed under an order of or a remediation plan approved by the Commission, the Commission shall file a recordable notice of remediation taken in the Cherokee Nation Realty office. The notice shall contain a legal description of the

affected property and shall identify all engineering controls used to ensure the effectiveness of the remediation.

D. The notices required in this section shall also contain a prohibition against engaging in any activities that could cause damage to the remediation or the engineering controls, or could cause contamination or recontamination of the soil or waters of the Nation. The notices shall also contain any appropriate restriction on land use or other activities that are incompatible with the cleanup level, including but not limited to, restriction against using water for drinking or irrigation purposes or redeveloping the land for residential use. Any person who damages or interfere with the remediation, the engineering controls or continuing operation, maintenance or monitoring of the site shall be liable to repair the damage or remedy the interference, or for costs incurred by the Nation in doing so. The Commission may take administrative or civil action to recover costs or to compel compliance with this subsection.

§ 1320. Monitoring of closed facility

After a hazardous waste facility has been closed, its owner or operator shall properly maintain and monitor the hazardous waste facility for the period of time required by the Code, rules promulgated hereunder, permit or order of the Commission and shall make such repairs or improvements as necessary to ensure that no migration of hazardous waste material will occur.

§ 1321. Hazardous waste manifest

A. Persons generating hazardous waste shall provide a manifest to the operator of any mode of any offsite transportation carrying hazardous waste. Such manifest shall be in a form which has been prescribed by the Commission and shall indicate a disposal plan number assigned by the Commission which shows that the Commission has approved the plans of the person generating such waste. The manifest shall also set forth the type, amount, approximate content, origin and destination of the waste. Such operator shall have the manifest in his possession while transporting or handling the hazardous waste. Upon delivery of the hazardous waste to a facility duly authorized to accept such waste, the operator shall submit such manifest to the receiving person for processing pursuant to rules promulgated by the Commission.

B. No off-site TSRD facility shall accept the manifest unless such manifest has a properly assigned disposal plan number indicating that the Commission has approved the plans of the person generating the hazardous waste.

C. No person shall transport, receive, treat or dispose of hazardous waste without having the manifest in his possession.

D. The Commission may recognize manifests that have been duly issued or authorized by a state or federal agency with jurisdiction.

§ 1322. Inspections—Administrative proceedings—Records—Violations—Penalties

The provision of Chapter 2 of the Cherokee Nation Environmental Quality Code including, but not limited to, provisions relating to inspections, records, administrative proceedings, violations and penalties shall apply to persons, activities, waste and facilities regulated under the Cherokee Nation Hazardous Waste Code.

CHAPTER 14

UNDERGROUND INJECTION CONTROL

§ 1401. Short title

This chapter shall be known and may be cited as the Cherokee Nation Underground Injection Control Code or the UIC Code.

§ 1402. Purpose

The purpose of the UIC Code is to protect Cherokee communities, underground waters and other resources of the Nation from pollution and so establish a comprehensive regulatory program for protecting the environment and human health.

§ 1403. Definitions

The types of underground injection wells defined in 40 C.F.R. Part 144.6 are adopted by reference.

§ 1404. Prohibitions

The following underground injection wells are prohibited within Cherokee Nation:

1. Class I wells for hazardous waste or radioactive waste;
2. Class III wells except those for mining of salts;
3. Class IV wells for hazardous waste or radioactive waste;
4. Wells prohibited by duly promulgated rules of the Commission;
5. Any well that the Commission finds:
 - a. will create an unreasonable risk of harm to wildlife, human health, natural resources, waters of the Nation and other parts of the environment, or
 - b. is not the most technologically advanced or environmentally sound means of waste disposal or mineral extraction.

§ 1405. Permit required

A permit issued by the Commission is required for construction, operation and use of any UIC well that is not otherwise prohibited by law.

§ 1406. Minimum requirements

For UIC wells and related activities that are not otherwise prohibited under the UIC Code, the following regulations are adopted by reference as minimum requirements, provided, however, nothing herein shall prevent the Commission from promulgating rules that set forth additional or more stringent requirements:

1. 40 C.F.R. Part 144
2. 40 C.F.R. Part 146
3. 40 C.F.R. Part 148.

§ 1407. Power and duties

The Commission shall have all necessary authority and powers to:

1. implement the provisions of the Cherokee Nation UIC Code and applicable federal requirements within the Nation;
2. establish a comprehensive regulatory program;
3. approve or reject applications for permits;
4. issue, modify, renew or revoke permits;
5. promulgate rules and issue orders to implement the provisions of the UIC Code;
6. prosecute violations of the UIC Code, rules of the Commission or Commission orders and permits, using methods and penalties established under the provisions of the Environmental Quality Code.

§ 1408. Additional authorities

The Commission and Administrator shall have the authority to require:

1. maintenance of records by any permit holder;
2. sampling and monitoring of wastes and the environments;
3. reports;

4. provisions and conditions in permits as may be appropriate to prevent harm or risk of harm to the environment or public health;
5. appropriate studies and risk assessments; and
6. Inspections at any reasonable time by the Administrator or other authorized representative of the Commission.

§ 1409. Violations and penalties

Any violation of an order, rule, statutory provision or permit under the UIC code shall be subject to the penalties provided in the Cherokee Nation Environmental Quality Code. The remedies provided herein shall be cumulative and shall not be construed to supercede any other remedy under federal statutes, tribal law, or other applicable law.

CHAPTER 15

REDUCE, REUSE AND RECYCLE

§ 1501. Short title

This act shall be known and may be cited as the Reduce, Reuse and Recycle Act of 2009.

§ 1502. Purpose

Cherokee Nation, as a global partner in the recycling effort and to supplement other green initiatives will establish a "Reduce, Reuse and Recycling" program for all branches of Cherokee Nation Government. Such an effort will be the first step in formalizing overall conservation and energy efficiency policies for the Nation.

§ 1503. Definitions

For the purposes of this chapter, "**Cherokee Nation**" means Cherokee Nation Government and all of its entities, including businesses wholly-owned by Cherokee Nation.

§ 1504. Policies and programs

A. Establishment of policies. By January 1, 2010 policies will be developed and implemented requiring the following:

1. water conserving toilets and fixtures upon new construction or replacement;
2. cell phone reuse program;

3. eyeglass frame reuse program;
4. recycling of televisions, computers and other electronics as appropriate;
5. energy consumption reduction;
6. assessment of energy efficient options for new construction and remodeling.

B. Paper/cardboard recycling system.

1. Cherokee Nation shall establish and implement a paper/cardboard recycling system to recycle wastepaper/cardboard products that are recyclable and for which there is an accessible and available market. The recycling system shall include the recyclable wastepaper//cardboard products generated in the offices and other facilities of the Nation. Cherokee Nation may hire private contractors to establish or implement all or a portion of the recycling system under this chapter. The paper/cardboard recycling system established by the Nation shall provide for the recycling of wastepaper/cardboard in the offices and facilities that participate in that system, in accord with the following schedule:

- a. January 1, 2010 40% or more.
- b. January 1, 2012 50% or more.
- c. January 1, 2014 60% or more.
- d. January 1, 2016 85% or more.

2. The paper/cardboard recycling system established by Cherokee Nation shall provide for the expansion and improvement of any wastepaper/cardboard recycling system that exists on the effective date of this act:

- a. an aggressive program to locate and develop, if necessary, markets for recyclable wastepaper/cardboard products;
- b. an education program to assure that employees who participate in the recycling system are knowledgeable about both of the following:
 - i. the importance of recycling paper/cardboard,
 - ii. the importance of reducing paper by use of electronics,
 - iii. the importance of double-sided printing to conserve the use of paper,
 - iv. the components of the paper/cardboard recycling system and how the system will impact each employee.

- c. the recovery of all wastepaper/cardboard for which a market is available and accessible;
- d. the separation of the recyclable wastepaper/cardboard by the generator in close proximity to the point at which the paper product enters the waste stream;
- e. a central collection system within each building or office of facility that is participating in the recycling system;
- f. the compiling of information and the preparation of an annual written report detailing the implementation and operation of the recycling system; the level of participation in the recycling system of offices, facilities, and agencies within each branch of government.

C. Aluminum, glass and plastic recycling system. Cherokee Nation shall establish and implement an aluminum, glass and plastic recycling system to recycle aluminum, glass and plastic products that are recyclable and for which there is an accessible and available market. The recycling system shall include the recyclable aluminum, glass and plastic products generated in the offices and other facilities of the Nation. Cherokee Nation may hire private contractors to establish or implement all or a portion of the recycling system under this chapter. The system shall be implemented by January 1, 2010.

The aluminum, glass and plastic recycling system established by the Cherokee Nation shall provide for the expansion and improvement of any aluminum, glass and plastic recycling system that exists on the effective date of this act:

- 1. an aggressive program to locate and develop, if necessary, markets for recyclable aluminum, glass and plastic products;
- 2. an education program to assure that employees who participate in the recycling system are knowledgeable about both of the following:
 - a. the importance of recycling aluminum, glass and plastic
 - b. the components of the aluminum, glass and plastic recycling system and how the system will impact each employee.
- 3. the recovery of all aluminum, glass and plastic for which a market is available and accessible.
- 4. the separation of the recyclable aluminum, glass and plastic by the generator in close proximity to the point at which the aluminum, glass and plastic product enters the waste stream.
- 5. a central collection system within each building or office of facility that is participating in the recycling system.
- 6. the compiling of information and the preparation of an annual written report detailing the

implementation and operation of the recycling system; the level of participation in the system of offices, facilities, and agencies within each branch of government

D. Cost effectiveness. Implementation of any provisions of this chapter is subject to a cost-benefit analysis. Such analysis will consider short- and long-term costs and benefits, including intangible costs and benefits of each mandate required herein. The fact that a mandate will result in net financial cost to the Nation shall not preclude its implementation, however. Should the Nation find any mandate infeasible due to cost-benefit analysis, such determination and supporting information shall be publicized as soon as practicable thereafter via a public notice in the *Cherokee Phoenix* and reported to the appropriate committee of the Council of Cherokee Nation. Such public notice shall be published no later than the implementation deadlines set herein.

TITLE 28

ETHICS

CHAPTER 1

GENERAL PROVISIONS

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Ethics Act of 2012.

§ 2. Purpose

The purpose of this act is to codify the issues relating to conflicts of interest pertaining to employees and appointed and elected officials of Cherokee Nation, use of businesses owned wholly or partially by Cherokee Nation employees and appointed and elected officials, contracting with relatives of elected officials, and the parameters under which Cherokee Nation employees and officials must operate with respect to conflicts of interest.

The Cherokee Nation Constitution in Article X, Section 10, provides that, "No official, member or officer of the Council, Cabinet Member, employee of any official, Council, Cabinet, or subdivisions thereof, or any person employed in any capacity by the Cherokee Nation shall receive from any individual, partnership, corporation, or entity doing business with the Cherokee Nation directly or indirectly, any interest, profit, benefits, or gratuity, other than wages, salary, per diem, or expenses specifically provided by law." This act is in part intended to specify those situations "provided by law" under which a transaction which would otherwise be prohibited by this section of the Constitution will be permitted.

§ 3. Definitions

A. "**Hiring authority**" is the branch of government, instrumentality, official, board or commission or CEO or other executive officer ultimately responsible for hiring decisions including but not

limited to Principal Chief and Deputy Principal Chief, Tribal Council, Supreme Court and other entities or instrumentalities including Gaming, Tax, Election and other boards and commissions for their respective branch of government instrumentalities or boards or commissions any entities in which Cherokee Nation is the sole or majority stockholder or owner and all entities that are fifty-one percent (51%) or more owned by Cherokee Nation.

B. **"Immediate family"** shall include parents, children (including adopted children but not including foster children even when living in the same household), spouses (including common law spouses or those with whom the subject individual shares a conjugal relationship), siblings (one or more persons having one common parent), step-parents and step-children and wards over which the subject individual has guardianship or anyone living in the same household as the individual.

C. **"Instrumentalities"** means Cherokee Nation Government and any entities in which Cherokee Nation is the sole or majority stock holder or owner and all entities that are fifty-one percent (51%) or more owned by Cherokee Nation.

D. **"Interest, profit, benefit or gratuity"** as used in Article 10, Section 10 of the Cherokee Nation Constitution shall not include any benefit paid on behalf of and for the betterment of a Cherokee Nation citizen, regardless of the payee of the benefit.

E. **"Official"** means any elected or appointed person to any governmental entity, instrumentality, commission or board of Cherokee Nation Government or its instrumentalities any entities in which Cherokee Nation is the sole or majority stock holder or owner and all entities that are fifty-one percent (51%) or more owned by Cherokee Nation as defined by this act.

B. **"Relative"** shall include the following: parents, children (including adopted children but not including foster children even when in current placement with the individual), spouses (including common law spouses or those with whom the subject individual shares a conjugal relationship), siblings (one or more persons having one common parent), step-parents and step-children, step-siblings, parents-in-law, siblings-in-law, grandparents-in-law, grandchildren-in-law, aunts, uncles, nephews, nieces, grandparents, and grandchildren, wards over which the subject individual has an existing guardianship, and anyone living in the same household as the individual. These relationships include those created by adoption as well as by marriage or blood. Provided, however, that for the purposes of this act a divorce of husband and wife or permanent termination of the conjugal relationship shall terminate all relationship by affinity that existed by reason of the marriage or conjugal relationship.

CHAPTER 2

SOLICITATION, CONFLICTS OF INTEREST AND DEALINGS WITH RELATIVES

§ 11. Solicitation prohibited

A. No employee or official who has an ownership interest in a business, or whose immediate

family member has an ownership interest in a business may solicit for that business from Cherokee Nation or its instrumentalities. To so solicit may subject the employee to disciplinary action, up to and including immediate discharge. Such a prohibited soliciting of business on the part of an official shall constitute "willful neglect of duty" and may subject the official to removal from office pursuant to the laws and Constitution of Cherokee Nation. For purposes of this section, solicitation shall not include applying for TERO certification and placement on a TERO business list, nor shall it include responding to a request for bids.

B. Where an employee or official of Cherokee Nation sells real property to Cherokee Nation there shall be no conflict of interest, provided that the employee or official did not solicit Cherokee Nation for the purchase, where the property has previously been for sale and where the property sale is for a price that is at the prevailing market value.

§ 12. Involvement in business decision—Crime defined

The involvement of an employee or official in a purchasing or business decision, including any attempt to influence the decision-making parties, other than in the case of an elected official in the normal annual budgetary review excluding budget modifications, in any transaction between Cherokee Nation or its instrumentalities and a business owned, in whole or part, by the employee or member of the employee's immediate family shall constitute a crime and is punishable under 21 CNCA § 10. Such involvement may also subject the employee to disciplinary action, up to and including immediate discharge and may constitute "willful neglect of duty" and may subject an official to removal from office pursuant to the laws and Constitution of Cherokee Nation.

§ 13. Resolution of conflict issues not defined by statute

A. In situations not defined by statute any question of whether or not a conflict exists with regard to an employee shall be made pursuant to the written policies and procedures of each entity. Such determination shall be in writing and shall be made open and available to the public upon request. Should any question arise as to conflict the affected employee must seek a determination as designated in the employer's policies and procedures. Failure to request such a determination or failure to make known to the employer any questionable activity may result in disciplinary action up to and including immediate termination.

B. In situations not defined by statute any question of whether or not a conflict exists with regard to an appointed official shall be resolved by the Principal Chief. Such determination shall be in writing and shall be made open and available to the public.

C. In situations not defined by statute, any question of whether or not a conflict exists with regard to a Member of the Cherokee Nation Council shall be resolved by a majority vote of the membership of the Council. Such determination shall be made in public.

D. In situations not defined by statute, any question of whether a conflict exists with regard to the Principal Chief or Deputy Principal Chief shall be determined under Cherokee law including but not limited to proceedings authorized by Legislative Act 10-02.

E. If it is deemed that a conflict exists, such conflict may be resolved by discontinuing the transaction(s) that resulted in the conflict, and/or by transfer of the employee to another department and/or by any other action deemed appropriate by the applicable reviewing body, including any appropriate disciplinary action. In the case of the Cherokee Nation Council, any disciplinary action shall be determined by two-thirds (2/3) vote of the membership of the Council.

F. Cherokee Nation and its instrumentalities shall within sixty (60) calendar days of the effective date of this act promulgate policies and procedures for resolving conflicts pursuant to this section.

§§ 14 to 18. Reserved

§ 19. Employment of relatives of elected officials permitted

There shall be no prohibition in employing relatives of elected or appointed officials or employees of Cherokee Nation so long as it is for wages, salary, per diem or expenses. However, in no instance may a relative within the first degree be employed within the direct chain of command of another immediate family member.

§ 20. Contracting with relatives of elected officials

No elected or public official, Member or Officer of the Council, Cabinet Member, or relative within the first degree of such individual shall be authorized to contract with Cherokee Nation or its entities or instrumentalities or any entity where the tribe owns fifty-one percent (51%) or more shall contract with any primary contractor or sub-contractor who is contracting with Cherokee Nation. Individual employment contracts are exempt from this provision.

§ 21. Solicitation of employment and appointment of relatives of appointed and elected officials unlawful

A. It shall be unlawful for any elected official, any District Court Judge, or any Supreme Court Justice to appoint or vote for the appointment or employment of any of his or her relatives to any position within the Nation or the Nation's instrumentalities.

B. It shall be unlawful for any elected official, any District Court Judge, or any Supreme Court Justice to campaign, urge or endorse for appointment or employment any of his or her relatives to any position within the Nation or the Nation's instrumentalities.

C. Where a relative of any elected official, any District Court Judge, or any Supreme Court Justice is employed or appointed to any position within the Nation or its instrumentalities, it shall be unlawful for any official, any District Court Judge, or any Supreme Court Justice to campaign or urge for or against or to otherwise affect or attempt to affect any terms or conditions of that relative's appointment or employment, including but not limited to salary, position, disciplinary action, and termination of employment; provided that this section shall not affect the ability of a District Court Judge or Supreme Court Justice to decide employment cases concerning relatives of

other officials, Judges or Justices.

D. Any elected official, District Court Judge, or Supreme Court Justice who shall violate any provision of this section shall be deemed guilty of a crime involving official misconduct and willful neglect of duty, and may be subject to removal from office as prescribed in the Constitution and laws of Cherokee Nation.

E. Nothing in this act shall prohibit the Nation or its instrumentalities from promulgating policies and procedures intended to prevent conflicts of interest within the chain of command or within a department based on the relationships of employees not otherwise covered by this act.

CHAPTER 3

JUDICIAL REVIEW

§ 31. Right to judicial review not abrogated

Nothing in this title shall serve to abrogate or dilute an employee's or official's right otherwise granted by law to review by the Cherokee Nation Courts of any action affecting his or her position unless otherwise provided by this act.

TITLE 29

GAME AND FISH

CHAPTER 1

HUNTING AND FISHING

§ 101. Short title

This act shall be known and may be cited as the Cherokee Nation Hunting and Fishing Code and is hereinafter referred to as "the Hunting and Fishing Code" or "this Code".

§ 102. Legislative intent and purpose

A. The purpose of this act is to establish a regulatory scheme for hunting and fishing on tribal trust lands and restricted lands, in Indian country and in all other areas, lands and waters subject to the Nation's jurisdiction pursuant to treaty, federal laws, inherent sovereign authority, compact, cross-deputization agreement or other authority.

B. It is the intent of the Council to confirm and assert the Nation's sovereign rights to establish a regulatory scheme under which Cherokee citizens may exercise, within areas subject to the Nation's jurisdiction, those communal rights to hunt and fish which were included as part and parcel of the rights conveyed by treaty and patent, and which rights have not ever been conveyed,

relinquished, or extinguished by any subsequent treaty or agreement.

§ 103. Adoption by reference—Laws of adjacent states and nations

A. Whenever necessary or appropriate to the conservation of the Nation's natural resources or the protection of the rights of the Nation's citizens or inherent sovereign authority, the Nation may adopt by reference and enforce the fish and wildlife laws and requirements of adjacent states and nations.

B. Requirements for fish and wildlife under the jurisdiction of Cherokee Nation that are established pursuant to applicable federal laws such as the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq. and Endangered Species Act, 16 U.S.C. § 1531 et seq., are hereby adopted by reference as minimum requirements.

C. The provisions of the Oklahoma State Wildlife Conservation Code (29 O.S. § 1-101 et seq.), federal migratory bird seasons, and official requirements for hunting and fishing, established by rules of the Oklahoma Wildlife Conservation Commission, shall apply to lands, waters, fish and wildlife, and persons subject to the jurisdiction of Cherokee Nation, except as specified herein.

§ 104. Modification of laws adopted by reference

A. The provisions of laws and rules adopted by reference shall be read in all instances to give full effect to the establishment and implementation of a comprehensive Cherokee Nation wildlife program.

B. For purposes of this chapter, the following modifications shall apply to any provisions of law or regulation that may be adopted by reference:

1. Where the term "**Attorney General**" or "**General Counsel**" is used, it shall mean the Attorney General of Cherokee Nation.

2. Where the term "**code**" is used, it shall refer to the Cherokee Nation Hunting and Fishing Code.

3. Where reference is made to a "**county jail**" or "**state prison**", it shall refer to such facilities as are used for imprisonment by Cherokee Nation.

4. Where there is reference to any "**Court**", it shall mean the Courts of the Cherokee Nation with corresponding jurisdiction.

5. Where the term "**Department**" is used, it shall mean such division of Cherokee Nation that the Principal Chief may designate.

6. Where the term "**Director**" is used, it shall mean the person to whom the Principal Chief has appointed such authority in writing.

7. Where the term "**Oklahoma**" or "**state**" is used, it shall mean Cherokee Nation.

8. Where the term "**Oklahoma Wildlife Conservation Commission**" or "**Commission**" is used, that authority shall vest in the Principal Chief of Cherokee Nation.

9. Where the term "**warden**" or "**game warden**" is used, it shall mean those persons designated by the Principal Chief as having authority to issue field citations or take other actions regarding violations, subject to such guidelines as may be established by rules of Cherokee Nation approved by the Council and Principal Chief.

C. The following additional definitions shall apply:

1. Where reference is made to "**Cherokee citizen**", it means any enrolled citizen of Cherokee Nation.

2. The term "**tribal lands**" shall include lands held in trust by the United States for Cherokee Nation, individual restricted lands and other areas constituting Indian country.

§ 105. Requirements of the state

The provisions of the Oklahoma Wildlife Conservation Code, 29 O.S. § 1–101 et seq., are adopted by reference, with the following exceptions and modifications:

29 O.S. § 2–147. Waters of the Nation.

Whenever the term "**waters of the Nation**" is used, it shall refer to waters of Cherokee Nation as defined in the Cherokee Nation Environmental Quality Code, 27 CNCA § 100 et seq.

29 O.S. § 3–204. Procedures.

The Department shall operate under the provisions of the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq.

29 O.S. § 3–301. Dispositions of monies from fines and forfeitures.

Monies shall be collected by the Comptroller and be deposited in a separate account which shall be used for conservation of the Nation's fish and wildlife resources.

29 O.S. § 4–103. Commercial fishing.

Commercial fishing is not allowed in waters of the Nation.

29 O.S. § 4–103A. Commercial harvest.

Commercial harvest of wildlife is not allowed, except nuisance wildlife may be removed by a

person for hire who has a duly issued authorization from the Nation.

29 O.S. § 4–103B. Commercial sale and purchase.

The commercial sale and purchase of wildlife resources of the Nation is not allowed.

29 O.S. § 4–103C. Activities not prohibited.

Provisions of this Code prohibiting commercial fishing, commercial harvest and commercial sale/purchase shall not apply to prohibit Cherokee citizens from fishing, or harvesting fish and wildlife, or from gathering materials for crafting culturally related items, if they are doing so for the purpose of providing food, clothing or traditional items for Cherokee citizens in their immediate family. Provided, however, this shall not authorize the purchase or sale of fish or wildlife to noncitizens or persons outside their immediate family.

29 O.S. § 4–107.1. Non-native species.

All activities related to fish, birds, plant and wildlife, native and non-native, shall be subject to regulation by the Nation and the designated Department. Non-native species of fish and wildlife shall not be released on tribal lands or in waters of the Nation unless a permit is first obtained from the Department. Prior to issuance of such a permit, an environmental review shall be prepared and submitted to the Cherokee Nation Environmental Protection Commission for its review and recommendation.

29 O.S. § 4–115. Minnow or fish harvest.

Commercial harvest of minnows or fish is not allowed in waters of the Nation.

29 O.S. § 4–129. Mussels.

Commercial harvest and export of mussels, other mollusks or crayfish is not allowed.

29 O.S. § 4–135. Permits to control nuisance or dangerous wildlife.

Only authorized representatives of the Department may take or control nuisance or dangerous wildlife on tribal trust lands or in waters of the Nation. Any person wishing to take or control nuisance or dangerous wildlife on individual restricted lands must first obtain a permit from the Department unless otherwise authorized by Department rules.

29 O.S. § 5–101. Propagated or confined wildlife.

Hunting propagated or confined wildlife or domesticated animals is not allowed on trust lands, except in the case of a special hunt authorized by the Principal Chief and approved by the Council. Prior to such an authorization, an environmental review shall be prepared and submitted to the Cherokee Nation Environmental Protection Commission for its review and recommendation. The

Department shall promulgate rules that apply to hunting propagated or confined wildlife or domesticated animals on individual restricted lands.

29 O.S. § 5–102. Commercial hunting.

Commercial taking of wildlife is not allowed on any tribal lands, provided this does not preclude special hunts authorized by and conducted by the Nation.

29 O.S. § 5–103. Liberation of propagated and other birds.

A permit is required for release of any commercially propagated wildlife or domestic animal on tribal lands and waters of the Nation, provided that authorized representatives of the Department shall not be required to obtain a permit.

29 O.S. § 5–301. Limitation on predator control devices—Procedures for use.

The Department shall promulgate rules to establish procedures and requirements that shall apply in all cases to prohibit inhumane measures or methods which may endanger humans, domestic animals or other wildlife. Until such rules are promulgated, only authorized representatives of the Department shall use predator control devices on tribal lands. At no time shall persons other than authorized representatives of the Department be allowed to use predator control devices on trust lands.

29 O.S. § 5–501. Trapping.

A. No person, other than authorized representatives of the Department or persons doing so in conjunction with Department-authorized scientific research, may trap any fish, wildlife or birds on trust lands or waters of the Nation.

B. No person may trap on restricted lands or other lands within the Nation's jurisdiction without first obtaining a permit from the Department. Trapping will only be allowed if the applicant can demonstrate a legitimate need and that humane conditions will be maintained at all times.

C. Commercial trapping is prohibited at all times on all tribal lands and in waters of the Nation.

29 O.S. § 6–502. Closure of lands and waters.

The Department may designate specific lands or waters that shall be closed to hunting, fishing or related activities.

29 O.S. § 7–204. Ownership of wildlife.

Fish and wildlife are the property of the Nation, provided however, the Nation shall not be required to control said fish and wildlife and in no event shall the Nation be held responsible for damages caused by fish and wildlife.

29 O.S. § 7–304. Wildlife refuges or wildlife management areas—Entry with dog or gun prohibited.

Specific areas may be designated as a wildlife refuge or special management area. Special conditions or restrictions on activities may apply to such areas.

29 O.S. § 7–401. Deleterious, noxious or toxic substances.

It is illegal to place any pollutant into waters of the Nation, or to place any wastes in a place where it is likely to enter the waters of the Nation, without first obtaining a permit as required by the Cherokee Nation Environmental Quality Code.

29 O.S. § 7–402. Activities in other states injurious.

The Principal Chief with the advice of the Attorney General may take any legal action appropriate and necessary to address activities in other states or nations which may be injurious to plants, fish, birds or any wildlife species in this Nation.

29 O.S. § 7–502. Prohibition on buying, bartering, trading, offering or exposing for sale protected fish or wildlife.

The provisions of this section shall also apply to any specially designated protected plants.

29 O.S. § 7–503. Importation, sale, possession of aigrettes, plumes, feathers, quills, wings.

Only to the extent allowed by federal law and consistent with good conservation practices and this code, the Department may by rule provide for the lawful possession of parts of fish, wildlife or birds, in connection with traditional uses by individual Cherokee Nation citizens.

§ 106. License requirements

A. The Department designated by the Principal Chief shall have the authority to issue licenses and tags for hunting, fishing and other activities as set forth in this Code.

B. A valid Cherokee Nation Tribal Citizenship Card shall be considered a valid license for hunting or fishing by individuals for noncommercial traditional uses. This privilege may be revoked for persons who violate the provisions of this Code.

C. Persons who do not possess a Cherokee Nation Tribal Citizenship Card may be allowed to obtain a permit to hunt on tribal lands as follows:

1. Members of other Indian Tribes who present their CDIB card, pay any applicable fees and comply with other applicable rules may be granted a permit to hunt or fish on tribal lands. The Nation may limit the number of permits as it deems appropriate.

2. The spouse and children of any Cherokee citizen may hunt on restricted lands owned by that Cherokee citizen.

3. The Department may promulgate rules that limit the numbers of permits, establish appropriate conditions and restrictions, to allow other persons who are not Cherokee citizens to hunt and fish on restricted lands.

4. The Department may promulgate rules that establish permit application requirements, fees, limit the number of permits and set other conditions for persons who wish to fish on navigable waterways of the Nation.

D. Persons who are not Cherokee citizens and are not otherwise allowed to hunt or fish under the provisions of subsection (C) of this section shall not be allowed to hunt or fish on tribal lands or waters of the Nation, except in the event of a special hunt or event authorized and conducted by the Nation.

E. All permits, special hunts and rules shall be consistent with good conservation practices and the goal of preserving the Nation's resources for future generations.

F. No exemptions may be granted from federal requirements.

G. The Nation reserves the right to deny a permit application or to revoke a permit to hunt or fish on tribal lands or waters of the Nation for any person who is otherwise in violation of tribal law or is a habitual offender.

§ 107. Registration—Checkpoints

A. The Department shall establish checkpoints or provide other methods so that all persons who enter tribal lands or waters of the Nation to hunt or fish on tribal lands can fill out a registration form.

B. Such form should include information such as date of entry, purpose, animals taken, and other data pertinent to making informed fish and wildlife management decisions.

§ 108. Rules

A. Until such time as the Department promulgates rules, the hunting and fishing rules of the Oklahoma Department of Wildlife Conservation existing on the effective date of this Code shall apply to all tribal lands.

B. The Department shall have the authority to promulgate, update, revise, modify or revoke any provisions or requirements contained in the rules of the Oklahoma Department of Wildlife Conservation, or any season, provided:

1. The rules are not inconsistent with the provisions of this code;
2. The rules will assist the Nation in conserving fish and wildlife, protecting important habitat and ensuring public safety; and
3. The requirements of the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq., are followed.

C. In developing subsequent revisions of this code and rules, the Department shall work with the Environmental Protection Commission and other departments of the Nation.

D. The Department shall work with the Environmental Protection Commission and other departments of the Nation to identify and protect plant and animal species of special concern to the Nation and important habitats. For purposes of this code, "**species of special concern**" should include, but is not limited to, any species listed as endangered, threatened or rare by the federal government, states, and other tribal nations, and any "**culturally-protected species**" identified by Cherokee Nation, pursuant to the following rules:

1. Definitions

a. "**Culturally-protected species**" includes:

i. bald eagle,

ii. black bear,

iii. mountain lion (aka puma, cougar, etc.) and

iv. any other plant, animal or aquatic species designated as a culturally-protected species as determined by regulations established by the Natural Resources Department and approved by the Environmental Protection Commission.

b. "**Indian**" means an individual who is a member of a federally-recognized Indian tribe or eligible for membership in a federally-recognized Indian tribe.

c. "**Indian country**" has the meaning given to such term by 18 U.S.C. § 1151.

d. "**Take**" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "**Harm**" in the definition of "take" in the act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

2. It shall be a crime for an Indian to take or possess a culturally-protected species from Indian country.

a. Exceptions.

i. those possessing live animals or any part of a dead animal are not subject to sanction if in possession by any legal tribal, federal or state method; specifically including:

(I) eagle feathers obtained through a repository,

(II) rehabilitation efforts of a live animal, or

(III) pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996.

ii. The Natural Resources Department and Environmental Protection Commission shall promulgate rules that would allow an exception to take or possess a culturally-protected species, if that taking or possessing positively impacts the people of Cherokee Nation.

b. Punishment. This crime shall be punishable by a term of imprisonment not exceeding one (1) year or a fine in a sum not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine or imprisonment.

3. It shall be unlawful for any non-Indian to take or possess a culturally-protected species from Indian country.

4. Remedy. A non-Indian who takes or possesses a culturally-protected species in violation of this act is subject to:

a. a civil fine in a sum not exceeding Five Thousand Dollars (\$5,000.00); and

b. permanent or temporary expulsion and exclusion from Indian country; and

c. reimbursement of Cherokee Nation for any rehabilitation cost to an injured species.

5. Cause of action.

a. Criminal sanctions may only be initiated by the Office of the Attorney General in Cherokee Nation District Court, Criminal Division;

b. Civil sanctions may be initiated by the Office of the Attorney General or the Environmental Protection Commission in Cherokee Nation District Court, Civil Division.

6. Preemption. This act specifically preempts state law applicable to Indian country.

7. Use of fines. Any criminal or civil fines collected pursuant to this act shall be earmarked for conservation efforts.

8. Guidelines for listing a species as a culturally-protected species:

- a. Proposals to add/delist all species to/from the list of culturally-protected species shall be coordinated through and by the Natural Resources Department;
- b. The final determination of a listed species will be made by the Environmental Protection Commission;
- c. To be considered for listing as a culturally-protected species, an individual must present information as required by the Natural Resources Department and Environmental Protection Commission, including, but not limited to, cultural significance, habitat information, and likely harm to the species;
- d. Burden of proof. An individual seeking to add a species to the culturally-protected species list must establish proof by a preponderance of the evidence that a species is in need of protection because of its cultural significance to Cherokee Nation;
- e. Appeals. The Natural Resources Department and the Environmental Protection Commission will establish policies and procedures for an appeals process pursuant to the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq.

9. List. A list of culturally-protected species shall periodically, but no less than once per year, be published pursuant to rules established by the Environmental Protection Commission regarding time and place of publication.

§ 109. Management plans

- A. The Department, in cooperation with Environmental Programs and other departments of the Nation, shall prepare management plans for fish and wildlife resources of the Nation and their habitats.
- B. The Management Plans may be adopted or incorporated in the Strategic Land Plan, Integrated Resource Management Plan and other guidance used to make decisions about tribal land development and future land purchases.
- C. The Management Plans shall be consistent with these plans, establish by rule appropriate conditions on allowable activities in sensitive areas and limits on uses of fish and wildlife resources and their habitats.
- D. The Department shall, consistent with these Plans, establish by rule appropriate conditions on allowable activities in sensitive areas and limits on uses of fish and wildlife resources and their habitats.
- E. The Department may enter into agreements with private landowners and may acquire conservation easements as appropriate to the conservation of species, habitats and the preservation

of Cherokee culture.

§ 110. Permission to enter lands and general requirements

A. No person shall enter restricted lands or fee lands owned by the Nation to hunt, fish, trap or engage in related activities without first obtaining appropriate permission from the owner of the lands.

B. Any person who may hunt fish or otherwise take, fish, birds, plants or wildlife on lands and waters subject to the Nation's jurisdiction shall comply with the requirements set forth in this code and rules promulgated hereunder, applicable federal laws, the Cherokee Nation Environmental Quality Code and requirements contained in any applicable permit.

§ 111. Violations

A. The requirements and penalties established in this Code and rules promulgated hereunder shall be cumulative and in addition to any penalties set forth in the Cherokee Nation Environmental Quality Code and other provisions of tribal law.

B. In addition to any other remedy provided by law, the Department may modify, revoke, refuse to renew or refuse to issue a permit to persons in violation of this code.

§ 112. Enforcement and field citations

A. The Principal Chief may designate persons authorized to issue field citations, make arrests and confiscate property for violations.

B. Any person authorized by the Principal Chief to engage in enforcement actions shall have appropriate training related to wildlife management and enforcement.

C. The Director of the designated department shall have the authority to issue notices of violation for violations of the terms of any permit or license, and to initiate administrative proceedings to revoke, modify, suspend or cancel a license, permit or other authorization. The Principal Chief shall designate an impartial person or entity to make final decisions.

D. The Principal Chief, Director or Attorney General may also direct that an enforcement referral be made to the District Court for cases involving violations of this code, requirements in rules that are adopted by reference, and any rule promulgated pursuant to this Code.

§ 113. Appeals and authority of District Court

A. Persons wishing to appeal any final decision denying or revoking a license may, if such right is specifically granted by law, appeal to the Cherokee Nation District Court.

B. The District Court shall have authority to issue judgments and orders, assess costs, fines and

attorney fees, require remediation, restitution and payment of damages, issue injunctive relief and issue orders relating to confiscation of property, in any civil or criminal enforcement proceeding involving violations of requirements imposed by this Code, permits issued under this code or rules duly promulgated pursuant to this Code.

TITLE 30

GUARDIANSHIP AND CONSERVATORSHIP

CHAPTER 1

GUARDIANSHIPS

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Guardianship and Conservatorship Act of 2012.

§ 2. Purpose

It is the purpose of this chapter to promote the general welfare of minor Cherokee Nation citizens or minors eligible to be Cherokee Nation citizens by establishing a system of general and limited guardianships for minors which provides for the protection of their rights and the management of their financial resources.

§ 3. Existing guardianships or conservatorships—Compliance with act

A. Any guardianship or conservatorship in existence on or created on or after the effective date of this act shall comply with the provisions of the Cherokee Nation Guardianship and Conservatorship Act.

B. Unless otherwise modified or terminated, all guardianships and conservatorships established prior to the effective date of this act shall remain in full force and effect.

C. All guardians or conservators shall retain the powers assigned to them, unless otherwise modified or terminated by the Court.

§ 4. Definitions

A. As used in the Cherokee Nation Guardianship and Conservatorship Act:

1. "**Confidential information**" means medical records, physical, psychological or other evaluations of a ward or subject of the proceeding, initial and subsequent guardianship plans, reports of guardians, limited guardians and conservators, and financial records and information submitted to the Court in connection with a proceeding pursuant to this chapter.

2. **"Court"** means the District Court of Cherokee Nation.
3. **"Estate"** means the property of the person whose affairs are subject to a guardianship proceeding.
4. **"Guardian"** means a person appointed as general or limited guardian of the person, general or limited guardian of the property, special guardian and temporary guardian, but does not include a person appointed as guardian ad litem.
5. **"Guardian ad litem"** means, with respect to a guardianship proceeding, a person appointed by the Court to assist the subject of the proceeding in making decisions with regard to the guardianship proceeding, or to make said decisions when the subject of the proceeding is wholly incapable of making said decisions even with assistance.
6. **"Guardianship of the person"** means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:
 - a. the authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment; and
 - b. the authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child; and
 - c. the authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents; and
 - d. the rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution; and
 - e. the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child. Guardianship of the person of a child, or legal custody of a child, may be taken from its parents only by Court action, notwithstanding the emergency protection of a child.
7. **"Guardianship plan"** means the plan for the care and treatment of a ward, the plan for the management of the financial resources of a ward, or both.
8. **"Guardianship proceeding"** means a proceeding for the appointment of a guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a minor.
9. **"Guardianship report"** means any report required by the provisions of 30 CNCA § 23.
10. **"Initial review hearing"** means the first hearing held by the Court for review of the guardianship proceeding after entry of the order appointing a guardian for a minor.

11. **"Letters"** means a document issued by the Court subsequent to the appointment of a guardian which designates the name of the guardian and specifies the authority and powers of said guardian. Such document shall be endorsed thereon with the oath of the guardian that he or she will perform the duties of their office as guardian according to law.

12. **"Minor"** means a person less than eighteen (18) years of age.

13. **"Person"** means an individual.

14. **"Property"** means real property, personal property, and income, any interest in such real or personal property and includes anything that may be the subject of ownership.

15. **"Subject of the proceeding"** means a minor:

a. who is the subject of a petition requesting the appointment of a guardian, limited guardian, or temporary guardian; or

b. for whom a guardian or limited guardian has been appointed by the Court.

16. **"Ward"** means the person over whom, or over whose property, a guardian is appointed.

B. Nothing contained in this Act shall prevent the Court from immediately assuming custody of a minor, pursuant to the Cherokee Nation Children's Code, 10 CNCA § 1 et seq., and ordering whatever action may be necessary, including medical treatment, to protect the minor's health or welfare.

§ 5. Types of guardianships

There are four (4) types of guardianships: general, limited, temporary and special.

1. A general guardian is a guardian of the person or of all the property of the ward or both.

2. A limited guardian is a person authorized by the Court to exercise limited powers over the person of the ward, or over the property of the ward or both.

3. A temporary guardian is a person appointed by the Court in accordance with 30 CNCA § 19.

4. A special guardian is all other guardians who may be appointed by the Court for a situation not covered by this chapter and appointed in the same manner as for the appointment of a temporary guardian.

§ 6. Persons and property subject to act—Parental rights

A. Except as otherwise specifically provided by law, the Cherokee Nation Guardianship and

Conservatorship Act applies to:

1. Minor Cherokee Nation citizens or minors eligible to be Cherokee Nation citizens residing within the territorial jurisdiction of Cherokee Nation; and
2. Property located in Cherokee Nation of non-domiciliaries who are minors, or property coming into the control of a guardian who is subject to the laws of Cherokee Nation.

B. No person, whether a parent or otherwise, has any power as a guardian, except by appointment by a court. The provisions of the Cherokee Nation Guardianship and Conservatorship Act shall not be construed to limit the parental rights of parents as the natural guardians of their children.

§ 7. Jurisdiction

A. Territorial jurisdiction and subject matter jurisdiction shall be in accordance with 20 CNCA § 24 et seq.

B. The Court shall have the authority, whenever it appears necessary, to appoint a guardian for the person and/or property of any child who is subject to the jurisdiction of the District Court.

C. After the service of notice in a proceeding seeking the appointment of a guardian or other order, in subsequent proceedings pertaining to the guardianship of a ward and until termination of the proceeding, the Court has exclusive jurisdiction to determine:

1. the need for a guardian or other order; and
2. how the estate of the ward shall be managed, expended, or distributed to or for the use of the ward or the dependents of the ward.

§ 8. Jurisdiction of Court over guardians and guardianship proceedings

A. In all cases the Court making the appointment of a guardian has exclusive jurisdiction to control such guardian in the management and disposition of the person and property of the ward.

B. The Court has jurisdiction over guardianship proceedings and cases, and has the following powers, which must be exercised in the manner prescribed by this chapter, to:

1. appoint and remove guardians for minors;
2. issue and revoke letters of guardianship;
3. control the conduct of guardians with regard to the care and treatment provided to their wards;
4. control the conduct of guardians with regard to the management of the financial resources of their wards;

5. compel guardians to submit plans, reports, inventories and accountings, to the Court;
6. compel payment and delivery by guardians of property belonging to their wards;
7. order the payment of debts, the sale of property, and order and regulate the distribution of property which has been placed under the control or management of a guardian;
8. settle the accounts of guardians;
9. appoint appraisers of the property of wards;
10. compel the attendance of witnesses and the production of documents and property;
11. after a petition has been filed for appointment of a guardian for a minor, make or modify any temporary order of guardianship during the progress of the proceedings that would be in the best interest of the ward. Any such temporary order may be entered ex parte with written notice sent to all parties directing them to appear before the Court at a time and place therein specified, not more than thirty (30) days from the time of making such order, to show cause why the order should not be granted for guardianship; and
12. exercise all powers conferred by this chapter and to make such orders as may be necessary for the exercise of said powers.

§ 9. Guardians ad litem

- A. Nothing contained in this chapter affects or impairs the power of the Court to appoint a guardian ad litem to defend the interests of any minor interested in any suit or matter pending therein.
- B. At any point in a guardianship proceeding, the subject of the proceeding, his attorney, the guardian of the subject of the proceeding or anyone interested in the welfare of the subject of the proceeding may file an application to have a guardian ad litem appointed by the Court, or the Court on its own motion may appoint a guardian ad litem.

§ 10. Duties and powers of guardians—Annual review

- A. Except as otherwise ordered or limited by the Court:
 1. A guardian of a child shall have the right to take or provide for his physical custody and shall be required to care for his health, safety and welfare, and provide for his education and medical care.
 2. In a legal action, the guardian shall have the authority to represent the interests of the child in actual, threatened or contemplated litigation or other proceedings of a legal nature. The guardian may employ counsel and settle or compromise suits or claims subject to the approval of the Court

3. A guardian of the property of the child shall have the authority to invest, manage and dispose of the child's property in a prudent and reasonable manner. The guardian may expend such portions of the property, income and principal as shall be reasonably necessary for the education of the child and care of the child, including medical care, unless the guardianship order states that the child's property may not be used for the child's care and support, but rather that it be managed for the child until he reaches the age of eighteen (18) or an emancipation occurs.

B. A guardian may petition the Court at any time for authority to do any act, if he is uncertain of his authority. The Court may grant such authority, after notice and hearing, if this appears to be consistent with the best interests of the child.

C. A guardian shall report to the Court any change in the residence of a ward within ten (10) days following such change unless a prior order of approval of such change has been entered by the Court.

D. Every guardian, whether of the person and/or property of a child, shall:

1. stand in a fiduciary relationship to the child;
2. exercise a high degree of care in managing the child's property;
3. derive no personal benefit from the management of the child's property; and
4. be liable to the child for any losses attributable to breach of these duties.

E. Any action to enforce liability against the guardian may be brought by the child or a subsequently appointed guardian on behalf of the child within two (2) years after the appointment of a new guardian, or the discovery of the breach of duties, or attainment of the age of eighteen (18) by the child, whichever comes first.

F. The Court shall hold annual review hearings in guardianship cases. Upon request by the Court, a guardian shall file a progress report with the Court at least thirty (30) days prior to the annual review hearing.

§ 11. Confidential information filed with court

A. Confidential information filed with or submitted to the Court in conjunction with any proceeding pursuant to this chapter shall not constitute a public record. Access to confidential information shall be strictly controlled. Except upon Court order, no confidential information shall be disclosed to persons other than:

1. the subject of the proceeding and his attorney,
2. the guardian ad litem;

3. if the subject of the confidential information is a ward, the guardian or conservator of such ward;
 4. if the subject of the confidential information is the guardian or conservator, the ward and his attorney, and the attorney of such guardian or conservator; and
 5. Cherokee Nation and any Cherokee Nation or Bureau of Indian Affairs governmental entities necessary to provide services to the ward.
- B. The fact of the existence of a guardianship or conservatorship of a person or that person's estate shall not be considered confidential information.

§ 12. Letters of guardianship

Letters of guardianship are evidence of the transfer of the management or administration of all assets, or the part thereof specified in the letters, of a ward to the guardian. An order terminating a guardianship is evidence of transfer of the management or administration of all assets subject to the guardianship from the guardian to the ward, or to successors of the ward.

§ 13. Filing of petition and eligibility—Costs

- A. Guardianship proceedings shall be started by the filing of a petition. Any person, not otherwise prohibited, eighteen (18) years of age or older or any representative of the Cherokee Nation Department of Youth and Family Services may file a petition.
- B. Any person, not otherwise prohibited, eighteen (18) years of age or older and subject to the jurisdiction of the District Court may serve as guardian.
- C. Preference shall be given to relatives and to the person preferred by a child of sufficient age to form an intelligent preference; however, in all cases, the Court shall determine the guardian on the basis of the best interests of the child.
- D. The petitioner shall be responsible for bearing the costs of filing any petition for guardianship and the costs associated with any required additional information.

§ 14. Contents of petition—Additional information submitted prior to hearing on petition

- A. The petition shall set forth the following:
1. the basis for the Court's jurisdiction;
 2. the full name, address and tribal affiliation of the petitioner;
 3. the full name and date of birth of any and all adults residing in the home of the petitioner;
 4. the full name, sex, date of birth, residence and tribal affiliation of the child;

5. the petitioner's relationship to the child;
6. the name and address of the person or agency having custody of the child;
7. the names and addresses of all known relatives of the child, insofar as these are known to the petitioner;
8. a concise statement as to whether the petitioner or any adult residing in the home of the petitioner has been convicted of a felony. Such statement shall include the nature of the felony, the date of conviction and the jurisdiction of the conviction;
9. a concise statement of any and all Child Welfare history involving the child, the petitioner or any adult residing in the home of the petitioner;
10. a statement regarding whether the person proposed to serve as guardian is insolvent or has declared bankruptcy during the five (5) years immediately prior to filing the petition proposing such person to serve as guardian;
11. the type of guardianship requested; and
12. a concise statement of the reasons for which the guardianship should be granted.

B. Prior to the hearing on the petition for guardianship, the petitioner shall submit the following additional information to the Court; provided that a temporary emergency guardianship order may be granted by the discretion of the Court prior to full compliance with the requirements of this subsection:

1. complete Oklahoma State Bureau of Investigation background checks for the petitioner and any adult residing in the home of the petitioner;
2. sworn affidavits attesting that neither the petitioner nor any adult residing in the home of the petitioner is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction;
3. an Oklahoma Department of Human Services child welfare history report on petitioner and any adult residing in the home of the petitioner;
4. a complete financial assessment affidavit.

§ 15. Appointment of guardian of minor—Notice—Intervention

A. Before making the appointment, the Court must cause notice of the hearing on the petition for appointment of a guardian for a minor to be given in the form required by the Court to the following persons:

1. the minor himself if the minor has attained the age of fourteen (14) years as of the date the petition is filed;
2. the Cherokee Nation Department of Youth and Family Services;
3. the Cherokee Nation Office of Attorney General;
4. the then-living parents of the minor and any other person having care of the minor;
5. if the minor has no then-living parent, then to one of the then-living grandparents who is not one of the petitioners and who is not married to one of the petitioners; and
6. if there is no such then-living grandparent or if there is no such then-living grandparent whose address is known to the petitioner, then notice shall be given to an adult relative, if any, of the minor, who resides within the territorial jurisdiction of Cherokee Nation.

B. Such notice shall be mailed to each person entitled to notice at that person's address as last-known to the petitioner, at least ten (10) days prior to the date set by the Court for hearing on the petition. Provided, the Court may direct a shorter notice period if the Court deems such shorter notice period to be appropriate under the circumstances.

C. If there is no person, other than the minor, who is entitled to notice, or if the address of any person entitled to notice is not known to the petitioner, the petition shall so allege. The Court may direct that notice be waived or be given to any person or persons by publication or in any such manner as the Court determines and directs.

D. Cherokee Nation may intervene in any case subject to the requirements of this act.

§ 16. Nomination and appointment by minor—Age of minor

If the minor is under the age of fourteen (14) years, the Court may name and appoint his guardian. If the minor has attained the age of fourteen (14) years, the minor may nominate his own guardian who, if approved by the Court, shall be appointed accordingly.

§ 17. Appointment of guardian when minor has attained fourteen years of age

If a guardian nominated by a minor who has attained the age of fourteen (14) years is not approved by the Court or if, after being notified by the Court, the minor neglects for ten (10) days to nominate a suitable person, the Court may name and appoint a guardian in the same manner as if the minor was under the age of fourteen (14) years.

§ 18. Order of preference

A. In accordance with 10 CNCA § 21.1, a guardianship shall be appointed in the following order

of preference according to the best interests of the child to:

1. a parent or to both parents jointly except as otherwise provided in subsection (B) of this section;
2. a grandparent;
3. a person who was indicated by the wishes of a deceased parent;
4. a relative of either parent;
5. the person in whose home the child has been living in a wholesome and stable environment; or
6. any other person deemed by the Court to be suitable and able to provide adequate and proper care and guidance for the child.

B. When a parent having physical custody and providing support to a child becomes deceased, in appointing as guardian of the child the noncustodial parent, the Court may deny the custody or guardianship only if:

1. the noncustodial parent has willfully failed, refused, or neglected to contribute to the support of the child for a period of at least twelve (12) months immediately preceding the determination of custody or guardianship action:

- a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

- b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto;

2. the noncustodial parent has abandoned the child; or

3. the Court finds it would be detrimental to the health or safety of the child for the noncustodial parent to be appointed guardian.

C. The Court may consider the preference of the child in awarding guardianship of said child if the child is of sufficient age to form an intelligent preference.

§ 19. Temporary guardianship

A. The Court may appoint a temporary guardian under such terms and conditions as the Court deems appropriate.

B. Temporary guardianship shall be for a limited duration, and the length of the guardianship shall be set forth in the court order along with such other terms and conditions as the Court finds appropriate.

C. A temporary guardianship may be terminated if the Court determines that it is in the child's best interests to change guardians or to return the child to the parent(s) or custodian(s).

D. The child's parents, grandparents and other family members shall have rights of reasonable visitation unless the Court finds that the visitation would endanger the child or significantly impair his emotional development.

§ 20. Cessation of power of guardian

The power of a guardian appointed for a minor ceases upon:

1. the removal of the guardian;
2. the solemnized marriage of the ward; or
3. the ward's attaining majority.

§ 21. Minor ward at majority—Release of guardian

After a minor ward has reached the age of majority, the ward may settle accounts with his guardian and give the guardian a valid release, subject to approval of the Court, if such release is obtained fairly and without undue influence.

§ 22. Discharge of guardian by Court

A guardian of a minor appointed by the Court is not entitled to discharge until one (1) year after the majority of the ward unless the Court determines that the minor has earlier validly released said guardian after a final accounting.

§ 23. Guardianship report

A. Upon the filing of a guardianship petition, the Court may request that the Indian Child Welfare Department conduct, or arrange to have conducted, a guardianship report. The report shall contain information necessary to determine the best interests of the child, including data pertaining to the child, the biological parent(s), the extended family and the circumstances requiring the appointment of a guardian.

B. The guardianship report shall be submitted to the Court and copies may be furnished to all interested parties.

§ 24. Order of guardianship

The terms and conditions of the guardianship shall be clearly set forth in the order of guardianship, together with any bond requirements. Copies of the order shall be furnished to all parties.

§ 25. Guardianship plan

Upon request of the Court, a plan for the care and treatment of a ward and/or the plan for the management of the financial resources of a ward shall be filed by the guardian.

§ 26. Setting of initial review hearing

A. In the order appointing the guardian of a minor, the Court shall set the date for the initial review hearing, which shall be not more than ninety (90) days following the date of entry of the order appointing such guardian.

B. When any person is appointed guardian of a minor, the Court may include in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education and welfare of the minor.

§ 27. Compensation

No guardian shall receive any compensation for acting as such without prior approval of the Court.

§ 28. Bond

In the event a guardian receives any funds or property of the child at the time of appointment or during the term of his guardianship, he may be required by the Court to post a bond with sufficient surety in such amount as the Court may order to assure the guardian's faithful performance of the duties of his trust. Any surety of such bond must consent to the jurisdiction of the Court for purposes of an action against the bond.

§ 29. Trust property

The guardian may be appointed to manage trust property of a child. Any sale of an interest in trust property belonging to the child must be for an adequate and fair price and must be authorized by the Court and approved by the Superintendent of the Bureau of Indian Affairs. The Court may approve the sale if it is in the best interests of the child.

§ 30. Annual accounting

The guardian of property valued in excess of Five Thousand Dollars (\$5,000.00) shall submit to the Court for approval an annual accounting which shall be verified under oath. The accounting shall be required for every year in which the value of the estate is over Five Thousand Dollars (\$5,000.00), and shall contain information on all additions to and withdrawals from the property. All supporting documentation, including canceled checks, vouchers, receipts and bank statements,

shall be attached to the accounting.

§ 31. Inquiry to determine suitability of guardian

A. In conducting an inquiry to determine whether a person is suitable to serve as a guardian, the Court shall determine if:

1. the person proposed to serve as guardian is a minor or incapacitated or partially incapacitated person;
2. the person proposed to serve as guardian is a convicted felon;
3. the person proposed to serve as guardian is insolvent or has declared bankruptcy during the five (5) years immediately prior to filing the petition proposing such person to serve as guardian;
4. the person proposed to serve as guardian is under any financial obligation to the ward; or
5. there exists a conflict of interest which would preclude or be substantially detrimental to the ability of the person to act in the best interest of the subject of the proceeding if such person is appointed.

B. In every case involving guardianship of a minor, the Court shall determine whether any individual seeking guardianship or visitation with the minor:

1. is or has been subject to the registration requirements of a sex offender act or any similar act in any jurisdiction; or
2. is residing with a person who is or has been subject to the registration requirements of a sex offender act or any similar act in any jurisdiction.

C. There shall be a rebuttable presumption that it is not in the best interests of the minor to have guardianship or unsupervised visitation granted to any individual who:

1. is or has been subject to the registration requirements of a sex offender act or any similar act in any jurisdiction; or
2. is residing with a person who is or has been subject to the registration requirements of a sex offender act or any similar act in any jurisdiction.

D. If the person proposed to serve is a convicted felon, the Court shall make further inquiry into the nature of the felony and the circumstances surrounding the conviction. The Court shall appoint such person proposed to serve only upon determining that the facts underlying the conviction do not give rise to a reasonable belief that person proposed to serve will be unfaithful to or neglectful of his fiduciary responsibilities, and that the appointment is in the best interest of the ward.

E. If the person proposed to serve as guardian is insolvent or has declared bankruptcy within five (5) years prior to the filing of the pleading proposing that such person serve, the Court shall appoint such person only after giving due consideration to the nature and extent of the property of the ward and the anticipated actions necessary to manage the estate of the ward, and only upon a determination that such appointment is in the best interest of the ward. Insolvency or bankruptcy shall not automatically preclude a person proposed to serve as guardian.

F. No minor, partially incapacitated person or incapacitated person shall be appointed.

§ 32. Applications to Court for relief—Contents—Notice and hearing—Order—Appointment of counsel—Joinder—Hearing without notice

A. After the appointment of a guardian, the ward, any person interested in the welfare of the ward, or a guardian may make application to the Court for:

1. termination of the guardianship;
2. removal of the guardian;
3. resolution of a dispute pertaining to the guardianship plan; or
4. a review hearing.

B. Such application shall set forth:

1. the names and addresses of the individuals and entities entitled to notice;
2. the relief requested; and
3. the alleged facts and reasons supporting the request.

C. Any person entitled to notice of the hearing on an application filed pursuant to this section may object to the relief requested in the application. Notice shall be as provided as set forth in this chapter.

D. The Court shall set an application filed pursuant to this section for hearing on a date certain and shall cause notice to be given to the persons entitled thereto by regular first-class mail at least ten (10) days prior to such date. However, except for an order terminating a guardianship, the Court may enter an order granting the relief requested in the application without notice if the Court determines that such relief should be granted immediately. In that event, the Court may grant such relief on a temporary basis and proceed to set the application for further hearing following the giving of notice as provided by this subsection. At the hearing, based upon the evidence adduced, the Judge may continue, modify or vacate his temporary order.

E. At the hearing held upon an application filed pursuant to this section for which notice is

required, the Court may, based upon the evidence presented, enter an order granting or denying the relief requested. At such hearing, the Court may also make any other order which the Court deems to be in the best interests of the ward or the estate of the ward. The Court may also set for further hearing, with prior notice to be given as provided in this section, any other matter which the Court deems should be considered in the best interest of the ward or the estate of the ward.

F. With respect to any matter set for hearing pursuant to this section, the Court may appoint an attorney to represent a ward at such hearing, in the same manner as provided in this chapter for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian. The appointment of such attorney shall cease:

1. upon the entry by the Court of an order pertaining to the matters considered at such hearing, unless the Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;
2. unless an appeal is taken from the order of the Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the ward until final disposition or as otherwise ordered by the Court; or
3. upon application of said attorney, the Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.

G. After notice, the Court may join the issues raised in separate applications or separate objections for determination at a single hearing, unless the Court determines joinder would be prejudicial to the interests of the ward.

H. The Court may hear an application other than with respect to the matters set forth in subsection (A) of this section, with or without notice as the Court determines. If the Court requires notice to be given, the Court shall specify the persons to whom notice shall be given and the manner and time in which such notice shall be given.

§ 33. Two or more guardians

A. If there are two (2) guardians who are citizens of Cherokee Nation, the act of one (1) alone shall be effectual if a co-guardian has given the other co-guardian authority in writing to act for both.

B. If there are more than two guardians, the act of a majority of them is valid.

§ 34. Death of one of two or more joint guardians

On the death of one (1) of two or more joint guardians, the power continues to the survivor until a further appointment is made by the Court.

§ 35. Nonresident ward's guardian—Notice

When a minor, otherwise liable to be put under guardianship according to the provisions of this chapter, resides outside the territorial jurisdiction of Cherokee Nation and has estate therein, any friend of such minor or anyone interested in the minor's estate may apply to the Court for the appointment of a guardian. If, after notice is given to all interested in such manner as the Judge orders and a full hearing and examination is held, the Court deems it proper, a guardian for such absent minor may be appointed.

§ 36. Powers of guardian of nonresident ward

Every guardian appointed under the preceding section has the same powers and performs the same duties, with respect to the estate of the ward found within Cherokee Nation, as are prescribed with respect to any other guardian appointed under this chapter.

§ 37. Jurisdiction of first appointment

The guardianship which is first lawfully granted, of any minor residing outside Cherokee Nation, extends to all the estate of the ward within Cherokee Nation, and excludes all other jurisdictions.

§ 38. Payment of just debts

Every guardian appointed under the provisions of this chapter shall pay all just debts due from the ward out of the personal estate and income from the real estate of the ward, if sufficient. If said estate and income is not sufficient, then payment shall be made out of the real estate of the ward, upon obtaining an order from the Court for the sale thereof.

§ 39. Collection and settlement of accounts—Appearance for ward

A guardian must settle all accounts of the ward and demand, sue for, and receive all debts due to the ward. A guardian may, with approval of the Court, compromise or compound for the same and give discharges to the debtors on receiving a fair and just settlement of such claim. A guardian shall appear for and represent the ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend. A guardian, with the approval of the court exercising jurisdiction in the suit or proceeding, may compromise and settle any claim made by, on behalf of or against the ward in such suit or proceeding.

§ 40. Estate management—Income applied to maintenance and support of ward—Sale of realty

Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as may be necessary, for the comfortable and suitable maintenance and support of the ward. If such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order of the Court as provided, and must apply the proceeds of such sale, as may be necessary, for the maintenance and support of the ward.

§ 41. Execution of waivers or consents for wards

The duly appointed and acting guardian, limited guardian, conservator, attorney in fact, or any other person legally authorized to act on behalf of any minor may execute waivers or consents for his ward as authorized by the Court. There shall be attached to each waiver or consent a certified copy of the instrument authorizing him to perform such act.

§ 42. Causes for removal of guardians

A guardian may be removed by the Court for any of the following causes:

1. for abuse of his fiduciary responsibility;
2. for continued failure to perform his duties;
3. for incapacity to perform his duties;
4. for gross immorality;
5. for having an interest adverse to the faithful performance of his duties;
6. if the instrument in which the person was nominated as guardian is judicially determined to be invalid;
7. in the case of guardian of the property, for insolvency; or
8. when it is no longer proper that the ward should be under guardianship.

§ 43. Removal or resignation of guardian

A. The authority and responsibility of a guardian terminates upon the death of the guardian, conservator, or the ward, the determination of incapacity of the guardian or conservator, or upon removal or resignation of guardian or conservator. Termination does not affect the liability of a guardian or conservator for prior acts or the obligation to account for any funds and assets of the ward under the control of the guardian or conservator. The authority and responsibility of a guardian also terminates upon the marriage or majority of the ward.

B. The Court, after notice and hearing, may remove a guardian or conservator for cause if the guardian or conservator has failed for thirty (30) days, after he is required to do so, to render an account or make a report and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto.

C. Every guardian or conservator may resign when it appears proper to allow the same and upon the resignation or removal of a guardian or conservator the Court may appoint a successor guardian or conservator in the place of the guardian or conservator who has resigned or has been removed or

make other appropriate orders pursuant to the provisions of this chapter.

§ 44. Discharge of unnecessary guardianship

The guardian of a minor may be discharged by the Court when it appears to the Court, on the application of the ward or other interested person, that the guardianship is no longer necessary.

§ 45. Civil liability of guardians or petitioners—Damages—Willful or malicious filing of false petition or application

A. Any guardian who willfully violates the duties or willfully misuses the powers assigned by the Court and thereby causes injury to the ward or damages to the financial resources of the ward shall, in addition to any criminal penalties, be liable in a civil action for any actual damages suffered by the ward. Nothing in this subsection shall limit the authority of the Court to surcharge a guardian as otherwise provided by law.

B. Any person who willfully or maliciously files a false petition or application pursuant to the provisions of this chapter or a petition or application without a reasonable basis in fact for such a petition pursuant to the provisions of this chapter may be liable in a civil suit for any actual damages suffered by the subject of the petition or application.

§ 46. Concealment or embezzlement citation

Upon complaint made to the Court by any guardian, ward, creditor, or other person interested in the ward's estate, against anyone suspected of having concealed or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the ward or to his estate, the Court may require such suspected person to appear before the Court and may examine and proceed with such person on such charge in the manner provided by law with respect to persons suspected of, and charged with, concealing or embezzling decedent.

TITLE 31

HERITAGE AND CULTURE

CHAPTER 1

GENERAL PROVISIONS

§ 101. Short title and purpose

The purpose of this act is to provide for promotion and preservation of Cherokee language, history and culture. It will be commonly referred to and may be cited as the Cherokee Nation Language and Cultural Preservation Act. This act is in recognition that the survival of a people is dependent upon their capacity to preserve and protect their culture and language. This act further promotes the acculturation of tribal youth through education about their history, language and culture and

establishes tribal policy for the promotion and preservation of the Cherokee language and culture.

§ 102. Establishment of official languages

Cherokee Nation does hereby officially establish both Cherokee and English as official languages for the tribe. The encouraged use of these languages is as follows:

1. Tribal government. Any tribal citizen may speak in Cherokee or English in communicating with tribal government with regard to any programs or services provided. Any tribal citizen may use either Cherokee or English languages to communicate with the Tribal Council in any officially called meeting of the Council on any occasion on which said person may be recognized to speak.
2. Translation services. In any situation in which translation into English is deemed necessary or appropriate for persons using Cherokee language as defined in subsection (A) of this section, translation services may be provided.

§ 103. Language maintenance

It shall be the policy of Cherokee Nation to take the leadership to maintain and preserve the Cherokee language as a living language. Such efforts shall include but not be limited to:

1. efforts to involve tribal citizens to the greatest extent possible in instruction in Cherokee language;
2. establishment of a permanent Cherokee Language Program as a support unit for all programs and services within Cherokee Nation subject to such funding limitations as may exist from year to year;
3. encouraging the use of Cherokee language in both written and oral form to the fullest extent possible in public and business settings;
4. encouraging creation and expansion of the number, kind and amount of written materials in the Cherokee language and official encouragement for the development of materials on, by or through Cherokee Nation service programs.

§ 104. Education

Cherokee Nation promotes the use of both the Cherokee and English languages to the fullest extent possible within tribal, local, state and federal educational institutions, agencies and programs. It is therefore the policy of the Cherokee Nation:

1. To work with all schools, state and federal agencies and others to encourage that those schools which serve large percentages of Cherokee students adequately and fairly represent the language, history and culture of the tribe in the instructional, administrative and social processes of the school.

2. To the greatest extent possible within budgetary limitations, provide summer, evening, weekend and other tribal programs, for instruction of children and adults who have an interest in cultural education.
3. To provide instruction in Cherokee language at the preschool level in programs operated by Cherokee Nation of Oklahoma.
4. To recognize certain tribal elders and talented tribal citizens as knowledgeable in the culture, language, history and related skills of Cherokee Nation. These people may be recognized as "Eminent Persons" who may be employed in positions related to culture, language and history and may be paid for their educational services.
5. To oppose biased, stereotypic and/or derogatory depiction of Cherokees or American Indians within education institutions or wherever such representations which work to lower the self-esteem of Cherokee youth may be found.

§ 105. Employment

Cherokee Nation acknowledges the need to provide bilingual clerical and other staff in programs and positions which call for extensive public contact with tribal citizens. Given the need to assure that the Cherokee language may be used in the workplace for conduct of business between Cherokee-speaking tribal citizens and staff of Cherokee Nation and to promote good role modeling by Cherokee Nation staff, the following policies are adopted:

1. All Cherokee Nation personnel shall become more knowledgeable in Cherokee history, language and culture.
2. Cherokee Nation will provide an educational program for all Cherokee Nation employees in the history, language, and culture of Cherokee Nation to become more knowledgeable in these subjects. This program will provide information which will promote pride and tribal identity and respect for tribal government and Cherokee people.

CHAPTER 2

ART AND FACILITIES

§ 201. Short title

This act shall be known and may be cited as the Cherokee Art and Facilities Act of 2005.

§ 202. Purpose

The purpose of this act is earmark a percentage of construction or renovation cost on all facilities built by the Cherokee Nation (and its wholly-owned/majority owned businesses) to be used for

historically and culturally appropriate artwork done by Cherokee Nation citizens.

§ 203. Definitions

For purposes of this chapter:

1. **"Cherokee Nation citizen"** means a citizen of Cherokee Nation as determined by the Cherokee Nation Registration office.
2. **"Cherokee Nation facility"** means any building or property owned or under construction by or for the Cherokee Nation, or subject to or under a long-term lease to the Nation in which the nation is investing its own capital for new construction or improvements to existing facilities, or any property owned or under construction by or for any business in which the Cherokee Nation is a sole or majority shareholder, or subject to or under a long-term lease to such business in which the business is investing its own capital for new construction or improvements to existing facilities.
3. **"Construction or renovation"**. This act applies to any new construction or any renovation to an existing facility, the cost of which exceeds Five Hundred Thousand Dollars (\$500,000.00).

§ 204. Historically and culturally appropriate artwork in Cherokee Nation facilities and properties

For any construction or renovation to an existing Cherokee Nation facility or property, or any facility or property in which the Cherokee Nation is the sole or majority shareholder, the budget of such project shall set aside one percent (1%) of the total cost of construction or renovation for artwork that is historically and culturally appropriate for the facility and provided that the artwork is designed and created by Cherokee Nation citizens. The facility being built or renovated must be suitable to housing and displaying art. If said facility is found not suitable to housing or displaying art the one percent (1%) of the construction budget referred to in this act shall be set aside for distribution to me an appropriate Cherokee Nation-owned facility capable of housing and displaying art.

Such artwork may include, but is not limited to: sculpture, painting, carving, beadwork, basketry, traditional crafts, culturally appropriate landscaping and any other media of Cherokee art deemed to be cultural, historic, or traditional. Expenditures under this act may include the cost of the appropriate display and installation of said art work.

The Principal Chief shall designate the appropriate office within the Executive Branch whose responsibility will be to make the determination of which artwork is appropriate under this act.

CHAPTER 3

ARTS AND CRAFTS COPYRIGHT

§ 301. Short title

This act shall be known and may be cited as the Cherokee Nation Arts and Crafts Copyright Act Amendment of 2012.

§ 302. Purpose

The purpose of this act is to prevent the purchase of copyrights of works of art by the Cherokee Nation or its entities in the initial purchase of the work of art and to ensure that policies shall be created by Cherokee Nation and its affiliated entities to include in their contracts in purchasing arts and crafts to avoid any prohibitions of this act.

§ 303. Definitions

A. "**Arts and crafts**" means any traditional or contemporary skill or creative work of graphics, painting, sculpture, music, writing, basketry, jewelry, pottery, metalwork, photography, or other crafts or media that an artist chooses to produce works of art from.

B. "**Cherokee Nation**" means the Cherokee Nation Government located at Tahlequah Oklahoma and all departments and agencies thereof.

C. "**Cherokee Nation entities**" means any corporation, company, business or other entity in which Cherokee Nation owns a majority interest.

§ 304. Purchase of copyright prohibited

A. In the event Cherokee Nation or its affiliated entities request bids for arts or crafts or Solicit for the purchase of art and crafts the purchase of copyrights of the item is prohibited in the initial sale.

B. Cherokee Nation and its affiliated entities shall establish policies to include in their contracts in purchasing arts and crafts to avoid any prohibitions of this act.

CHAPTER 4

TRUTH IN ADVERTISING FOR NATIVE ART

§ 401. Short title

This act shall be known and may be cited as the Cherokee Nation Truth in Advertising for Native Art Act.

§ 402. Purpose

The purpose of this act is to establish guidelines for the purchase, promotion and sale of genuine Native American arts and crafts within Cherokee Nation and by Cherokee Nation entities. This act is further intended to encourage and allow Cherokee artists to be diverse, creative as well as

traditionally influenced and to continue the use of traditional materials as well as use new mediums.

§ 403. Definitions

A. **"Art"** is an object or action that is made with the intention of stimulating the human senses as well as the human mind and/or spirit regardless of any functional uses. For purposes of this act, **"art"** also includes crafts, handmade items, traditional storytelling, contemporary art or techniques, oral histories, other performing arts and printed materials.

B. **"Cherokee Nation"** means the government, its agencies and instrumentalities, including but not limited to Cherokee Nation Businesses, Cherokee Nation Enterprises, Cherokee Nation Industries and Housing Authority of Cherokee Nation, any component units of Cherokee Nation and any entities in which Cherokee Nation is the sole or majority stockholder or owner.

C. **"Indian"** means a citizen or member, not individually adopted, of a federally recognized Indian entity evidenced under the Federally Recognized Indian Tribe List Act of 1994, PL 103-454, November 2, 1994, 25 U.S.C. § 479a, as amended.

D. **"Indian art"** means art produced by an Indian.

E. **"Indian artist"** means an Indian who produces art.

§ 404. Authentic Indian art—Registry—Inventory

A. Cherokee Nation shall not knowingly offer for sale art that is produced by individuals who falsely claim, imply, or suggest that they are Indian.

B. Cherokee Nation shall not host, sponsor, fund, or otherwise devote or contribute any resource to art exhibits allowing the exhibition of works by artists who falsely claim, imply, or suggest that they are Indian.

C. The Tribal Employment Rights Office (TERO) shall maintain a voluntary registry of Cherokee artists and their contact information.

D. The Principal Chief shall cause to be published an inventory of all Indian art owned by Cherokee Nation, and such listing shall be accessible to the public.

E. The Principal Chief shall cause to be developed a label or other form of identification to be placed upon or with any Indian art or craft sold by Cherokee Nation or its entities. This is to ensure and identify the object being sold as authentic Indian art.

F. The Principal Chief shall cause to be published an inventory of all Indian art owned by Cherokee Nation, except for art held for resale in retail stores or warehoused for such purpose, and such listing shall be a public record pursuant to the Freedom of Information and Right of Privacy

TITLE 32

HISTORICAL SOCIETIES AND ASSOCIATIONS

CHAPTER 1

GENERAL PROVISIONS

Reserved for Future Use

CHAPTER 1A

VIOLATIONS—PENALTIES

§ 2.1. Damage to historical site

No person shall willfully or knowingly break, break off, crack, carve upon, write, or otherwise mark upon, or in any manner damage, destroy, mutilate, deface more, or harm any historic or prehistoric site, building, object artifact or material in, around or upon any historic or prehistoric site, building, object artifact or material in, around or upon any historic site owned, operated, managed or under the control of Cherokee Nation. Any person convicted of violating any of the provisions of this section shall be guilty of a crime and shall be punished by a fine of not to exceed Two Hundred Dollars (\$200.00) or by confinement in the county jail for not to exceed thirty (30) days or by both such fine and confinement.

CHAPTER 20

REGISTER OF HISTORIC PLACES

§ 361. Anthropological and archaeological projects

A. It shall be unlawful for any person to intentionally and knowingly deface American Indian or aboriginal paintings, pictographs, petroglyphs or other marks or carvings on rock or elsewhere that are of archaeological interest and pertain to early American Indian or aboriginal habitation of the country. It shall be unlawful to willingly injure, disfigure, remove or destroy any archaeological interest and pertain to early American Indian or aboriginal habitation of the country. It shall be unlawful to willingly injure, disfigure, remove or destroy any archaeological resources, including but not limited to, a prehistoric or historic structure, site, monument, marker, medallion, burial, burial marker or artifact without lawful authority as provided in this or related statutes. It shall be unlawful to enter onto the enclosed lands of another with the intent to intentionally injure, disfigure, remove, excavate, damage, take, dig into or destroy any archaeological remains or any prehistoric or historic site, American Indian or aboriginal campsite, artifact, burial, ruin or other materials wherever situated within the state without consent of the owner.

B. Any person violating any of the provisions of this section shall be guilty of a crime and, upon conviction, shall forfeit to the Cherokee Nation for final disposition all articles and materials and related records wrongfully acquired through his action or efforts, and shall also be fined not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00), or imprisoned in the county jail, not exceeding thirty (30) days, or both.

TITLE 33

HOUSING

CHAPTER 1

CHEROKEE NATION MORTGAGE FORECLOSURE ACT

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Mortgage Foreclosure Act.

§ 2. Purpose

This act shall be interpreted and construed to fulfill the following purposes:

1. To preserve the peace, harmony, safety, health and general welfare of the people of the Nation and those permitted to enter or reside in Cherokee Nation;
2. To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees of buildings;
3. To avail Cherokee Nation, Cherokee Business Entities, and Cherokee citizens of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of Cherokee Nation by prescribing procedures for the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution;
4. To establish laws and procedures which are necessary in order to obtain governmental funding for Cherokee Nation housing programs or loan guarantees for private or Nation housing construction, purchase, or renovation.

§ 3. Definitions

For the purpose of this chapter, unless the context otherwise requires, the terms defined in this section shall have the meaning ascribed to them as follows:

1. "**Borrower/mortgagor**" shall mean the Nation, the Indian Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Nation or

such Indian(s) or non-Indian(s) who has executed a mortgage as defined in this act or a leasehold mortgage as defined in this act.

2. "**Default**" shall mean the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, when such failure continues for a period of more than thirty (30) days.

3. "**Department**" or "**HUD**" shall mean the U.S. Department of Housing.

4. "**Guarantee fund**" shall mean the Indian Housing Loan Guarantee Fund established under 12 U.S.C. § 1715z-13a(i).

5. "**Housing Authority**" shall mean the Cherokee Nation Housing Authority, established pursuant to Oklahoma law for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of Cherokee Nation.

6. "**Indian**" or "**Native American**" shall mean any person recognized as being Indian or Alaska Native by an Indian tribe, the federal government, or any state.

7. "**Indian area**" shall mean the area within which an Indian housing authority is authorized to provide housing.

8. "**Indian country**" shall mean property within the territorial jurisdiction of the Nation, all lands owned by or held in trust for the Nation as well as any such ownership or use by an entity of the Nation; and including any and all areas which constitute the Indian country of the Nation under applicable provisions of its laws or the laws of the United States.

9. "**Lease assignments**" shall mean a transfer or conveyance of a valid existing lease to a third party, who becomes the new lessee. Generally, an assignment must cover the entire leasehold interest, although some leases do provide for the creation of several leases in place of the original lease (so-called spin-off leases) each of which may then be assigned.

10. "**Lease or lease contract**" shall mean the complete agreement between the parties as it exists at any given time. It is the original lease as it has been modified to date.

11. "**Leasehold encumbrance**" shall mean a mortgage, deed of trust, or other lien on the leasehold interest given to secure the repayment of a loan obtained by the lessee.

12. "**Leasehold interest**" shall mean the interest conveyed by the lessor to the lessee under the lease; in other words, the lessee's interest in the land. It consists of the right to the quiet enjoyment of the leased premises for the term of the lease, subject to the requirements of the contract.

13. "**Leasehold mortgage**" shall mean the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency home buyer program, the Mutual Help Home Ownership administered by the Indian Housing Authority, or any other agreement

entered between a borrower/mortgagor and a lender/mortgagee.

14. "**Lender/mortgagee**" shall mean any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Nation, an Indian Housing Authority, or a U.S. government agency which loans money, guarantees or insures loans to a borrower for construction, acquisition, or rehabilitation of a home. It is also any lender-designated assignee(s) or successor(s) of such lender/mortgagee.

15. "**Lessee**" shall mean a tenant of a dwelling unit, user and/or occupier of real property, or the home buyer under any federal mortgage program including the Mutual Help program. The lessee may, for purposes of federal agency home mortgage programs, be the Indian Housing Authority.

16. "**Lessor**" shall mean the legal, beneficial, or equitable owner of property under a lease. Lessor may also include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the lessor.

17. "**Mortgage**" shall mean a first lien as is commonly given to secure advances on, or the unpaid purchase of, real estate under the laws of the jurisdiction where the property is located, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, or security deed, as well as the credit instrument, or note secured thereby.

18. "**Mortgage foreclosure proceeding**" means a proceeding:

a. To foreclose the interest of the borrower(s)/mortgagor(s), and each person or entity claiming through the borrower(s)/mortgagor(s), in real property, a building, or in the case of a leasehold mortgage, a lease for which a mortgage has been given under the home purchase program of any federal agency; and

b. To assign where appropriate the borrower(s)/mortgagor(s) interest to a designated assignee.

19. "**Mortgagor**" shall mean all persons who to the knowledge of the mortgagee owe payment or other performance of the obligation secured by the mortgage, and for the purpose of receipt of notice, includes a surety, guarantor or co-signor.

20. "**Nation**" shall mean Cherokee Nation.

21. "**Owner**" shall mean any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

22. "**Principal residence**" shall mean the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one (1) principal residence at any one time. This term also includes mobile homes which have been affixed to the land.

23. "**Recording Clerk**" shall mean the Director of the Cherokee Nation Real Estate Service or

such other person designated by the Nation to perform the recording functions required by this document or any deputy or designee of such person.

24. "**Secretary**" shall mean the Secretary of Housing and Urban Development.

25. "**Shall**" for the purposes of this act, shall be defined as mandatory or must.

26. "**Standard housing**" shall mean a dwelling unit or housing that complies with the requirements established by federal law.

27. "**Subordinate lienholder**" shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a mortgage under this code, except the Nation shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

28. "**Title status report**" shall mean a report issued after a title examination that shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions, or encumbrances of record; and whether the land is in unrestricted, trust, or other status as indicated by the records in a land titles and records office.

29. "**Trust land**" shall mean land or any interest therein held in trust by the U.S. Government for an individual Indian or tribe.

§ 4. Priority of liens

All mortgages recorded in accordance with the recording procedures set forth in this chapter, including leasehold mortgages, and including loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage.

§ 5. Recording

A. The Recording Clerk shall maintain in the Nation's Real Estate Service Office a system for the recording of mortgages and to such other documents as the Nation may designate by law or resolution.

B. The Recording Clerk shall endorse upon any mortgage or other document to be recorded:

1. The date and time of receipt of the mortgage or other document;

2. The filing number, to be assigned by the Recording Clerk, which shall be a unique number for each mortgage or other document received; and

3. The name of the Recording Clerk or designee receiving the mortgage or document.

Upon completion of the above-cited endorsements, the Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Cherokee Nation.)
) ss.
)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this ____ day of _____.

(SEAL) _____
 (Signature)

(Date)

The Recording Clerk shall maintain the copy in the records of the recording system, and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

C. The Recording Clerk shall also maintain a log of each mortgage or other document recorded, in which there shall be entered:

1. The name(s) of the borrower/mortgagor of each mortgage, identified as such;
2. The name(s) of the lender/mortgagee of each mortgage, identified as such;
3. The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents filed or recorded;
4. The date and time of the receipt;
5. The filing number assigned by the Recording Clerk; and
6. The name of the Recording Clerk or designee receiving the mortgage or document.

D. The certified copies of the mortgages and other documents and the log maintained by the Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Nation's Recording Clerk.

§ 6. Foreclosure procedures

A. A borrower/mortgagor shall be considered to be in default when he is thirty (30) days past due

on his mortgage payment(s) to the lender/mortgagee.

B. Before a borrower/mortgagor becomes ninety (90) days delinquent on his mortgage payments and before any foreclosure action or activity is initiated, the lender/mortgagee shall complete the following:

1. Make a reasonable effort to arrange a face-to-face interview with the borrower/mortgagor. This shall include at least one (1) trip to meet with the borrower/mortgagor at the mortgaged property;
2. Lender/mortgagee shall document that it has made at least one (1) phone call to the borrower/mortgagor (or the nearest phone as designated by the borrower/mortgagor, able to receive and relay messages to the borrower/mortgagor) for the purpose of trying to arrange a face-to-face interview.

C. Lender/mortgagee may appoint an agent to perform the services or arrange and conduct the face-to-face interview specified in this action.

D. Before the borrower/mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Cherokee Nation Court, the lender/mortgagee shall provide the following advice to the borrower/mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Nation:

1. advise the borrower/mortgagor that information regarding the loan and default will be given to credit bureaus;
2. advise the borrower/mortgagor of home ownership counseling opportunities/programs available through the lender or otherwise.
3. advise the borrower/mortgagor of other available assistance regarding the mortgage/default.
4. In addition to the preceding notification requirements, the lender/mortgagee shall complete the following additional notice requirements when a leasehold mortgage is involved:
 - a. notify the borrower/mortgager that if the leasehold mortgage remains in default for more than ninety (90) days, the lender/mortgagee may ask the applicable governmental agency to accept assignment of the leasehold mortgage if this is a requirement of the governmental program;
 - b. notify the borrower/mortgagor of the qualifications for forbearance relief from the lender/mortgagee, if any, and that forbearance relief may be available from the government if the mortgage is assigned; and
 - c. provide the borrower/mortgager with names and address of government officials to whom further communications may be addressed, if any.

E. If a borrower/mortgagor has been in default for ninety (90) days or more and the

lender/mortgagee has complied with the procedures set forth in the first part of this section, the lender/mortgagee may commence a foreclosure proceeding in the Cherokee Nation District Court by filing a complaint as set forth in § 1–5–4 of this Code.¹

¹ So in original.

§ 7. Foreclosure complaint and summons

A. The verified complaint in a mortgage foreclosure proceeding shall contain the following:

1. The name of the borrower/mortgagor and each person or entity claiming through the borrower/mortgagor subsequent to the recording of the mortgage, including each subordinate lienholder (except the Nation with respect to a claim for a tribal leasehold), as a defendant;

2. A description of the property subject to the mortgage;

3. A concise statement of the fact concerning the execution of the mortgage or in the case of a leasehold mortgage the lease, the facts concerning the recording of the mortgage or the leasehold mortgage, the facts concerning the alleged default(s) of the borrower/mortgagor, and such other facts as may be necessary to constitute a cause of action;

4. True and correct copies of each promissory note, and if a leasehold mortgage then a copy of the lease, the mortgage, or assignment thereof relating to the property (appended as exhibits); and

5. Any applicable allegations concerning relevant requirements and conditions prescribed in:

a. federal statutes and regulations,

b. Cherokee Nation laws and regulations, and/or

c. provisions of the lease or leasehold mortgage, or security instrument.

B. The complaint shall be filed by the Cherokee Nation District Court Clerk, who shall issue a summons specifying a date and time of appearance for the defendant(s).

§ 8. Service of process and procedures

Service of process shall be performed according to the procedures set forth as follows:

1. Service by personal delivery.

a. At the election of the plaintiff, process shall be served by a Marshal, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The Court shall freely make special appointments to serve all process, other than a subpoena under this subdivision.

b. A summons to be served by the Marshal shall be delivered to the Marshal by the Court Clerk or attorney of record by the plaintiff.

c. Service shall be made as follows:

i. upon an individual, other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the complaint to him/her personally or by leaving copies thereof at his dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process;

ii. upon an infant who is less than fifteen (15) years of age, by serving the summons and complaint upon him/her personally and upon either of his parents or his guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom he lives; and upon an incompetent person by serving the summons and complaint upon him personally and upon his guardian;

iii. upon the Housing Authority by delivering a copy of the summons and of the complaint to an officer or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service of process by also mailing a copy to the defendant.

2. Service by mail.

a. At the election of the plaintiff, a summons and complaint may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to this statute as previously stated herein. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and complaint by the defendant.

b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant. If the summons is to be served by mail by the Court Clerk, the Court Clerk shall enclose the summons and a copy of the petition or order of the Court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The Court Clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. Such return receipt shall be prepared by the plaintiff.

c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or

usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph (c) of paragraph (1)¹ of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph (c) of paragraph (1)¹ of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the judgment.

3. Service by publication.

a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that with due diligence service cannot be made upon the defendant by any other method.

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that the person who verified the petition or the affiant does not know and with due diligence cannot ascertain the following:

i. whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of his successors, if any,

ii. the names or whereabouts of the unknown successors, if any, of a named decedent,

iii. whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not, or the names or whereabouts of its officers or successors,

iv. whether any person designated in a record as a trustee continues to be the trustee, or the names or whereabouts of the successors of the trustee, or

v. the names or whereabouts of the owners or holders of special assessment or improvement bonds,

or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this subdivision shall be made by publication of a notice, signed by the Court Clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one (1) notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the Court is based on property, any real property subject to the jurisdiction of the Court and any property or debts to be attached or garnished must be described in the notice.

¹ So in original.

§ 9. Cure of default by subordinate lienholder

Prior to the entry of a judgment of foreclosure, any borrower/mortgagor or a subordinate lienholder may cure the default(s) under the mortgage by making a full payment of the delinquency to the lender/mortgagee and all reasonable legal and court costs incurred in foreclosing on the property. Any subordinate lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such subordinate lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

§ 10. Judgment and remedy

This matter shall be heard and decided by the Cherokee Nation District Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the borrower/mortgagor. If the alleged default has not been cured at the time of trial and the District Court finds for the lender/mortgagee, the District Court shall enter judgment, which shall:

1. Foreclose the interest of the borrower/mortgagor and each other defendant, including subordinate lienholder, in the mortgage; and
2. Assign the mortgage to the lender/mortgagee or the lender's designated assignee; in the case of a leasehold mortgage, the lease will be assigned to the lender/mortgagee or the lender's designated assignee, subject to the following provisions:
 - a. The lender shall give the Nation the right of first refusal on any acceptable offer to purchase the lease or leasehold mortgage which is subsequently obtained by the lender or lender's designated

assignee;

b. The lender or lender's designated assignee may only transfer, sell or assign the lease and/or leasehold mortgage to a Cherokee citizen, the Nation, or the Housing Authority of Cherokee Nation.

3. Any other transfer, sale or assignment of the lease or leasehold mortgage and fee simple property secured by a mortgage that is duly recorded shall only be made to a Cherokee citizen, the Nation, or the Housing Authority of Cherokee Nation during the remaining period of the leasehold.

§ 11. Foreclosure evictions

Foreclosure evictions shall be handled according to the general eviction process set forth in Chapter 3 of this Code¹, with the added provision that foreclosure eviction proceedings shall not occur until after the borrower/mortgagor, lessee, occupier has received thirty (30) calendar days' notice, and remains in possession of the property contrary to the terms of the notice. All foreclosure evictions shall occur no later than sixty (60) days from the date of service of notice upon the borrower/mortgagor that foreclosure was completed.

¹ So in original.

§ 12. No merger of estates

There shall be no merger of estates by reason of the execution of a lease or a leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the Cherokee Nation District Court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

§ 13. Certified mailing to Nation and lessor

In any foreclosure proceedings on a lease or leasehold mortgage where the Nation or the lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Nation and to the lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor(s) in care of the Self-Governance Specialist of the Bureau of Indian Affairs.

§ 14. Intervention

The Nation or any lessor may petition the Cherokee Nation District Court to intervene in any lease or leasehold mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Nation, nor the granting of such a petition by the Cherokee Nation District Court shall operate as a waiver of the sovereign immunity of the Nation, except as may be expressly authorized by the Nation.

§ 15. Appeals

Appeals under this chapter shall be to the Cherokee Nation Supreme Court and shall be handled in accordance with the Rules of the Supreme Court.

CHAPTER 2

HOUSING AUTHORITY ADVISORY BOARD

§ 21. Advisory board of directors

A. There shall be an advisory board of directors to the Cherokee Nation Housing Authority. This advisory board shall consist of five (5) members of the Cherokee Nation Tribal Council. The Tribal Council shall appoint these members in accordance with their rules and procedures. The advisory board shall have full access to all information and meetings of the Board of Directors and have all privileges of the Board of Directors except voting privileges.

B. A regular agenda item will be included in the monthly Community Services Committee meeting so that the members of the Council who serve on the Cherokee Nation Housing Authority Advisory Board can provide the full Council Committee with a monthly report in addition to the Cherokee Nation Housing Authority Director.

TITLE 34

INITIATIVE AND REFERENDUM

CHAPTER 1

REFERENDUM AND INITIATIVE PROCEDURES

§ 1. Short title

This act shall be known and may be cited as the Referendum and Initiative Procedures Act.

§ 2. Purpose

The purpose of this act is to set standards and procedures for referendum and initiative measures.

§ 3. Form of referendum petition

The referendum petition shall appear in conformance with the following form:

PETITION FOR REFERENDUM

To Cherokee Nation:

We, the undersigned legal voters of Cherokee Nation respectfully order that Cherokee Nation Legislative Act No. _____, entitled _____ (title of Act, and if the petition is against less than the whole Act, then set forth here the part or parts on which the referendum is sought), passed by the Cherokee Tribal Council, at the regular session of said Council on _____ (date), be referred to the people of the Cherokee Nation for their approval or rejection at the regular (or special) election. I have personally signed this petition; I am a legal voter of the Cherokee Nation (and district of _____); my physical residence and voter identification number are correctly written after my name.

The question we herewith submit to our fellow voters is: Shall the following legislation of the Cherokee Nation Tribal Council be approved? (Insert here an exact copy of the title and text of the legislation.)

Name and Address of Proponents (not to exceed three)

Name _____ Physical Residence _____ P.O. Box _____ ID # _____.

(Here follow twenty numbered lines for signatures.)

Referendum petitions shall be filed with the Secretary of State of Cherokee Nation not more than ninety (90) days after the session of the Council which passed the legislation on which the referendum is demanded.

§ 4. Form of initiative petition

The form of initiative petition shall be substantially as follows:

INITIATIVE PETITION

To Cherokee Nation:

We, the undersigned legal voters of Cherokee Nation, respectfully order that the following proposed law be submitted to the legal voters of the Cherokee Nation for their approval or rejection at the regular general election and each for himself says: I have personally signed this petition; I am a legal voter of the Cherokee Nation; my physical residence, post office address, and voter identification number are correctly written after my name. The time for filing this petition expires ninety (90) days after original filing. The question we herewith submit to our fellow voters is: Shall the following legislative act or proposed amendment to the Constitution or resolution be approved?

(Insert here an exact copy of the title and text of the measure.)

Name and Address of Proponents (not to exceed three)

Name _____ Physical Residence _____ P.O. Box _____ ID# _____

(Here follow twenty numbered lines for signatures.)

§ 5. Canvass procedure

Whenever any measure or proposition is submitted to a vote by the initiative or referendum, it shall be the duty of the Cherokee Nation Election Commission to make and transmit the returns thereof to the Cherokee Nation Tribal Council in the same manner that they make their returns in the case of an election of other Cherokee Nation officers, transmitting a certificate of the total number of electors voting in such elections to the Tribal Council.

§ 6. Who may sign petition and vote—Penalties

Every person who is a qualified elector of Cherokee Nation may sign a petition for the referendum or for the initiative for any measure upon which he or she is legally entitled to vote. Any person signing any name other than his or her own to any petition, or knowingly signing his or her name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter, or whoever falsely makes or willfully destroys a petition or any part thereof, or who signs or files any certificate or petition knowing the same or any part thereof to be falsely made, or suppresses any certificate or petition or any part thereof which has been duly filed or who shall violate any provision of this statute, or who shall aid or abet any other person in doing any of said acts; and any person violating any provision of this chapter, shall upon conviction thereof be guilty of a crime and shall be punished by a fine of not exceeding Five Hundred Dollars (\$500.00) and such other civil penalty in the discretion of the Cherokee Nation Court before which such conviction shall be had.

§ 7. Time for submission of initiated and referred measures

Whenever any measure shall be initiated by the people in the manner provided by law, or whenever the referendum shall be demanded against any measure passed by the Tribal Council, same shall be submitted to the people for their approval or rejection at the next regular or special election as provided at Article XV, Section 4 of the Cherokee Nation Constitution.

§ 8. Distribution of information regarding process

The Election Commission shall prepare and distribute information to the public on the initiative and referendum process. The information shall include, but not be limited to relevant statutes and constitutional provisions related to the initiative and referendum process. The information should also outline the initiative and referendum process in a chronological order.

§ 9. Petitions and signatures

Each initiative petition and each referendum petition shall be duplicated for the securing of signatures, and each sheet for signatures shall be attached to a copy of the petition. Each copy of the petition and sheets for signatures is hereinafter termed a **pamphlet**. On the outer page of each pamphlet shall be printed the word "**Warning**", and underneath this in ten- (10) point type the

words in bold letters:

"It is a crime for anyone to sign an initiative or referendum petition with any name other than his own, or knowingly to sign his name more than once for the measure, or to sign such petition when he is not a legal voter or to provide false information".

A clear and concise statement of the proposition shall be printed on the top margin of each signature sheet. Not more than twenty (20) signatures on one (1) sheet, on lines provided for the signatures shall be counted. Any signature sheet not in substantial compliance with this act shall be disqualified.

§ 10. Filing and binding

When any such initiative or referendum petition shall be offered for filing, the Election Commission, in the presence of the person offering the same for filing, shall detach the sheets containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petition. All petitions for the initiative and referendum and sheets for signatures shall be printed on pages eight and one-half inches (8 1/2") in width by fourteen inches (14") in length, with a margin of one and three-fourths inches (1 3/4") at the top for binding; if the aforesaid sheets shall be too bulky for convenient binding in one (1) volume, they may be bound in two or more volumes, those in each volume to be attached to a single printed copy of such measure; the detached copies of such measures shall be delivered to the person offering the same for filing. Each of the volumes and each signature sheet therein shall be numbered consecutively, and a cover sheet shall be attached, showing the purported number of signature sheets, the series of numbers assigned to the signature sheets and the total number of signatures counted per volume. The Commission shall render a signed receipt to the person offering the petition for filing, which receipt shall include a report, volume by volume, showing the number of signature sheets in each volume, the series of numbers assigned to the signature sheets in each volume, and the number of purported signatures in each volume. Duplicate copies of the cover sheets, with necessary corrections, may be used as receipts. The Commission shall not provide any copies of signature sheets to anyone until the sheets have been bound as provided in this section.

§ 11. Approval and preservation

If the people shall at the ensuing election, approve any measure, then the copies so preserved, with the sheets of signatures and affidavits, and a certified copy of the Chief's proclamation declaring the same to have been approved by the people, shall be bound together in such form that they may be conveniently identified. The Secretary of State of Cherokee Nation shall preserve the material required to be bound together for three (3) years after the measure was filed.

§ 12. Verification of signatures

Each sheet of every such petition containing signatures shall be verified on the back thereof, in substantially the following form, by the person who circulated said sheet of said petition, by his or

her affidavit thereon and as a part thereof, as follows:

Cherokee Nation)
) ss.
)

I, _____, being first duly sworn, say: That I am a qualified elector of Cherokee Nation and that (Here shall be legibly written or typewritten the names of the signers of the sheet), signed this sheet of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, post office address, physical residence, and identification number correctly, and that each signer is a legal voter of Cherokee Nation and District No. _____ (as the case may be).

(Signature and address of affiant.)

Subscribed and sworn to before me this _____ day of _____ A.D. 20 _____.

(Signature and title of the officer
before whom oath is made, and his
address.)

§ 13. Physical count of signatures

The Election Commission shall make or cause to be made a physical count of the number of signatures on the petitions. In making such count, the Commission shall not include in such physical count:

1. All signatures on any sheet of any petition, which is not verified by the person who circulated the sheet of the petition as provided hereinabove;
2. All signatures of persons who do not list an address or Cherokee Nation Registry Number;
3. All signatures on a sheet that is not attached to a copy of the petition;
4. All multiple signatures on any printed signature line;
5. All signatures not on a printed signature line;
6. Those signatures by a person who signs with any name other than his own or signs more than once; and

7. All signatures on any sheet on which a notary has failed to sign, the seal of the notary is absent, the commission of the notary has expired or the expiration date is not on the signature sheet.

The Election Commission shall notify the Cherokee Nation Attorney General of any and all violations of this act of which it has knowledge.

§ 14. Numbering petitions

Each order for a direct ballot by the voters that is filed by initiative petition, referendum petition, and by the Tribal Council shall be numbered consecutively, each in a series by itself, beginning with one (1), to be continued year after year, without duplication of numbers.

§ 15. Filing copy of proposed petition

When a citizen or citizens desire to circulate a petition initiating a proposition of any nature, whether to become a law or an amendment to the Constitution, or for the purpose of invoking a referendum upon legislative enactments, such citizen or citizens shall, when such petition is prepared, and before the same is circulated or signed by electors, file a true and exact copy of same in the office of the Election Commission and, within ninety (90) days after such filing of an initiative petition, the signed copies thereof shall be filed with the Election Commission, but the signed copies of a referendum petition shall be filed with the Secretary of State within ninety (90) days after the adjournment of the Tribal Council enacting the measure on which the referendum is invoked. The electors shall sign their legally registered name, their address or post office box, and Cherokee Nation Registry identification number. Any petition not filed in accordance with this provision shall not be considered. The proponents of a referendum or an initiative petition, any time before the final submission of signatures, may withdraw the referendum or initiative petition upon written notification to the Election Commission.

The proponents of a referendum or an initiative petition may terminate the circulation period any time during the ninety- (90) day circulation period by certifying to the Election Commission that:

1. All signed petitions have already been filed;
2. No more petitions are in circulation; and
3. The proponents will not circulate any more petitions.

If the Election Commission receives such a certification from the proponents, the Commission shall begin the counting process.

When the signed copies of a petition are timely filed, the Election Commission shall certify to the Supreme Court of Cherokee Nation:

1. The total number of signatures counted pursuant to procedures set forth in this Title; and

2. The total number of votes cast for the office receiving the highest number of votes cast at the last general election.

The Supreme Court shall make the determination of the numerical sufficiency or insufficiency of the signatures counted by the Election Commission, all in accordance with Article XV, Section 3 of the Cherokee Nation Constitution.

§ 16. Effect of filing petition

Filing of a petition for referendum or initiative shall not operate to stay the legislative measure on which the initiative or referendum is invoked.

§ 17. Protest

Upon order of the Supreme Court it shall be the duty of the Election Commission to forthwith cause to be published, in at least one (1) newspaper of general circulation in the state, a notice of such filing and the apparent sufficiency or insufficiency thereof and notice that any citizen or citizens of Cherokee Nation may file a protest to the petition or an objection to the count made by a written notice to the Supreme Court and to the proponent or proponents filing the petition, said protest to be filed within ten (10) days after publication. A copy of the protest or objection to the count shall be filed with the Election Commission. In case of the filing of an objection to the count, notice shall also be given to the Election Commission and the party filing a protest, if one was filed.

The Election Commission shall deliver the bound volumes of signatures to the Supreme Court.

Upon the filing of an objection to the count, the Supreme Court shall resolve the objection with dispatch. The Supreme Court shall adopt rules to govern proceedings to apply to the challenge of a measure on the grounds that the proponents failed to gather sufficient signatures.

Upon the filing of a protest to the petition, the Supreme Court shall then fix a day, not less than ten (10) days thereafter, at which time it will hear testimony and arguments for and against the sufficiency of such petition.

A protest filed by anyone hereunder may, if abandoned by the party filing same, be revived within five (5) days by any other citizen. After such hearing the Supreme Court shall decide whether such petition be in form as required by this act. If the Court be at the time adjourned, the Chief Justice shall immediately convene the same for such hearing. No objection to the sufficiency shall be considered unless the same shall have been made and filed as herein provided.

If in the opinion of the Supreme Court, any objection to the count or protest to the petition is frivolous, the Court may impose appropriate sanctions, including an award of costs and attorney fees to either party as the Court deems equitable.

§ 18. Publication of measures

It shall be the duty of Cherokee Nation at which any proposed law, part of an act, or amendment to the Constitution is to be submitted to the people of Cherokee Nation for their approval or rejection, to cause to be published once in two (2) different newspapers of general statewide circulation and in a newspaper of general circulation in each county of the Cherokee Nation, a copy of all ballots on initiated and referred questions, measures, and constitutional amendments, and an explanation of how to vote for or against propositions. The Secretary shall designate the newspapers in which the publication shall be made. The publication shall be paid for at the legal rate for other publications, out of any funds of Cherokee Nation appropriated therefor.

§ 19. Filing—Official ballots—Review

When a referendum is ordered by petition of the people against any measure passed by the Tribal Council or when any measure is proposed by initiative petition, whether as an amendment to the Constitution or as a statute, it shall be the duty of the parties submitting the measure to prepare and file one (1) copy of the measure with the Election Commission and one (1) copy with the Attorney General's Office.

The parties submitting the measure shall also submit a suggested ballot title, which shall be filed on a separate sheet of paper and shall not be deemed part of the petition. The suggested ballot title:

1. Shall not exceed two hundred (200) words;
2. Shall explain in basic words, which can be easily found in dictionaries of general usage, the effect of the proposition;
3. Shall be written on the eighth-grade reading comprehension level;
4. Shall not contain any words that have a special meaning for a particular profession or trade not commonly known to the citizens of Cherokee Nation;
5. Shall not reflect partiality in its composition or contain any argument for or against the measure;
6. Shall contain language which clearly states that a "yes" vote is a vote in favor of the proposition and a "no" vote is a vote against the proposition; and
7. Shall not contain language whereby a "yes" vote is, in fact, a vote against the proposition and a "no" vote is, in fact, a vote in favor of the proposition.

When a measure is proposed as a constitutional amendment by the Tribal Council or when the Tribal Council proposes a statute conditioned upon approval by the people:

1. After final passage of a measure, the Election Commission shall submit the proposed ballot title to the Cherokee Nation Attorney General for review as to legal correctness. Within five (5)

business days, the Attorney General shall, in writing, notify the Election Commission and the Tribal Council Members whether or not the proposed ballot title complies with applicable laws. The Attorney General shall state with specificity any and all defects found and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective, prepare and file a ballot title which complies with the law;

2. After receipt of the measure and the official ballot title, as certified by the Attorney General, the Election Commission shall within five (5) days transmit to the Tribal Council an attested copy of the measure, including the official ballot title.

The following procedure shall apply to ballot titles of referenda ordered by a petition of the people or any measure proposed by an initiative petition:

1. After the filing and binding of the petition pamphlets, the Election Commission shall submit the proposed ballot title to the Attorney General for review as to legal correctness. Within five (5) business days after the filing of the measure and ballot title, the Attorney General shall, in writing, notify the Election Commission whether or not the proposed ballot title complies with applicable laws. The Attorney General shall state with specificity any and all defects found and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective, prepare and file a ballot title which complies with the law; and

2. Within ten (10) business days after completion of the review by the Attorney General, the Election Commission shall, if no appeal is filed, transmit to the Tribal Council an attested copy of the measure, including the official ballot title, and a certification that the requirements of this section have been met. If an appeal is taken from such ballot title within the time specified in this title, then the Election Commission shall certify the ballot title, which is finally approved by the Supreme Court.

TITLE 35

RESERVED

Reserved for Future Use

TITLE 36

INSURANCE

Reserved for Future Use

TITLE 37

INTOXICATING LIQUORS

CHAPTER 1

GENERAL PROVISIONS

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Limited Mixed Beverage Sales Act.

§ 2. Definitions

As used in this act, the following words shall have the following meanings unless the context clearly requires otherwise:

1. "**Alcohol**" means the substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.
2. "**Alcoholic beverage**" is synonymous with the term "liquor" as defined in this chapter.
3. "**Board of Directors**" means the Board of Directors of Cherokee Nation Enterprises, L.L.C.
4. "**CNE**" means Cherokee Nation Enterprises, L.L.C.
5. "**Liquor**" includes mixed beverages and all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substance, which contains more than one half of one percent (0.5%) of alcohol.
6. "**Sale**" or "**sell**" includes exchange, barter and traffic; and also includes the selling or supplying or distribution, by any means whatsoever, of liquor.
7. "**Tax Commission**" means the Cherokee Nation Tax Commission.
7. "**Trust land**" means those lands that are held in trust by the United States for Cherokee Nation and not for any individual Indian.

§ 3. Powers of enforcement

The Tax Commission. In furtherance of this act, the Tax Commission shall have the power to:

1. issue licenses pursuant to 37 CNCA § 4;
2. collect the excise tax specified in 37 CNCA § 5;

3. publish and enforce rules and regulations adopted by the Tax Commission governing the sale, consumption and possession of alcoholic beverages;
4. establish procedures for conducting hearings related to licensing; and
5. take all necessary steps to enforce 37 CNCA §§ 4 and 5, including the collection of fees, taxes and damages related thereto.

§ 4. Sales of liquor

A. License required. Sales of liquor and alcoholic beverages may only be made by CNE, or other persons approved by CNE, under a license issued by the Tax Commission.

B. Identification. When requested by the provider of liquor, any person asking to purchase liquor or being served in a group shall be required to present official documentation bearing the holder's age, signature and photograph before being served. Official documentation includes one (1) of the following:

1. Driver's license or identification card issued by any state department of motor vehicles or foreign nation;
2. United States Military identification;
3. Official passport issued by any nation and accepted by the United States Department of State for entry into the United States.

§ 5. Taxes

Excise Tax. In lieu of any otherwise applicable tribal sales tax on the retail sale of liquor or alcoholic beverages, there shall be an excise tax in the amount of two percent (2%) of the retail sales price, to be collected by the Tax Commission. These revenues shall be used to promote mental health and related issues associated with substance abuse and shall be reserved for expenditure as provided for in the annual budget by the Cherokee Nation Health Service. The Board of Directors shall be entitled to make recommendation as to how these revenues are expended.

§ 6. Rules, regulations, and enforcement

A. Sales without license. Any person who shall sell or offer for sale, distribute or transport, in any manner, liquor in violation of this act, or who shall operate or shall have liquor for sale in his possession without a license, shall be guilty of a violation of this act subjecting him or her to prosecution for a crime.

B. Sale for personal consumption. All sales shall be for the personal consumption of the purchaser or persons in a group. Resale of any alcoholic beverage is prohibited. Any person not licensed

pursuant to this act who purchases an alcoholic beverage and sells it, whether in the original container or not, shall be guilty of a crime.

C. Illegal purchases. Any person who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this act, subjecting him or her to prosecution for a crime.

D. Minors. No person under the age of twenty-one (21) years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of twenty-one (21) to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a violation of this act, subjecting him or her to prosecution for a crime.

E. Sales to minors. Any person who shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a crime.

F. Sales to intoxicated persons. Any person who shall sell or provide any alcoholic beverage to an individual who is intoxicated, or appears intoxicated, shall be guilty of a crime.

G. False identification. Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor or any alcoholic beverage shall be in violation of this act, subjecting him or her to prosecution for a crime.

H. Using false identification. Any person who attempts to purchase liquor or any alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this act, subjecting him or her to prosecution for a crime.

I. Punishment. Any person found guilty of a crime under this section may be punished by imprisonment for up to one (1) year and/or fined up to Five Hundred Dollars (\$500.00) for each violation.

J. Contraband liquor. Any liquor, possessed contrary to the terms of this act, whether for personal consumption, hospitality, sale, or otherwise, is declared to be contraband. Any tribal law enforcement officer who is authorized to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property.

K. Forfeiture. Upon being found in violation of this act, the party shall forfeit all right, title and interest in the items seized which shall become the property of Cherokee Nation.

TITLE 38

JURORS

CHAPTER 1

GENERAL PROVISIONS

§ 1. Limitations on who may serve on jury

No person who is related to either of the parties to any suit, either by consanguinity or affinity, nor any person who is interested in the termination of a suit, or who has previously served as juror in the trial of that case, shall serve as juror in that suit. No person under the age of eighteen (18) years, nor any person who has been convicted of any felony, nor who may be under punishment for misdemeanor, shall be summoned to serve on a jury in any case. And, no member of the legislative or executive departments, or any commissioned officer of this Nation shall be compelled to serve on any jury.

§ 2. Inability of jury to reach verdict

If the jury shall disagree in any criminal case, the Presiding Judge shall require them to make known to him the cause of such disagreement, and if such disagreement, in whole or in part, shall be as to the meaning or the application of the law to the facts found by them, the Court shall instruct them thereon, in which case, the jury shall return to their deliberations, and continue the same until they agree, or the Judge is satisfied they cannot agree.

TITLE 39

RESERVED

Reserved for Future Use

TITLE 40

LABOR AND EMPLOYMENT

CHAPTER 1

GENERAL PROVISIONS

§ 101. Short title

This act shall be known and may be cited as the Cherokee Nation Employment Rights Act.

§ 102. Purpose

The purpose of this Title is to encourage employment of Indians and to assist in and require the fair employment of Indians and to prevent discrimination against Indians in the employment practices of employers who are doing business with Cherokee Nation in Cherokee Nation Indian Country or

in such jurisdiction as is provided in a cooperative agreement between the Cherokee Nation and another government.

§ 103. Definitions

A. "**Administration**" shall mean the Executive Branch of Cherokee Nation as provided in the Cherokee Nation Constitution.

B. "**Cherokee Nation Indian Country**" shall mean all land held in trust or subject to restrictions by the United States for Cherokee Nation, or land within the original boundaries of Cherokee Nation and held in trust or subject to restrictions for an individual, and all land held by Cherokee Nation or its entities, in fee simple, and any other land within the jurisdiction of Cherokee Nation which land comes within the definition of "Indian Country" as defined in 18 U.S.C. § 1151.

C. "**Cherokee Nation Government**" shall mean the officials and employees at the Cherokee Nation complex located at Tahlequah Oklahoma and its programs or commissions wherever located. "**Cherokee Nation**" shall mean the government of Cherokee citizens, authorized by the Act of Union of 1839.

D. "**Contractor**" shall mean any person, company or other entity engaged in work with Cherokee Nation, its entities or wholly-owned corporations. The term "**contractor**" includes Cherokee Nation, its entities and wholly-owned corporations, federal, state and county government agencies and includes contractors and subcontractors of all other agencies.

E. "**Core crew**" shall mean an owner of the firm, or an employee who is in a supervisory or other key position such that the employer would face serious financial damage or loss if that position were filled by a person who had not previously worked for the contractor or subcontractor.

F. "**Council**" shall mean the Tribal Council of Cherokee Nation as established pursuant to the Cherokee Nation Constitution.

G. "**Debarment list**" shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

H. "**EEOC**" shall mean the Equal Employment Opportunity Commission of the United States.

I. "**Emergency**" means any condition that places an extreme emotional or financial burden on a Cherokee citizen. (After all reasonable efforts have been made to contact a TERO vendor.)

J. "**Employer**" shall mean any person, company, contractor, subcontractor or other entity located in or on Cherokee Nation Indian Country or engaged in work with Cherokee Nation, its entities or wholly-owned corporations employing two (2) or more persons. For the purpose of this act, the term "**employer**" includes Cherokee Nation, its entities and wholly-owned corporations, federal, state and county government agencies and includes contractors and subcontractors of all other

agencies.

K. "**Engaged in work**". An employer is "**engaged in work**" if, during any portion of a business enterprise or specific project, contract or subcontract, the employer performs work under contract with Cherokee Nation, its entities and wholly-owned corporations and/or the work is performed in Cherokee Nation Indian Country.

L. "**HRC**" shall mean the Human Rights Commission of the State of Oklahoma.

M. "**Indian**" shall mean a person who is a member of a federally-recognized Indian tribe and/or any person recognized as an Indian by the United States pursuant to its trust responsibility to American Indians.

N. "**Indian organization**" shall mean the governing body of any Indian tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. § 1451).

O. "**Indian-owned economic enterprise**" shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than fifty-one percent (51%) of the enterprise, and the ownership shall encompass active operation and control of the enterprise.

P. "**Indian tribe**" means an Indian tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. § 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Q. "**Locally-owned**" means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of Cherokee Nation, as described in Article II of the Cherokee Constitution, or counties contiguous to those boundaries.

R. "**Located in or on Cherokee Nation**". An employer is "**located in or on Cherokee Nation**" if, during any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility in or performs work in Cherokee Nation Indian Country.

S. "**Major Cherokee employer**" shall mean an Indian-owned business that employs at least fifty (50) Cherokee citizens as either part of the core crew or project crew, or has at least seventy-five percent (75%) of its workforce comprised of Cherokee citizens as certified by the TERO. A business may be certified as Indian-owned, major Cherokee employer, or both.

T. "**Nation**" shall mean Cherokee Nation.

U. "**OFCCP**" shall mean the Office of Federal Contract Compliance Programs of the United

States.

V. **"One-stop business center"** means a centralized location where Cherokee- owned businesses can obtain information regarding procurements, training, and financing.

W. **"Secretary"** shall mean the United States Secretary of the Interior or his or her duly authorized representatives.

X. **"Tribal citizen"** or **"citizen"** shall mean any person who is a duly enrolled citizen of Cherokee Nation, unless the context clearly indicates otherwise.

Y. **"TERO"** shall mean the Tribal Employment Rights Office.

Z. **"TERO staff"** shall mean employees assigned to the TERO by the Executive Branch of Cherokee Nation.

§ 104. Time computation

In computing any period of time prescribed or allowed by this Title, the day of the act, default, or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by Cherokee Nation, or any other day, when the receiving office does not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays as defined by Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., shall be excluded in the computation.

§ 105. Notification of prospective and current employers of obligations and rules, regulations and orders

A. The TERO shall notify all employers of this title and of the employer's obligation to comply herewith. All bid announcements issued by any tribal, federal, state, or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this title and all rules, regulations and orders of the TERO.

B. All Cherokee Nation agencies responsible for issuing business permits for activities within Cherokee Nation or otherwise engaged in activities involving contact with prospective employers within Cherokee Nation shall be responsible for advising such prospective employers of their obligations under this title and rules, regulations and orders of the TERO.

C. The TERO shall send a copy of this Title to every employer doing business with Cherokee Nation.

§ 106. Filing of reports, etc.—Inspections and investigations—Inspection and copying of records

- A. Employers shall submit reports and other information requested by the TERO.
- B. The TERO and its representatives shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Title and the rules, regulations, and orders of the TERO.
- C. The TERO shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor, and shall have a right to speak to workers and conduct investigations on job sites.

CHAPTER 2

TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO)

§ 201. Tribal Employment Rights Office—Establishment, authority and duties

There is hereby recognized the Tribal Employment Rights Office (hereinafter referred to as the "TERO"). The TERO shall administer the Employment Rights Program of Cherokee Nation in accordance with this title.

The TERO shall have the authority:

1. To operate consistent with the provisions of this title and to develop rules and regulations governing activities of TERO. The TERO may adopt EEOC guidelines or may adopt other requirements to eliminate employment barriers unique to Indians in Indian Country;
2. To obtain funding from federal, state and other sources to supplement Council appropriations as delegated by the Administration;
3. To negotiate cooperative agreements with federal, state, local, and other authorities on matters dealing with employment rights and TERO activities and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreement;
4. To use the information, facilities, personnel, and other resources of federal, state, and local agencies, as well as any and all Cherokee Nation departments;
5. To establish numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level;
6. To require employers to establish or participate in job training programs as the TERO deems necessary to increase the pool of Indians eligible for employment;

7. To establish and administer a tribal job bank and require employers to use it;
8. To prohibit employers from using job-qualification criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are required by business necessity;
9. To engage in the process of certifying businesses as "Indian-owned economic enterprises" and to determine whether businesses may be given Indian preference;
10. To direct inspections of regulated sites and determine compliance with rules, regulations, and/or contract requirements;
11. To negotiate agreements with unions to insure union compliance with this title;
12. To require employers to give preference to Indian-owned economic enterprises in the award of contracts and subcontracts;
13. To establish counseling programs to assist Indians in obtaining and retaining employment;
14. To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of this act;
15. To enter into cooperative agreements with employment rights agencies such as EEOC, HRC, and OFCCP to eliminate adverse discrimination against Indians;
16. To take such actions as are necessary to achieve the purposes and objectives of the Cherokee Nation Employment Rights Program established in this Title;
17. To publish a listing of certified "Indian-owned economic enterprises;"
18. To review and propose changes to this Title and related regulations as necessary;
19. To hold hearings in accordance with this chapter;
20. To register and keep a file of complaints concerning certified Indian-owned economic enterprises and with individuals and companies doing business with Cherokee Nation;
21. To assess an employment rights fee of one-half of one percent (0.5%) on all covered contracts;
22. To issue and assess fees for work permits which must be obtained for all non-Indian employees of a covered employer:
 - a. Any employer, as defined in this act, shall be required to pay a fee of not less than Twenty-five Dollars (\$25.00) per employee per day for non-Indian employees hired for the project;

- b. Each such employer shall be required to submit a core crew list to the TERO;
- c. Once the core crew list is submitted the TERO will confirm the essential employees the vendor has listed;
- d. If the TERO has identified Indians that can be used for non-Indian employees it shall require the employer to place the qualified Indians;
- e. The TERO is also authorized to administer other fees and penalties as provided in this act.

§ 202. Adoption of rules, regulations, policies and guidelines

The TERO and its staff shall, with all reasonable speed, adopt detailed rules, regulations, policies and guidelines to fully implement this title and the purposes and responsibilities of the TERO.

§ 203. Funds

All funds from employer fees and other sources collected by the TERO shall be tribal funds and be allocated to job training programs developed by the TERO staff and approved by the Council.

CHAPTER 3

PREFERENCE IN EMPLOYMENT

§ 301. Indian preference requirements generally

A. All employers are required to give preference to Indians in hiring, promotion, training, and all other aspects of employment, contracting, or sub-contracting, and must comply with this Title and the rules, regulations and orders of the TERO.

1. Cherokee Nation Government is an "**employer**" for the purposes of this Title and any of its business entities shall be an "**employer**" for the purpose of this Title.

2. If potential contractors are otherwise equally qualified to complete the relevant contract work and respective bids are otherwise equal, Cherokee Nation, its entities and wholly-owned corporations shall apply a preference for Indian-owned economic enterprises in procurement and contracting. Exceptions to this requirement shall be permitted when no Indian-owned economic enterprise is readily available; when other governmental entity contracts (including, but not limited to, VA or GSA contracts) are available; when more favorable pricing may be obtained; when the order meets the requirements of the Sole Source Request as defined in Acquisition Policy and Procedure; or in an emergency situation as determined by the Principal Chief.

a. Primary preference shall be given to certified "Indian-owned businesses" where the majority owner(s) are Cherokee citizens:

b. Second preference to other certified "Indian-owned businesses" and,

c. A business may be certified as both an "Indian-owned" and "major Cherokee employer" business. In this case, such dually-certified business would receive preference over other Indian-owned businesses within categories a and b above.

d. Preference shall be given in the following order:

i. first preference shall be given to Cherokee-owned business that are major Cherokee employers;

ii. second preference shall go to Cherokee-owned businesses;

iii. third preference shall go to businesses that are certified as Indian-owned and that are major Cherokee employers;

iv. final preference shall go to those businesses that are certified as Indian-owned.

3. Following the preferences in paragraph 2 above, the procurement offices of the Nation shall develop policies to administer to "Locally-owned businesses" as defined herein. In no instance shall this preference degrade or supersede Indian preference.

4. Any contract awarded to a general contractor may be subcontracted, provided that the Indian preference requirements herein apply, regardless of the level of subcontracting activity. Failure to apply Indian preference to subcontracts shall be deemed by TERO a violation of this act.

5. Cherokee Nation Administration may create procurement and contracting policies and procedures for application of said preference. Cherokee Nation procurement and/or contracting offices may maintain a list of entities which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

6. Nothing shall require Cherokee Nation to contract with or hire any Indian-owned economic enterprises which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. The Cherokee Nation procurement and/or contracting offices may maintain a list of entities which have previously provided poor performance or unsatisfactory work or which have engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

B. In accordance with paragraph 5 of subsection (A) of this section the procurement offices of the Nation and its entities shall maintain a "Debarment List" which shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. The procurement offices shall develop policies and procedures to define poor performance of a contractor/employer. Documentation of poor performance must be available and provided to the contractor upon request. The procurement offices shall forward the names of any certified Indian-owned businesses determined to have poor

performances to both the TERO and to the One-stop Business Center for Technical Assistance and Improvement.

1. Debarment list, annual certification. In compiling the debarment list required by this section, the TERO shall require, on an annual basis, employers who employ twenty-five (25) employees or more to certify that they are in compliance with applicable state, federal and tribal labor and employment laws. Nothing herein shall impose any new obligation on any employer to comply with said labor and employment laws.

2. The period of debarment by the TERO shall be for a period of no less than two (2) years.

C. In accordance with 40 CNCA § 502, the TERO shall address complaints of violations of the act or TERO rules. Should there be any unresolved violations by Departments of the Nation or its Business Entities, the TERO shall issue reports of non-compliance to the Principal Chief, Tribal Council and applicable Boards of Directors.

§ 302. Indian preference in contracting and subcontracting

In the award of contracts or subcontracts, employers shall give preference to Indian organizations and to Indian-owned economic enterprises as defined in this title. The TERO staff shall maintain and publish a list of Indian organizations and Indian-owned economic enterprises which shall be supplied to the employers for their use.

§ 303. Preference in promotions

Every employer shall, in accordance with TERO regulations, give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. Preference will apply as follows:

1. Primary preference to Cherokee Nation citizens;
2. Second preference to other Indians.

§ 304. Preference in employment of students

Employers shall give Indian students preferential consideration for summer student employment. The employer shall make every effort to promote after-school, summer and vacation employment for Indian students.

§ 305. Establishment and review of numerical goals for Indian employment generally

A. The TERO may establish the minimum number of Indians each employer must employ on his work force during any year that the employer or any of its employees are located or engaged in work within Cherokee Nation Indian Country. Numerical goals may be set for each craft, skill, job classification, etc., used by the employer and shall include, but not be limited to, administrative,

supervisory and professional categories. The goals shall be expressed in terms of man-hours worked by the employer's work force in the job classification involved.

B. For both new and existing employers, the goals shall be reviewed by the TERO staff at least annually and shall be revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans. Each employer shall submit a monthly report to TERO on a form provided by the TERO staff, indicating the number of Indians in the employer's work force, the progress towards the employer's goals, all persons hired or fired during the month, the job positions involved, and other information required by the TERO.

§ 306. Participation in training programs by employers

Employers may be required by the TERO to participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. The ratio of Indian trainees to fully qualified workers shall be set by the TERO after consultation with the employer.

§ 307. Establishment by TERO staff of counseling and other support programs—Cooperation by employers

The TERO may establish counseling and other support programs to assist Indians in obtaining and retaining employment. Every employer shall be required to cooperate with the TERO regarding such counseling and support programs.

§ 308. Use of job qualification criteria and personnel requirements by employers

Employers are prohibited from using job qualification criteria or personnel requirements which bar Indians from employment unless such criteria or requirements are required by business necessity.

§ 309. Implementation of layoffs and reductions in force by employers

In all layoffs and reductions in force, employers shall maintain the required ratio of Indian employees.

§ 310. Duties of contractors and subcontractors—Liability of employers for violations by contractors and subcontractors

The Indian preference requirements contained in this Title shall be binding on all contractors and subcontractors of employers, regardless of tier, and shall be deemed a part of all contract and subcontract specifications. The employer shall be subject to penalties provided herein for violation of this Title if the contractor or subcontractor fails to comply.

§ 311. Establishment and administration of job bank—Recruitment and hiring of personnel by employers

The TERO may establish and administer a job bank to assist employers in placing Indians in job

positions. An employer may recruit and hire workers from whatever sources are available and by whatever process the employer chooses, as long as the employer complies with this Title and Indian job preference regulations and agreements pertaining to the employer.

§ 312. Prohibition on brokering and fronting services

No Indian entity shall represent that it is exercising management control of a project in order to qualify for Indian preference in the award of said contract or sub-contract when in fact such management control is exercised by a non-Indian entity such that the Indian entity is acting as front or brokering out services.

CHAPTER 4

UNION AGREEMENTS

§ 401. Duties of unions generally

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with this title and rules, regulations and orders of the TERO. Until such agreement is filed with the TERO, the employer may not commence work within the Cherokee Nation Indian Country.

§ 402. Contents of union agreements

Every union agreement with an employer or filed with the committee must provide:

1. Indian preference. The union will give preference to Indians in job referrals regardless of which union referral list they are on.
2. Cooperation with the TERO staff. The union will cooperate with the TERO in all respects and assist in the compliance with and enforcement of this title and related regulations and agreements.
3. Training programs. The union will establish a journeyman upgrade and advanced apprenticeship program.
4. Temporary work permits. The union will grant temporary work permits to Indians who do not wish to join the union.

§ 403. Model union agreement

The TERO staff will provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.

§ 404. Recognition of unions or endorsement of union activities

A. Nothing herein, or any activity by the TERO authorized hereby, shall constitute official Cherokee Nation recognition of any union or endorsement of any union activities within Cherokee Nation. Nothing herein bars any employer, Cherokee Nation or its entities, from recognizing any union.

B. Neither the TERO, including any employer or agent thereof, nor any Cherokee Nation entity, shall engage in any activity constituting opposition to or endorsement of any union activities among employees of any employer covered by this act. Nothing herein shall restrain any elected official of Cherokee Nation from endorsing or opposing such union activities.

C. Any prohibition against endorsement of any union activities in this section shall not include the provision of any assistance to any Cherokee Nation citizen to utilize any apprentice or job training program operated by any union or union-affiliated entity.

CHAPTER 5

COMPLAINTS AND HEARINGS

§ 501. Filing of complaints by TERO and proceedings thereon generally

If the TERO staff has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with this title or any rules, regulations or orders of the TERO, it may file a complaint with the TERO Director and notify such party of the alleged violations. The TERO Director will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the TERO may impose penalties as provided in 40 CNCA § 601. Should any entity fail to comply with orders of the TERO, the TERO may pursue a civil legal action against the entity in Cherokee Nation District Court.

§ 502. Filing of complaints by Indians and proceedings thereon generally—Penalties for retaliatory actions by employers against employees filing complaints

A. If any Indian believes that an employer has failed to comply with this title or rules, regulations or orders of the TERO, or if the Indian believes he or she has been adversely discriminated against by an employer because he or she is Indian, the Indian may file a complaint with the TERO specifying the alleged violation. Upon receipt of the complaint, the TERO shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or TERO may take further action as provided for by law.

B. If any employer fires, lays off, or penalizes in any manner any Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided in 40 CNCA § 601.

C. Nothing in this title shall prohibit the aggrieved Indian from pursuing from the employer other remedies available by law.

§ 503. Reserved

§ 504. Notice of hearings

A. The Administrative Appeals Board, as established pursuant to 51 CNCA § 1001 et seq. shall have the power and duty to hear employer appeals of TERO decisions denying certification of the employer as an Indian-owned economic enterprise. The Administrative Appeals Board shall have the power to either affirm or reverse the TERO certification decision, but will not have the power to award any other form of remedy in the cases brought under this title.

B. The Administrative Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the Administrative Appeals Board herein.

C. If a hearing is requested by the Board, an individual, an employer, or union pursuant to this section, a written notice of the hearing shall be given to all concerned parties stating the nature of the hearing and the evidence to be presented.

D. The notice shall advise such parties of their right to be present at the hearing, to present testimony of witnesses and other evidence and to be represented by counsel at their own expense.

§ 505. Conduct of hearings

If any employer or person feels aggrieved by a decision made by the TERO they may appeal that decision to the Administrative Appeals Board. The Administrative Appeals Board shall hold a hearing in accordance with this act and will either confirm or deny the TERO decision. The Chairperson and Co-Chairperson of the Employment Committee of the Tribal Council may attend said hearings as advisory members, but shall not have any vote in the proceedings.

1. Hearings shall be governed by the following rules and procedure:

a. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense;

b. The Board may have the advice and assistance at the hearing of counsel provided by the Nation;

c. The Chairman of the Board or the Vice-Chairman shall preside and the Board shall proceed to ascertain the facts in a reasonable and orderly fashion;

d. The hearing may be adjourned, postponed and continued at the discretion of the Board.

2. At the final close of the hearings, the Board may take immediate action or take the matter under advisement.

3. The Board shall notify all parties forty-five (45) days after the last hearing of its decision in the matter.

4. The Board shall conclude this process within ninety (90) days of the request for a hearing.

CHAPTER 6

ENFORCEMENT AND REMEDIES

§ 601. Penalties for violations of Title and rules, regulations or orders of the TERO or Administrative Appeals Board

A. Any employer, contractor, subcontractor or union who violates this Title or rules, regulations or orders of the TERO shall be subject to penalties for the violation, including, but not limited to:

1. denial of the right to commence or continue business within the jurisdiction of Cherokee Nation;
2. suspension of operations within the jurisdiction of Cherokee Nation;
3. payment of back pay and damages to compensate any injured party;
4. an order to summarily remove employees hired in violation of this Title or rules, regulations or orders of the TERO;
5. imposition of monetary civil penalties;
6. prohibition from engaging in future operations within Cherokee Nation boundaries;
7. an order requiring employment, promotion and training of Indians injured in the violation;
8. an order requiring changes in procedures and policies necessary to eliminate the violation;
9. an order making any other provision deemed necessary to alleviate, eliminate or compensate for any violation.

B. The maximum monetary penalty which may be imposed is Five Thousand Dollars (\$5,000.00) for each violation. The penalties will be graduated as follows:

1. The first violation will incur a fine of Two Hundred Dollars (\$200.00);
2. The second violation will incur a fine of One Thousand Dollars (\$1,000.00);
3. The third violation will incur a fine of Five Thousand Dollars (\$5,000.00).

C. Each day during which a violation exists shall constitute a separate violation.

D. Monetary penalties assessed by TERO may be tripled if it is shown that the violation occurred

egregiously or with reckless or wanton behavior.

E. Attorney fees and costs of pursuing or defending an action of the TERO may be awarded to the prevailing party.

CHAPTER 7

APPEALS

§ 701. Appeals from decisions of Administrative Appeals Board

A. Any party to a hearing shall have the right to appeal any decision of the Board to the District Courts of Cherokee Nation.

B. Standard of review. The District Court shall review decisions of the Administrative Appeals Board without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Administrative Appeals Board, not shown in the record, testimony thereon may be taken by the District Court. The District Court, upon request, shall hear oral arguments and receive written briefs.

C. Appeals of the decision of the District Court may be taken in the Supreme Court under the rules and procedures governing civil appeals before that Court.

§ 702. Employee Appeals Board—Change of name

The Employee Appeals Board, as established pursuant to 51 CNCA § 1001 et seq., shall hereinafter be known as the "Administrative Appeals Board".

CHAPTER 8

DOMESTIC VIOLENCE LEAVE

§ 801. Discharges for absence from employment due to domestic violence prohibited

When an employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that she or he has been the victim of domestic violence and that such violence contributed to her or his absence(s) from work or tardiness at work for a period of up to seven (7) days over the course of a year, it shall be a violation of this chapter for any employer to terminate or otherwise discipline any employee who has missed work or is tardy. In lieu of disciplinary action, the employer shall grant the employee leave, with or without pay, dependent upon the policies of the employer.

§ 802. Penalty for violation

Any employer who willfully violates this chapter shall be subject to a civil penalty of Five

Hundred Dollars (\$500.00) payable to the Court in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this chapter.

CHAPTER 9

MINIMUM WAGE

§ 901. Short title

This act shall be known and may be cited as the Cherokee Nation Minimum Wage Act of 2006.

§ 902. Purpose

The purpose of this act is to establish a minimum hourly wage for employees of Cherokee Nation and its corporations and entities.

§ 903. Definitions

A. **"Cherokee Nation"** means all three (3) branches of the government of Cherokee Nation as established by the 1999 Constitution, the seat of which is located at Tahlequah, Oklahoma, and includes all departments, commissions, agencies, and instrumentalities thereof.

B. **"Employ"** means to suffer or permit to work.

C. **"Employee"** means any individual employed by an employer but shall not include:

1. an individual employed on a farm in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment;

2. any individual working as a volunteer;

3. any employee of any carrier subject to regulation by Part I of the Interstate Commerce Act (see Revised Title 49, U.S.C.);

4. any employee employed in a bona fide executive, administrative or professional capacity, or in the capacity of outside salesman;

5. any person who is less than eighteen (18) years of age and is not a high school graduate or a graduate of a vocational training program, and any person who is less than twenty-two (22) years of age and who is a student regularly enrolled in a high school, college, university or vocational

training program;

6. any person who is working with Cherokee Nation as part of a training program, summer youth program, as an temporary intern, or to receive educational credit; or

7. any individual working as a reserve Marshal.

D. "**Employer**" means Cherokee Nation and any government–owned company.

E. "**Government–owned company**" means any entity which is wholly-owned by Cherokee Nation regardless of location of the entity, or any corporation or entity in which Cherokee Nation owns a controlling interest and which is located within Cherokee Nation jurisdiction.

F. "**Wage**" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by law.

§ 904. Minimum wage

A. Every employer shall pay to each of its employees wages at the following rate: not less than Seven Dollars Fifty Cents (\$7.50) per hour beginning with the first full pay period after enactment. Further, there shall be a wage increase beginning at One Dollar (\$1.00) for the wage rate of Six Dollars Fifty Cents (\$6.50) with the One Dollar (\$1.00) wage increase being reduced by One Cent (\$.01) for every Two Cents (\$.02) above the Six Dollars Fifty Cents (\$6.50) wage rate which shall also be effective with the first full pay period after enactment.

B. Every employer shall pay to each of its employees wages at the following rate: not less than Eight Dollars Twenty-five Cents (\$8.25) per hour beginning with the first full pay period after October 1, 2007. Further, there shall be a wage increase beginning at Seventy-five Cents (\$.75) for the wage rate of Seven Dollars Fifty Cents (\$7.50) with the Seventy-five Cents (\$.75) wage increase being reduced by One Cent (\$.01) for every Two Cents (\$.02) above the Seven Dollars Fifty Cents (\$7.50) wage rate which shall also be effective with the first full pay period after October 1, 2007.

C. Every employer shall pay to each of its employees wages at the following rate: not less than Nine Dollars (\$9.00) per hour beginning with the first full pay period after October 1, 2008. Further, there shall be a wage increase beginning at Seventy-five Cents (\$.75) for the wage rate of Eight Dollars Twenty-five Cents (\$8.25) with the Seventy-five Cents (\$.75) wage increase being reduced by One Cent (\$.01) for every Two Cents (\$.02) above the Eight Dollars Twenty-five Cents (\$8.25) wage rate which shall also be effective with the first full pay period after October 1, 2008.

D. The minimum wage provided for in subsection (A) of this section shall be considered a minimum rate of pay.

E. To compute the minimum wage provided for in subsection (A) of this section, credit toward the

minimum wage must be given for any tips or gratuities, meals or lodging received by the employee up to but not exceeding fifty percent (50%) of said wage.

F. Any employer which furnishes uniforms to its employees may take credit against the minimum wage in an amount equal to the reasonable cost of furnishing the uniforms.

G. Nothing in this act shall be construed to prohibit the payment of an hourly rate in excess of Seven Dollars Fifty Cents (\$7.50) per hour.

§ 905. Exemptions

All employees who are deemed "exempt" from the minimum wage under 29 U.S.C. § 213 and the rules and regulations promulgated pursuant thereto shall be deemed exempt from this act.

TITLE 41

LANDLORD AND TENANT

CHAPTER 1

GENERAL PROVISIONS

§ 1. Short title

This enactment shall be known as the Cherokee Nation Housing Code. This enactment is comprised of three acts: the Cherokee Nation Residential Landlord Tenant Act, the Cherokee Nation Non-Residential Landlord Tenant Act, and the Cherokee Nation Landlord and Tenant Procedures Act.

§ 2. Purpose

The purpose of this Title is to provide substantive and procedural law for determining the rights, obligations, damages and remedies for landlords and tenants.

§ 3. Definitions

Definitions appear in each of the following acts.

CHAPTER 2

RESIDENTIAL LANDLORD AND TENANT ACT

§ 100. Short title

This act shall be known and may be cited as the Residential Landlord and Tenant Act of Cherokee

Nation.

§ 101. Definitions

Save for any differences in the context of this act the following definitions shall be used:

1. "**Building and housing codes**" includes any law, ordinance or Cherokee Nation governmental regulation concerning the fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit that is erected on any property over which Cherokee Nation maintains and exerts jurisdiction.
2. "**C.F.R.**" means the Code of Federal Regulations.
3. "**Deposit**" includes any money or other property required by a landlord from a tenant as and for security and which is to be returned to the tenant upon termination of the rental agreement, less any deductions properly made and allowed by this act or any law, rule, or regulation of the United States of America promulgated to effectuate the Mutual Help Homeownership Program, Low-Income Rental Program or any other low-income housing program administered by the Housing Authority of Cherokee Nation and the Housing Authority of the Delaware Tribe of Indians.
4. "**Dwelling unit**" means a structure, or that part of a structure, which is used as a home, residence or sleeping place by one or more persons.
5. "**Good faith**" means honesty in fact in the conduct of the transaction concerned.
6. "**Home buyer**" means the person(s) who has executed an MHO Agreement with the IHA or an MHO Agreement for another home in the project (as indicated by the context of the agreement), and who has not yet achieved homeownership.
7. "**Indian Housing Authority**" or "**IHA**" means the Housing Authority of Cherokee Nation or the Housing Authority of the Delaware Tribe of Indians.
8. "**Landlord**" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to comply with the disclosure provisions of 41 CNCA § 113 including Cherokee Nation, the Housing Authority of Cherokee Nation and the Housing Authority of the Delaware Tribe of Indians.
9. "**MHO**" means a mutual help and occupancy agreement between the Indian Housing Authority and the home buyer.
10. "**Organization**" includes a corporation or any governmental subdivision, any agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest and any other legal or commercial entity.

11. **"Owner"** means one or more persons, jointly or severally, in whom is vested:

a. all or any part of the legal title to the property, or

b. all or part of the beneficial ownership and a right to present use and enjoyment of the property, and such term includes a mortgagee in possession.

12. **"Person"** includes both individuals and organizations.

13. **"Premises"** means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas and facilities held out for the use of the tenant generally or use of which is promised to the tenant.

14. **"Rent"** means all payments, except deposits and damages, to be made to the landlord under the rental agreement including required monthly payments under a mutual help and occupancy (MHO) agreement.

15. **"Rental agreement"** means all agreements, including a mutual help and occupancy agreement, and valid rules and regulations adopted under 41 CNCA § 126, which establish, embody or modify the terms and conditions concerning the use and occupancy of a dwelling unit and premises. All mutual help occupancy agreements executed between the Housing Authority of Cherokee Nation or Delaware Tribe of Indians and home buyers participating in the Mutual Help Homeownership Opportunity Program shall be considered rental agreements and not mortgages, contracts for deed, or any other instrument purporting to confer homeownership rights either at law or in equity.

16. **"Roomer"** or **"boarder"** is a tenant occupying a dwelling unit which lacks at least one major bathroom or kitchen facility, such as a toilet, refrigerator or stove, in a building:

a. where one or more of such major facilities are supplied to be used in common by the occupants of the roomer or boarder's dwelling unit and one or more other dwelling units, and

b. in which the landlord resides.

17. **"Single-family residence"** means a structure used and maintained as a single dwelling unit. A dwelling unit, including those with common walls, shall be deemed a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

18. **"Tenant"** means any person entitled under a rental agreement to occupy a dwelling unit.

§ 102. Rights, obligations and remedies—Enforcement

A. Any right, obligation or remedy declared by this act is enforceable exclusively in Cherokee Nation District Court and may be prosecuted as part of an action for forcible entry or detainer

unless the provision declaring it specifies a different and limited effect. In any action for breach of a rental agreement or mutual help occupancy agreement or to enforce any right or obligation provided for in the rental agreement or MHO agreement as provided in this act ¹.

B. Actions brought under this act by Cherokee Nation, Housing Authority of Cherokee Nation or Delaware Tribe of Indians may be prosecuted by a staff member or attorney.

¹ So in original; probably should read "as provided in this act, the prevailing party shall be entitled to reasonable attorney fees".

§ 103. Application

A. Except as otherwise provided in this act, this act applies to, regulates and determines rights, obligations and remedies under a rental agreement for a dwelling unit located within any area over which Cherokee Nation exercises jurisdiction.

B. Any agreement, whether written or oral, shall be unenforceable insofar as that agreement, or any provision thereof, conflicts with any provision of this act.

§ 104. Reserved

§ 105. Mitigation of damages

An aggrieved party under the provisions of this act has a duty to mitigate damages.

§ 106. Settlement of claim

A claim or right arising under this act or rental agreement, if disputed in good faith, may be settled by agreement and requires no further consideration.

§ 107. Good faith performance or enforcement

Every duty under this act and every act which must be performed as a condition precedent to the exercise of a right or remedy under this act imposes an obligation of good faith in its performance or enforcement.

§ 108. Beneficial owner to maintain premises

Any agreement, assignment, conveyance, trust deed or security instrument which authorizes a person other than the beneficial owner to act as a landlord of a dwelling unit shall not relieve the beneficial owner of the duty to conform with this act and any other law, code, ordinance or regulation concerning the maintenance and operation of the premises.

§ 109. Rent

A. In the absence of agreement, the occupants of a dwelling unit shall pay to the landlord as rent the fair rental value for the use and occupancy of the dwelling unit.

B. Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the dwelling unit at the beginning of any term of one (1) month or less, while one (1) month's rent shall be payable at the beginning of each month of a longer term.

§ 110. Term of tenancy

Unless the rental agreement fixes a definite term in writing, the tenancy is week-to-week in the case of a roomer or boarder who pays weekly rent, and in all other cases month-to-month.

§ 111. Termination of tenancy

A. Except as otherwise provided in the Residential Landlord and Tenant Act of Cherokee Nation, when the tenancy is month-to-month or a tenancy at will, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives a written notice to the other at least thirty (30) days before the date upon which the termination is to become effective. The thirty-day period to terminate shall begin to run from the date notice to terminate is served as provided in subsection (E) of this section.

B. Except as otherwise provided in the Residential Landlord and Tenant Act of Cherokee Nation, when the tenancy is less than month-to-month, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives to the other a written notice served as provided in subsection (E) of this section at least seven (7) days before the date upon which the termination is to become effective.

C. Unless earlier terminated under the provisions of the Residential Landlord and Tenant Act of Cherokee Nation or unless otherwise agreed upon, a tenancy for a definite term expires on the ending date thereof without notice.

D. If the tenant remains in possession without the landlord's consent after the expiration of the term of the rental agreement or its termination under the Residential Landlord and Tenant Act of Cherokee Nation, the landlord may immediately bring an action for possession and damages. If the tenant's holdover is willful and not in good faith, the landlord may also recover an amount not more than twice the average monthly rental, computed and prorated on a daily basis, for each month or portion thereof that said tenant remains in possession. If the landlord consents to the tenant's continued occupancy, a month-to-month tenancy is thus created, unless the parties otherwise agree.

E. The written notice, required by the Residential Landlord and Tenant Act of Cherokee Nation, to terminate any tenancy shall be served on the tenant or landlord personally unless otherwise specified by law. If the tenant cannot be located, service shall be made by delivering the notice to any family member of such tenant over the age of twelve (12) years residing with the tenant. If

service cannot be made on the tenant personally or on such family member, notice shall be posted at a conspicuous place on the dwelling unit of the tenant. If the notice is posted, a copy of such notice shall be mailed to the landlord by certified mail.

§ 112. Duties of parties upon termination of tenancy

Except as otherwise provided in this act, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and be determined upon the effective date of said termination, and the parties shall thereupon discharge any remaining obligations under this act as soon as practicable.

§ 113. Rental agreements

A. A rental agreement may not provide that either party thereto:

1. agrees to waive or forego rights or remedies under this act;
2. authorizes any person to confess judgment on a claim arising out of the rental agreement;
3. agrees to pay the other party's attorney fees;
4. agrees to the exculpation, limitation or indemnification of any liability arising under law for damages or injuries to persons or property caused by or resulting from the acts or omissions of either party, their agents, servants or employees in the operation or maintenance of the dwelling unit or the premises of which it is a part;
5. agrees to the establishment of a lien except as allowed by this act in and to the property of the other party.

B. A provision prohibited by subsection (A) of this section and included in a rental agreement is unenforceable.

C. Any prohibition provided by subsection (A) shall be superseded by MHO provisions mandated by federal law.

§ 113.1. Denial or termination of tenancy because of guide, signal or service dog

A landlord shall not deny or terminate a tenancy to a blind, deaf, or physically handicapped person because of the guide, signal, or service dog of such person unless such dogs are specifically prohibited in the rental agreement entered into prior to November 1, 1985.

§ 114. Reserved

§ 115. Damage or security deposits

A. Any damage or security deposit required by a landlord of a tenant must be kept in an escrow account for the tenant. Misappropriation of the security deposit shall be a crime and punishable by a term in the Cherokee Nation Tribal detention facility not to exceed six (6) months and by a fine in an amount not to exceed twice the amount misappropriated from the escrow account.

B. Upon termination of the tenancy, any security deposit held by the landlord may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with this act and the rental agreement, all as itemized by the landlord in a written statement to be delivered by mail with a return receipt requested and to be signed for by any person of statutory service age at such address or in person to the tenant if he can reasonably be found. If the landlord proposes to retain any portion of the security deposit for rent, damages or other legally allowable charges under the provisions of this act or the rental agreement, the landlord shall return the balance of the security deposit without interest to the tenant within thirty (30) days after the termination of tenancy, delivery of possession and written demand by the tenant. If the tenant does not make such written demand of such deposit within six (6) months after termination of the tenancy, the deposit reverts to the landlord in consideration of the costs and burden of maintaining the escrow account, and the interest of the tenant in that deposit terminates at that time.

C. Upon cessation of a landlord's interest in the dwelling unit including, but not limited to, termination of interest by sale, assignment, death, bankruptcy, appointment of receiver or otherwise, the person in possession of the tenants' damage or security deposits at his option or pursuant to court order shall, within a reasonable time:

1. transfer said deposits to the landlord's successor in interest and notify the tenants in writing of such transfer and of the transferee's name and address; or
2. return the deposits to the tenants.

D. Upon receipt of the transferred deposits under paragraph 1 of subsection (C) of this section, the transferee, in relation to such deposits, shall have all the rights and obligations of a landlord holding such deposits under this act.

E. If a landlord or manager fails to comply with this section or fails to return any prepaid rent required to be paid to a tenant under this act, the tenant may recover the damage and security deposit and prepaid rent, if any.

F. Except as otherwise provided by the rental agreement, a tenant shall not apply or deduct any portion of the security deposit from the last month's rent or use or apply such tenant's security deposit at any time in lieu of payment of rent.

G. This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this act.

H. Tenants under an MHO agreement may bring an action for settlement or accounting of the

disputed accounts and contributions only after the tenants have exhausted their administrative remedies provided by the Indian Housing Authority.

§ 116. Person to accept service or notice—Identity of owner and manager—Failure to comply

A. As a part of any rental agreement the lessor shall prominently and in writing identify what person at what address is entitled to accept service or notice under this act. The landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

1. the person or persons authorized to manage the premises;
2. the owner or owners of the premises; or
3. the name and address of a person authorized to act for and on behalf of the owner for the purpose of receipt of service of process and receiving and receipting for notices.

The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor owner, landlord or manager.

B. A person who fails to comply with this section becomes a landlord for the purposes of this act and an agent of each person who is otherwise a landlord for:

1. receipt of service of process and receiving and receipting for notices and demands; and
2. performing the obligations of a landlord under this act and under the rental agreement and expending and making available for the purpose all rents collected from the premises.

§ 117. Commencement of tenancy—Delivery of possession—Wrongful possession

At the commencement of the term a landlord shall deliver full possession of the premises to the tenant in compliance with the rental agreement and 41 CNCA § 118. Except as otherwise provided in this act, the landlord may bring an action for possession against any other person wrongfully in possession and may recover his damages.

§ 118. Duties of landlord and tenant

A. A landlord shall at all times during the tenancy:

1. Except in the case of a single-family residence, keep all common areas of his building, grounds facilities and appurtenances in a clean, safe and sanitary condition;
2. Make all repairs and do whatever is necessary to put and keep the tenant's dwelling unit and premises in a fit and habitable condition;

3. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;

4. Except in the case of one or two-family residences or where provided by a governmental entity, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for the frequent removal of such wastes; and

5. Except in the case of a single-family residence or where the service is supplied by direct and independently-metered utility connections to the dwelling unit, supply running water and reasonable amounts of hot water at all times and reasonable heat.

B. The landlord and tenant of a dwelling unit may agree by a conspicuous writing independent of the rental agreement that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling.

C. Conflicting terms of MHO agreements approved by the Indian Housing Authority shall supersede provisions of this section.

§ 119. Conveyance of property—Attornment of tenant

A. A conveyance of real estate, or of any interest therein, by a landlord shall be valid without the attornment of the tenant, but the payment of rent by the tenant to the grantor at any time before written notice of the conveyance is given to the tenant shall be good against the grantee.

B. The attornment of a tenant to a stranger shall be void and shall not affect the possession of the landlord unless it is made with the consent of the landlord, or pursuant to a judgment at law, or the order or decree of a court.

C. Unless otherwise agreed and except as otherwise provided in this act, upon termination of the owner's interest in the dwelling unit including, but not limited to, terminations of interest by sale, assignment, death, bankruptcy, appointment of a receiver or otherwise, the owner is relieved of all liability under the rental agreement and of all obligations under this act as to events occurring subsequent to written notice to the resident of the termination of the owner's interest. The successor in interest to the owner shall be liable for all obligations under the rental agreement or under this act. Upon receipt by a resident of written notice of the termination of the owner's interest in the dwelling unit, a resident shall pay all future rental payments, when due, to the successor in interest to the owner.

D. Unless otherwise agreed and except as otherwise provided in this act, a manager of premises that includes a dwelling unit is relieved of liability under a rental agreement and this act as to events occurring after written notice to the tenant of the termination of his management.

§ 120. Failure of landlord to deliver possession of dwelling unit to tenant

A. If the landlord fails to deliver possession of the dwelling unit to the tenant, rent abates until possession is delivered and the tenant may terminate the rental agreement by giving a written notice of such termination to the landlord, whereupon the landlord shall return all prepaid rent and deposit, or the tenant may, at his option, demand performance of the rental agreement by the landlord and maintain an action for possession of the dwelling unit against any person wrongfully in possession and recover the actual damages sustained by him.

B. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than twice the monthly rental as specified in the rental agreement, computed and prorated on a daily basis, for each month, or portion thereof, that said person wrongfully remains in possession.

§ 121. Landlord's breach of rental agreement—Deductions from rent for repairs—Failure to supply heat, water or other essential services—Habitability of dwelling

A. Except as otherwise provided in this act, if there is a material noncompliance by the landlord with the terms of the rental agreement or a noncompliance with any of the provisions of 41 CNCA § 118 which noncompliance materially affects health or safety, the tenant may deliver to the landlord a written notice specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within fourteen (14) days, and thereafter the rental agreement shall so terminate as provided in the notice unless the landlord adequately remedies the breach within the time specified.

B. Except as otherwise provided in this act, if there is a material noncompliance by the landlord with any of the terms of the rental agreement or any of the provisions of 41 CNCA § 118 which noncompliance materially affects health and the breach is remediable by repairs, the reasonable cost of which is less than One Hundred Dollars (\$100.00), the tenant may notify the landlord in writing of his intention to correct the condition at the landlord's expense after the expiration of fourteen (14) days. If the landlord fails to comply within said fourteen (14) days, or as promptly as conditions require in the case of an emergency, the tenant may thereafter cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection, in which event the rental agreement shall not terminate by reason of that breach.

C. Except as otherwise provided in this act, if, contrary to the rental agreement or 41 CNCA § 118, the landlord willfully or negligently fails to supply heat, running water, hot water, electric, gas or other essential service, the tenant may give written notice to the landlord specifying the breach and thereafter may:

1. Upon written notice, immediately terminate the rental agreement; or

2. Procure reasonable amounts of heat, hot water, running water, electric, gas or other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or

3. Recover damages based upon the diminution of the fair rental value of the dwelling unit; or

4. Upon written notice, procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

D. Except as otherwise provided in this act, if there is a noncompliance by the landlord with the terms of the rental agreement or 41 CNCA § 118, which noncompliance renders the dwelling unit uninhabitable or poses an imminent threat to the health and safety of any occupant of the dwelling unit and which noncompliance is not remedied as promptly as conditions require, the tenant may immediately terminate the rental agreement upon written notice to the landlord which notice specifies the noncompliance.

E. All rights of the tenant under this section do not arise until he has given written notice to the landlord or if the condition complained of was caused by the deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with his consent.

F. Conflicting terms of a MHO agreement approved by the Indian Housing Authority shall supersede provisions of this section.

§ 122. Damage to or destruction of dwelling unit—Rights and duties of tenant

A. If the dwelling unit or premises are damaged or destroyed by fire or other casualty to an extent that enjoyment of the dwelling unit is substantially impaired, unless the impairment is caused by the deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with his consent, the tenant may:

1. Immediately vacate the premises and notify the landlord in writing within one (1) week thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

2. If continued occupancy is possible, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair value of the dwelling unit.

B. If the rental agreement is terminated under this section the landlord shall return all deposits recoverable under 41 CNCA § 115 and all prepaid and unearned rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or other casualty.

§ 123. Wrongful removal or exclusion from dwelling unit

If a landlord wrongfully removes or excludes a tenant from possession of a dwelling unit, the tenant may recover possession by a proceeding brought in Cherokee Nation District Court, or terminate the rental agreement after giving notice of such intention to the landlord, and in either case recover an amount not more than twice the average monthly rental, or twice his actual damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all deposits recoverable under 41 CNCA § 115 and all prepaid and unearned rent.

§ 124. Unlawful entry or lawful entry in unreasonable manner—Harassment of tenant—Damages

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or harasses the tenant by making repeated unreasonable demands for entry, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or, upon written notice, terminate the rental agreement. In either case the tenant may recover actual damages.

§ 125. Defective condition of premises—Report to landlord

Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is unknown to the landlord, shall be reported by the tenant to the landlord as soon as practicable.

§ 126. Tenant's use and occupancy of premises—Rules and regulations

A. A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. Such a rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, peace, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally; and
2. It is reasonably related to the purpose for which it is adopted; and
3. It applies to all tenants in the premises in a fair manner; and
4. It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant what such tenant must or must not do to comply; and
5. It is not for the purpose of evading the obligations of the landlord; and
6. The tenant has notice of it at the time such tenant enters into the rental agreement, or when it is adopted.

B. If the rule or regulation is adopted after the tenant enters into the rental agreement and that rule

or regulation works a substantial modification of such tenant's bargain, the rule or regulation so adopted is not valid and enforceable against the tenant unless he consents to it in writing.

§ 127. Duties of tenant

A. The tenant shall at all times during the tenancy comply with the following in such a manner as to protect the property interest of his landlord and any person who resides within three hundred feet (300') of the boundary of the tenant's dwelling unit:

1. Keep that part of the premises which such tenant occupies and uses as safe, clean and sanitary as the condition of the premises permits;
2. Dispose from such tenant's dwelling unit all ashes, garbage, rubbish and other waste in a safe, clean and sanitary manner;
3. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean and sanitary as their condition permits;
4. Use in a safe and nondestructive manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises;
5. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person, animal or pet to do so;
6. Not engage in conduct or allow any person or animal or pet, on the premises with the express or implied permission or consent of the tenant, to engage in conduct that will disturb the quiet and peaceful enjoyment of the premises by other tenants.

B. Cherokee Nation or persons who reside within three hundred feet (300') of the offending tenant's dwelling unit and whose peaceful enjoyment or property is damaged by violation of subsection (A) may bring against the tenant or any third party a cause of action for abatement of the violation and/or damages.

§ 128. Consent of tenant for landlord to enter dwelling unit—Emergency entry—Abuse of right of entry—Notice—Abandoned premises—Refusal of consent

A. A tenant shall not unreasonably withhold consent to the landlord, his agents and employees, to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

B. A landlord, his agents and employees may enter the dwelling unit without consent of the tenant in case of emergency.

C. A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of

emergency or unless it is impracticable to do so, the landlord shall give the tenant at least one (1) day's notice of his intent to enter and may enter only at reasonable times.

D. Unless the tenant has abandoned or surrendered the premises, a landlord has no other right of access during a tenancy except as is provided in this act or pursuant to a court order.

E. If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or he may terminate the rental agreement.

§ 129. Tenant's breach of rental agreement—Wrongful abandonment

A. Unless otherwise agreed, use by the tenant of the dwelling unit for any purpose other than as his place of abode shall constitute a breach of the rental agreement and shall be grounds for terminating the rental agreement.

B. If the tenant wrongfully quits and abandons the dwelling unit during the term of the tenancy, the landlord shall make reasonable efforts to make the dwelling unit available for rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, said rental agreement terminates as of the commencement date of the new tenancy. If the landlord fails to use reasonable efforts to make the dwelling unit available for rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If, after making reasonable effort to make the dwelling unit available for rental after abandonment, the landlord fails to re-rent the premises for a fair rental during the term, the tenant shall be liable for the entire rent or the difference in rental, whichever may be appropriate, for the remainder of the term. If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.

§ 130. Abandoning, surrendering or eviction from possession of dwelling unit—Disposition of personal property

If the tenant abandons or surrenders possession of the dwelling unit or has been lawfully removed from the premises through eviction proceedings and leaves household goods, furnishings, fixtures, or any other personal property in the dwelling unit, the landlord may take possession of the property, and if, in the judgment of the landlord, the property has no ascertainable or apparent value, the landlord may dispose of the property without any duty of accounting or any liability to any party. Any property left with the landlord for a period of three (3) months or longer shall be conclusively determined to be abandoned and as such the landlord may dispose of said property in any manner which he deems reasonable and proper without liability to the tenant or any other interested party.

§ 131. Delinquent rent

A. If rent is unpaid when due, the landlord may bring an action for recovery of the rent at any time thereafter.

B. A landlord may terminate a rental agreement for failure to pay rent when due, if the tenant fails to pay the rent within five (5) days after written notice of landlord's demand for payment.

C. Demand for past due rent is deemed a demand for possession of the premises and no further notice to quit possession need be given by the landlord to the tenant for any purpose.

§ 132. Reserved

§ 133. Lien on tenant's property

A landlord shall have a lien upon that part of the property belonging to the tenant which has a reasonable relationship as nearly as practicable to the amount of the debt owed, which may be in a rental unit used by him at the time notice is given, for the proper charges owed by the tenant, and for the cost of enforcing the lien, with the right to possession of the property until the debt obligation is paid to the landlord. Provided, however, that such lien shall be secondary to the claim of any prior bona fide holder of chattel mortgage or to the rights of a conditional seller of such property, other than the tenant.

For purposes of this section, property shall mean any baggage or other property belonging to the tenant which may be in the rental unit used by the tenant but which shall not include all tools, musical instruments or books used by the tenant in any trade or profession, all family portraits and pictures, all wearing apparel, any type of prosthetic or orthopedic appliance, hearing aid, glasses, false teeth, glass eyes, bedding, contraceptive devices, soap, tissues, washing machines, vaporizers, refrigerators, food, cooking and eating utensils, all other appliances personally used by the tenant for the protection of his health, or any baby bed or any other item used for the personal care of babies.

§ 134. Procedure for enforcement of lien

A. The lien provided for by 41 CNCA § 133 may be foreclosed by a sale of such personal property upon the notice and in the manner following:

The notice shall contain:

1. The names of the owner and any other party or parties who may claim any interest in said property;
2. A description of the property to be sold;
3. The value of the rent provided and unpaid and the dates thereof;
4. The time and place of sale;
5. The name of the party, agent or attorney foreclosing such lien.

B. Such notice shall be posted on the front door of the tenant's dwelling unit at least ten (10) days before the time therein specified for such sale, and a copy of said notice shall be mailed to the owner and any other party or parties claiming any interest in said property if known, at their last known post office address by certified mail on the day of posting. Party or parties who claim any interest in said property shall include owners of chattel mortgages and conditional sales contracts as shown by the records in the office of the county clerk in the county where the lien is foreclosed.

C. The lienor or any other person may in good faith become a purchaser of the property sold.

D. Proceedings for foreclosure under this act shall not be commenced until thirty (30) days after the lien has accrued.

§ 135. Construction of act

This act shall be liberally construed and applied to promote and effectuate its underlying purposes and policies.

§§ 136 to 139. Reserved

§ 140. Federal rules and regulations affecting Indian housing programs shall take precedence

Any rule or regulation that has been promulgated by the United States of America, through the Department of Housing and Urban Development, for the implementation and management of Indian housing programs and which the Indian Housing Authority is required to follow shall supersede the provisions of this act and shall be controlling with respect to this act. Prior to commencement of any action under this act an aggrieved party must first exhaust all available administrative remedies available including those applicable and provided by an MHO.

§ 141. Claims brought under provisions of Landlord and Tenant Procedures Act

Actions under the Non-Residential Landlord and Tenant Act of Cherokee Nation and the Residential Landlord and Tenant Act shall be brought in accordance with the provisions of the Cherokee Nation Landlord and Tenant Procedure Act.

§ 142. Termination of mutual help occupancy agreement

A. The procedure for the termination of the MHO shall be according to 24 C.F.R. § 905.446.

B. In the event that the home buyer disputes any item in the settlement following a termination of an MHO or the disposition of personal property abandoned by the home buyer, the home buyer shall first exhaust all administrative remedies available through the Indian Housing Authority's grievance procedure before the matter shall be within the jurisdiction of the District Court of Cherokee Nation.

§ 143. Rules of evidence

The Federal Rules of Evidence, Public Law 93–595, 88 Stat. 1926, and its cumulative amendments shall apply to all proceedings of the Court.

CHAPTER 3

NON-RESIDENTIAL LANDLORD AND TENANT ACT

§ 200. Application

The Non-Residential Landlord and Tenant Act shall apply to all non-residential property under the jurisdiction of Cherokee Nation of which Cherokee Nation has a property interest as defined by 41 CNCA § 251.

§ 201. Who deemed tenant at will

Any person in the possession of real property, with the assent of the owner, is presumed to be a tenant at will, unless the contrary is shown, except as herein otherwise provided.

§ 202. Tenant holding over as tenant at will—Expiration of unwritten contract

When premises are let for one or more years, and the tenant, with the assent of the landlord, continues to occupy the premises after the expiration of the term, such tenant shall be deemed to be a tenant at will; provided, that no lease or rental contract of premises shall be continued, unless the original contract was in writing, and all other lease or contracts shall expire by limitation with the calendar year, without notice.

§ 203. Tenant holds from one period to another, when

When rent is reserved, payable at intervals of three months or less, the tenant shall be deemed to hold from one period to another, equal to the intervals between the days of payment, unless there is an express contract to the contrary.

§ 204. Time of notice to terminate tenancy

Thirty (30) days' notice in writing is necessary to be given by either party before he can terminate a tenancy at will, or from one period to another, of three months or less; but where in any case rent is reserved, payable at intervals of less than thirty days, the length of notice need not be greater than such interval between the days of payment.

§ 205. Termination of tenancy from year to year

All tenancies from year to year, may be terminated by at least three (3) months' notice, in writing, given to the tenant prior to the expiration of the year.

§ 206. Notice to quit where rent not paid

If a tenant, for a period of three months or longer, neglects or refuses to pay rent when due, then (10) days' notice in writing to quit, shall determine the lease, unless such rent be paid before the expiration of said ten (10) days.

§ 207. Notice when rent not paid under tenancy for less than three months

If a tenant for a period of less than three months, shall neglect or refuse to pay rent when due, five (5) days' notice, in writing, to quit, shall determine the lease, unless such rent be paid before the expiration of said five (5) days.

§ 208. Notice to quit not required, when

When the time for the termination of a tenancy is specified in the contract, or where a tenant at will commits waste, or in the case of a tenant by sufferance, and in any case where the relation of landlord and tenant does not exist no notice to quit shall be necessary.

§ 209. Service of notice—Termination of tenancy

The notice to terminate the tenancy required in this act may be served on the tenant, or, if he cannot be found, by delivering the same to some person over the age of twelve (12) years, residing on the premises, having first made known to such person the contents thereof; or, if service cannot be made by the use of reasonable diligence on the tenant or on any person over the age of twelve (12) years residing on the premises, the same may be served by posting said notice at some conspicuous place on the building on said premises and if there be no buildings on said premises then said notice shall be posted at some conspicuous place on said premises and if said notice is posted, a copy of said notice shall be mailed to the tenant at his last-known address by registered mail and such notice shall operate to terminate the tenancy at the end of the period after the date of such posting and mailing that it would have been terminated by personal service of such notice on the date of such posting and mailing; provided, that in no event shall such posting and mailing terminate any tenancy within a period of less than ten days from the date of such posting and mailing.

§ 210. Tenant may not assign, when

No tenant for a term not exceeding two (2) years, or at will, or by sufferance, shall assign or transfer his term or interest, or any part thereof, to another, without the written assent of the landlord or person holding under him.

§ 211. Landlord may reenter after unauthorized assignment

If any tenant shall violate the provisions of the preceding section, the landlord or person holding under him, after giving ten (10) days' notice to quit possession, shall have a right to reenter the

premises and take possession thereof, and dispossess the tenant, subtenant or undertenant.

§ 212. Attornment unnecessary to conveyance

A conveyance of real estate, or of any interest therein, by the landlord, shall be valid without the attornment of the tenant; but the payment of rent by the tenant to the grantor, at any time before notice of sale, given to said tenant, shall be good against the grantee.

§ 213. Attornment to stranger void

The attornment of a tenant to a stranger shall be void, and shall not affect the possession of his landlord unless it be made with the consent of the landlord, or pursuant to a judgment at law, or the order or decree of a court.

§ 214. Rights of sublessee

Sublessees shall have the same remedy upon the original covenant against the principal landlord as they might have had against their immediate lessor.

§ 215. Rights of alienees of lessors and lessees

Alienees of lessors and lessees of land shall have the same legal remedies in relation to such lands as their principal.

§ 216. Rents from life grants

Rents from lands granted for life or lives may be recovered as other rents.

§ 217. Recovery of arrears of rent from life grants after death

A person entitled to rents dependent on the life of another, may recover arrears unpaid at the death of that other.

§ 218. Rights and liabilities of executors and administrators

Executors and administrators shall have the same remedies to recover rents, and be subject to the same liabilities to pay them, as their testators and intestates.

§ 219. Occupants without contract liable for rent

The occupant of any lands, without special contract, shall be liable for the rent to any person entitled thereto.

§ 220. Contribution by joint tenants

If a joint tenant, or tenant in common, or tenant in coparcenary, have, by consent, management of the estate, and make repairs and improvements with the knowledge, and without objection, of his cotenant or coparcener, such cotenant or coparcener shall contribute ratably thereto.

§ 221. Joint tenant may recover his share of rents

A joint tenant, or tenant in common, or tenant in coparcenary, may maintain an action against his cotenant or coparcener, or their personal representatives, for receiving more than his just proportion of the rents and profits.

§ 222. Recovery for waste or trespass by remainderman

A person seized of an estate in remainder or reversion may maintain an action for waste or trespass, for injury to the inheritance, notwithstanding an intervening estate for life or years.

§ 223. Farm rent lien on crop

Any rent due for farming land shall be a lien on the crop growing or made on the premises. Such lien may be enforced by action and attachment therein, as hereinafter provided.

§ 224. Crop rent

When any such rent is payable in a share or certain proportion of the crop, the lessor shall be deemed the owner of such share or proportion, and may if the tenant refuse to deliver him such share or proportion, enter upon the land and take possession of the same, or obtain possession thereof by action of replevin.

§ 225. Removal of crops to defraud landlord

Any person who shall remove any crops from leased or rented premises with intent to deprive the owner or landlord interested in said land of any of the rent due from said land, or who shall fraudulently appropriate the rent due the owner or landlord of said land, to himself or any person not entitled thereto, shall be deemed guilty of embezzlement and punished accordingly.

§ 226. Purchaser of crop with notice liable for rent

The person entitled to rent may recover from the purchaser of the crop, or any part thereof, with notice of the lien, the value of the crop purchased, to the extent of the rent due and damages.

§ 227. Landlord may have attachment, when

When any person who shall be liable to pay rent (whether the same be due or not, if it be due within one (1) year thereafter, and whether the same be payable in money or other things), intends to remove or is removing, or has, within thirty (30) days, removed his property, or his crops, or any part thereof, from the leased premises, the person to whom the rent is owed may commence an

action; and upon making an affidavit, stating the amount of rent for which such person is liable, and one or more of the above facts, and executing an undertaking as in other cases, an attachment shall issue in the same manner and with the like effect as is provided by law in other actions.

§ 228. Attachment for rent lien on crops

In an action to enforce a lien on crops for rent of farming lands, the affidavit for attachment shall state that there is due from the defendant to the plaintiff a certain sum, naming it, for rent of farming lands, describing the same, and that the plaintiff claims a lien on the crop made on such land. Upon making and filing such affidavit and executing an undertaking as prescribed in the preceding section, an order of attachment shall issue as in other cases, and shall be levied on such crop, or so much thereof as may be necessary; and all other proceedings in such attachment shall be the same as in other actions.

§ 229. Reserved

§ 230. Taxation of improvements

All improvements put on leased lands, that do not become a part of the realty, shall be assessed to the owner of such improvements as personal property; and the taxes imposed on such improvements shall be collected by levy and sale of the interest of such owner, the same as in all other cases of the collection of taxes on personal property.

§§ 231, 232. Reserved

§ 233. Lease presumed to be for one year

A lease of real property, other than lodgings, in a places where there is no usage on the subject, is presumed to be for one (1) year from its commencement, unless otherwise expressed in the lease.

§ 234. Reserved

§ 235. Continued possession renews the lease, when

If a lessee of real property remains in possession thereof, after the expiration of the lease and the lessor accepts rent from him, the parties are presumed to have renewed the lease on the same terms and for the same time, not exceeding one (1) year.

§ 236. Renewal of lease presumed unless notice of termination given

A lease of real property, for a term not specified by the parties, is deemed to be renewed, as stated in the last section, at the. end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the lease itself, not exceeding one (1) month.

§ 237. Rent payable, when

When there is no contract or usage to the contrary, the rent of agricultural and wild land is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for shorter period than the periods herein specified is payable at the termination of such period.

§ 238. Duty of tenant in case of proceedings

Every tenant who received notice of any proceeding to recover the real property occupied by him or the possession thereof must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which said landlord may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing.

§§ 239 to 250. Reserved

§ 251. Abandonment or surrender of non-residential rental property—Definitions

As used in the Cherokee Nation Landlord Non-Residential Tenant Act:

1. "**Landlord**" means the owner, lessor or sublessor of a non-residential rental property;
2. "**Non-residential rental property**" means any land or building which is rented or leased to a tenant for other than residential purposes and the rental agreement of which is not regulated under the provisions of the Cherokee Nation Residential Landlord and Tenant Act.
3. "**Tenant**" means any person entitled under a rental agreement to occupy the non-residential rental property.

§ 252. Abandonment or surrender of non-residential rental property—Disposition of personal property of tenant—Notice—Storage costs—Liability of landlord—Application of proceeds of sale

A. If a tenant abandons, surrenders possession of, or is evicted from non-residential rental property and leaves goods, furnishings, fixtures or any other personal property on the premises of the non-residential rental property, the landlord may take possession of the personal property ten (10) days after the tenant receives personal service of notice or fifteen (15) days after notice is mailed, whichever is latest, and if the personal property has no ascertainable or apparent value, the landlord may dispose of the personal property in a reasonable commercial manner. In any such case, the landlord has the option of complying with the provisions of subsection (B) of this section.

B. If the tenant abandons, surrenders possession of, or is evicted from the non-residential rental property and leaves goods, furnishings, fixtures or any other personal property of an ascertainable

or apparent value on the premises of the non-residential rental property, the landlord may take possession of the personal property and give notice to the tenant, demanding that the personal property be removed within the dates set out in the notice but not less than (15) days after delivery or mailing of such notice, and that if the personal property is not removed within the time specified in the notice, the landlord may sell the personal property at a public sale. The landlord may dispose of perishable commodities in any manner the landlord considers fit. Payment by the tenant of all outstanding rent, damages, storage fees, court costs and attorney fees shall be a prerequisite to the return of the personal property. For purposes of this section, notice sent by registered or certified mail to the tenant's last-known address with forwarding requested shall be deemed sufficient notice.

C. After notice is given as provided in subsection (B) of this section, the landlord shall store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care of the personal property. The landlord shall not be responsible to the tenant for any loss not caused by the landlord's deliberate or negligent act. The landlord may elect to store the personal property on the premises of the non-residential rental property that was abandoned or surrendered by the tenant or from which the tenant was evicted, in which event the storage cost may not exceed the fair rental value of the premises. If the tenant's personal property is removed to a commercial storage company, the storage cost shall include the actual charge for the storage and removal from the premises to the place of storage.

D. If the tenant makes timely response in writing of an intention to remove the personal property from the premises and does not do so within the later of the time specified in the notice provided for in subsection (B) of this section or within fifteen (15) days of the delivery or mailing of the tenant's written response, it shall be conclusively presumed that the tenant abandoned the personal property. If the tenant removes the personal property within the time limitations provided in this subsection, the landlord is entitled to the cost of storage for the period during which the personal property remained in the landlord's safekeeping plus all other costs that accrued under the rental agreement.

E. If the tenant fails to take possession of the personal property as prescribed in subsection (D) of this section and make payments of all amounts due and owing, the personal property shall be deemed abandoned and the landlord may thereupon sell the personal property in any reasonable manner without liability to the tenant.

F. Notice of sale shall be mailed to the owner and any other party claiming any interest in said personal property, if known, at their last-known post office address, by certified or registered mail at least ten (10) days before the time specified therein for such sale. For purposes of this section, parties who claim an interest in the personal property include holders of security interests or other liens or encumbrances as shown by the records in the office of the court clerk of the county where the lien would be foreclosed.

G. The landlord or any other person may in good faith become a purchaser of the personal property sold. The landlord may dispose of any personal property upon which no bid is made at the public sale.

H. The landlord may not be held to respond in damages in an action by a tenant claiming loss by reason of the landlord's electing to destroy, sell or otherwise dispose of the personal property in compliance with the provisions of this section. If, however, the landlord deliberately or negligently violated the provisions of this section, the landlord shall be liable for actual damages.

I. Any proceeds from the sale or other disposition of the personal property, as provided in subsection (B) of this section, shall be applied by the landlord in the following order:

1. to the reasonable expenses of taking, holding, preparing for sale or disposition, giving notice and selling or disposing thereof;
2. to the satisfaction of any properly recorded security interest;
3. to the satisfaction of any amount due from the tenant to the landlord for rent or otherwise;
4. the balance, if any, shall be paid into the court within thirty (30) days of the sale and held for six (6) months and, if not claimed by the owner of the personal property within that period, shall escheat to Cherokee Nation.

§ 253. Claims brought under the Landlord and Tenant Procedures Act

Actions under this act shall be brought in Cherokee Nation District Court and under the provisions of the Cherokee Nation Landlord and Tenant Procedures Act.

§ 254. Application

A. Except as otherwise provided in this act, this act applies to, regulates and determines rights, obligations and remedies under a rental agreement for a non-residential property located within any area over which Cherokee Nation exercises jurisdiction.

B. Any agreement, whether written or oral, shall be unenforceable insofar as that agreement, or any provision thereof, conflicts with any provision of this act.

CHAPTER 4

LANDLORD AND TENANT PROCEDURES ACT

§ 1751. Suits authorized under landlord and tenant procedures

The following suits may be brought under the landlord and tenant procedures:

1. Actions under the Non-Residential Landlord and Tenant Act and Residential Landlord and Tenant Act for the adjudication of rights arising thereunder, recovery of damages or rents, and other such equitable relief as justice requires.

2. No action may be brought under landlord and tenant procedures by any collection agency, collection agent or any assignee of a claim.

§ 1752. Reserved

§ 1753. Affidavit—Form—Filing

Actions under this act shall be initiated by plaintiff or his attorney filing an affidavit in substantially the following form with the Clerk of the Court:

In the District Court of Cherokee Nation

Plaintiff	
vs.	LT No. _____
Defendant	

CHEROKEE NATION }
 }ss.
 CHEROKEE COUNTY }

_____, being sworn, deposes and says:

That the defendant resides at _____, in _____ county, in Cherokee Nation and that the mailing address of the defendant is _____.

That the defendant is indebted to the plaintiff in the sum of \$_____ for rent, and for the further sum of \$_____ for damages to the premises rented by the defendant; that plaintiff has demanded payment of said sum(s), but the defendant refused to pay the same and no part of the amount sued for has been paid,

and/or

That the defendant is wrongfully in possession of certain real property described as _____, that plaintiff is entitled to possession thereof and had demanded that defendant relinquish possession of said real property and vacate the premises but that defendant wholly refuses to do so.

Subscribed and sworn to before me this _____ day of _____, 20 ____.

Notary Public (Clerk or Judge)

My Commission Expires:

On the affidavit shall be printed:

ORDER AND SUMMONS

The people of Cherokee Nation, to the within-named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as ____ appear or to appear and show cause why you should be permitted to retain control and possession thereon.

You are further directed to answer the foregoing claim and to have with you all books, papers and witnesses needed by you to establish your defense to said claim.

This matter shall be heard at ____ (name or address of building), in ____, County of ____, within the boundaries of Cherokee Nation, at the hour of ____ o'clock of the ____ day of ____, 20 ____, or at the same time and place seven (7) days after service hereof, whichever is the latter. And you are further notified that in case you do not so appear judgment will be given against you as follows:

For the amount of said rent and/or damages as it is stated in said affidavit, or for possession of the real property described in said affidavit whereupon a writ of assistance shall issue directing the Marshal of Cherokee Nation to remove you from said premises and take possession thereof.

Date this ____ day of ____, 20 ____.

Clerk of the Court (or Judge)

§ 1754. Preparation of affidavit—Copies

The claimant shall prepare such an affidavit as is set forth in 41 CNCA § 1753, or, at his request, the Clerk of said Court shall draft the same for him. Such affidavit may be presented by the claimant in person or sent to the Clerk by mail. Upon receipt of said affidavit, properly sworn to, the Clerk shall file the same and make a true and correct copy thereof, and the Clerk shall fill in the blanks in the order printed on said copy and sign the order.

§ 1755. Service of affidavit and order upon defendant

Unless service by the Marshal or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The Clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from

addressee only. The Clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the Clerk shall deliver a copy of the affidavit and order to the Sheriff who shall serve the defendant in the time set in 41 CNCA § 1756.

§ 1756. Date for appearance of defendant

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than thirty (30) days nor less than ten (10) days from the date of said order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in said order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff must apply to the Clerk for a new order setting a new day for the appearance of the defendant, which shall not be more than thirty (30) days nor less than ten (10) days from the date of the issuance of the new order. When the Clerk has fixed the date for appearance of the defendant, he shall inform the plaintiff, either in person or by certified mail, of said date and order the plaintiff to appear on said date.

§ 1757. Reserved

§ 1758. Counterclaim or setoff by verified answer

No formal pleading, other than the claim and notice, shall be necessary, but if the defendant wishes to state new matter arising under the Cherokee Nation Non-Residential Landlord and Tenant Act or the Cherokee Nation Residential Landlord and Tenant Act, he shall file a verified answer, a copy of which shall be delivered to the plaintiff in person, and filed with the Clerk of the Court not later than seventy-two (72) hours prior to the hour set for the appearance of said defendant in such action. Such answer shall be made in substantially the following form:

COUNTERCLAIM OR SETOFF

In the District Court of Cherokee Nation

Plaintiff

vs.

LT No _____

Defendant

Claim of defendant.

In the District Court of Cherokee Nation, }

} ss.

Cherokee County }

____, being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of \$ ____ for ____, which amount defendant prays may be allowed as a claim against the plaintiff herein.

Subscribed and sworn to before me this ____ day of ____, 20 ____.

Notary Public (Clerk or Judge)

§ 1759. Reserved

§ 1760. Depositions—Interrogatories

No depositions shall be taken or interrogatories or other discovery proceeding shall be used under the landlord and tenant procedure except in aid of execution.

§ 1761. Trial by Court—Request for Reporter or jury—Evidence—Informality

Actions under the landlord and tenant procedure shall be tried to the Court. Provided, however, if either party wishes a Reporter, he must notify the Clerk of the Court in writing at least forty-eight (48) hours before the time set for the defendant's appearance and must deposit with said notice with the clerk Fifty Dollars (\$50.00). The party wishing a Reporter is liable for the cost of the Reporter and must make satisfactory arrangements with the Reporter for payment. The parties may have the proceedings recorded solely by electronic media. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the Judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such action shall be informal with the sole object of dispensing speedy justice between the parties.

§ 1762. Payment of judgment

If judgment be rendered against either party for the payment of money, said party shall pay the same immediately or pay the judgment in accordance with a judgment satisfaction plan arranged by the Court. Each side shall pay its own attorney fees and court costs.

§ 1763. Appeals

Appeals may be taken from the judgment rendered under landlord and tenant procedure to the Cherokee Nation Supreme Court in the same manner as appeals are taken in other civil actions.

§ 1764. Fees

A fee of Fifty Dollars (\$50.00) shall be charged and collected for the filing of the affidavit for the commencement of any action. If a pleading is served by the Marshal, the Court Clerk shall collect a fee of Fifty Dollars (\$50.00) for the Marshal as a service fee. A private process server licensed by

the State of Oklahoma may serve pleadings under this act. The party using the services of a private process server must pay the private process server directly. After judgment, the Court Clerk shall issue such process and shall be entitled to collect only such fees and charges as are allowed by law for like services in other actions. All fees collected as authorized by this section and 41 CNCA § 1772 shall be deposited with other fees that are collected by the District Court.

§§ 1765 to 1771. Reserved

§ 1772. Judgments

Judgments for the payment of money shall be rendered only in determining adjustment of accounts as held by the landlord. The Court may issue writs for securing possession of real property pursuant to Cherokee Nation law.

§ 1773. Dismissal of action—Failure to file pleadings or serve process

A. Any action under the Landlord and Tenant Procedures Act which is not at issue and in which no pleading has been filed or other action taken for one (1) year and in which no motion has been pending during any part of the year shall be dismissed without prejudice by the Court on its own motion after notice to the parties or their attorneys of record; providing, the Court may, upon written application and for good cause shown by order in writing, allow the action to remain on its docket.

B. If service of process under the Landlord and Tenant Procedures Act is not made upon a defendant within one hundred eighty (180) days after the filing of the affidavit, the action shall be deemed to have been dismissed without prejudice as to that defendant. The action shall not be deemed to have been dismissed where a summons was served on the defendant within one hundred eighty (180) days after the filing of the affidavit and a Court later holds that the summons or its service was invalid. After a Court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the Judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been in a foreign country for one hundred eighty (180) days following the filing of the affidavit.

§ 1774. Forcible entry and detention

The District Court shall have jurisdiction to try all actions for the forcible entry and detention, or detention only, of real property, and claims for the collection of rent and damages to the premises, or claims arising under the Cherokee Nation Landlord and Tenant Act, may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this act shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.

§ 1775. Powers of Court

The Court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the Court shall cause the party complainant to have restitution thereof.

§ 1776. Extent of jurisdiction

Proceedings under this act may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms. This section is not to be construed as limiting the provisions of the preceding section.

§ 1777. Issuance and return of summons

The summons shall be issued and returned as in other cases, except that it shall command the Marshal or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five (5) days nor more than ten (10) days from the date that the summons is issued. The summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.

§ 1778. Service of summons

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial, and the return day shall not be later than the day of trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by certified mail with return receipt postmarked at least three (3) days before the date of trial.

§ 1779. Constructive service of summons

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by certified mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the Marshal's posting said summons conspicuously on the building on the premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least five (5) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the defendant at his last-known address by certified mail at least five (5) days prior to said date of trial. Such service shall confer no jurisdiction upon the Court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant, unless the defendant appears at trial. Such service shall not be rendered ineffectual by the failure of the defendant to actually see or receive

such posted process nor by his failure to actually receive or sign a return receipt for such mailed process.

§ 1780. Answer or affidavit by defendant

A. In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he shall, before the time for the trial of the cause, file a verified answer or any affidavit of the facts constituting his defense of title or boundary dispute. If the defendant files such a verified answer or affidavit, the action shall proceed as one in ejectment before the District Court. If the defendant files an affidavit he shall file answer with ten (10) days after the date the affidavit is filed.

B. In all cases in which the cause of action is based on an asserted breach of a lease by the defendant, or the termination or expiration of a lease under which the defendant claims an interest in the property in a verified answer or affidavit, the plaintiff may proceed with the forcible entry and detainer action instead of an ejectment action.

C. No answer by the defendant shall be required before the time for trial of the cause.

§ 1781. Trial by Court

Trial shall be by the Court.

§ 1782. Writ of execution—Form

If judgment be for plaintiff, the Court shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

Cherokee Nation to Marshal of Cherokee Nation:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case any be) of the following described premises, to wit ____ lately tried before me, wherein ____ was the plaintiff, and ____ was the defendant, judgment was rendered on the ____ day of ____, 20 ____, that the plaintiff have restitution of said premises; and also that he recover rent in the sum of ____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattels of the said defendant, and make legal service and due return.

Witness my hand this ____ day of ____, 20 ____

A.B., Judge

A motion for a new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.

§ 1783. Stay of execution by posting supersedeas bond

If no supersedeas bond be posted within the time provided herein, the officer shall forthwith restore the plaintiff to possession of the premises by executing the writ prescribed in the preceding section of the statutes and shall make levy to collect the amount of the judgment. The officer's return shall be upon other executions. The defendant shall have three (3) days after the date of judgment to post a supersedeas bond conditioned as provide by law. This time limit may be enlarged by a Trial Judge's order to not more than ten (10) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his duty to pay current rent as it becomes due while the appeal is pending. Then rent shall be paid into the Court Clerk's office together with poundage. If there be controversy as to the amount of rent, the Judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the Court Clerk's office pending appeal shall not operate to estop him from urging on appeal his right to the possession of the premises. Failure to pay current rental while the appeal is pending shall be considered as abandonment of the appeal.

TITLE 42

LANGUAGE

Reserved for Future Use

TITLE 43

MARRIAGE AND FAMILY

CHAPTER 1

GENERAL PROVISIONS

§ 1. Marriage as civil contract—Consent of parties

Marriage, so far as its validity in law is concerned, is a civil contract between one man and one woman, to which the consent of the parties, capable in law of contracting, is essential.

§ 2. Who may be married

Every person who shall have attained the age of eighteen (18) years shall be capable in law of contracting marriage, if otherwise competent. But in all cases where the person is less than eighteen (18) years of age, the consent of the mother, father, or guardian of such minor shall be given; otherwise such marriage shall be null and void unless it shall appear that the parties have no parent or guardian then living, and at the time of marriage are self-dependent.

§ 3. Who may not be married

No marriage shall be contracted whilst either of the parties has a husband or wife living; nor between parties who are nearer of kin than first cousins whether of the half or of the whole blood; nor between parties who are insane or idiotic nor between parties of the same gender.

§ 4. Who may perform marriages

Marriages may be solemnized by any of the Judges of the Courts of this Nation, or by any ordained minister of the Gospel in regular communion with any religious society, or by religious leaders of the Keetoowah Society or the Four Mothers Society. Judges, ministers or religious leaders shall obtain a license from the Court Clerk of the Nation. A thirty- (30) day notice and objection period will follow the application for the license. If there are no objections, the license will be granted at the close of the period. If there are objections, the license will not be granted until the District Court of Cherokee Nation has ruled on the validity of the objections. The Court Clerk may charge a reasonable fee for the license.

§ 5. Form of marriage

No particular form of marriage shall be required in the solemnization of marriages, except that the parties shall solemnly declare in the presence of the Judge, minister, or religious leader officiating, that they take each other as husband and wife.

§ 6. Report

It shall be the duty of all persons who shall, within the Nation, join two (2) citizens thereof in wedlock, or who shall so join a citizen thereof with a citizen of any other government, to report the same to the Court Clerk for registration, giving the full names of the contracting parties, their ages and previous places of residence on a certificate obtained by the contracting parties from the Court Clerk. The Clerk shall at once make record of the same, in a book to be kept for that purpose.

§ 7. Violation of preceding section

Every person who shall, within the Nation, violate the provisions of this act by joining minors in the bonds of matrimony without the consent of the father, mother or guardian, except as hereinbefore expressly provided, shall be liable to a fine or to imprisonment at the discretion of the Court.

§ 8. Prohibited marriages declared void

All marriages which are herein prohibited on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall be absolutely void in this Nation, without any judgment of divorce or other legal proceeding.

§ 9. Common law marriage

The Cherokee Nation shall recognize that a "common law marriage" exists when parties, capable

of entering into a marital relation, agree to become husband and wife without a formal ceremony, and thereafter publicly maintain such relation.

§ 10. Adultery defined—Who may institute prosecution

Adultery is the unlawful voluntary sexual intercourse of a married person with one of the opposite sex; and when the crime is between persons, only one of whom is married, both are guilty of adultery. Prosecution for adultery can be commenced and carried on against either of the parties to the crime only by his or her own husband or wife as the case may be, or by the husband or wife of the other party to the crime; Provided, that any person may make complaint when persons are living together in open and notorious adultery.

§ 11. Punishment for adultery

Every person guilty of the crime of adultery shall be punished by imprisonment in the penitentiary not exceeding one (1) year or by fine not exceeding Five Hundred Dollars (\$500.00), or both such fine and imprisonment.

§ 12. Bigamy defined

Every person who having been married to another who remains living, marries any other person except in the cases specified in the next section is guilty of bigamy.

§ 13. Exceptions to the rule of bigamy

The last preceding section does not extend:

1. To any person whose husband or wife by a former marriage has been absent for five (5) successive years without being known to such person within that time to be living; nor
2. To any person whose husband or wife by a former marriage has absented himself or herself from his wife or husband and has been continually remaining without the United States for a space of five (5) years together; nor
3. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court; nor
4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

§ 14. Punishment of bigamy

Every person guilty of bigamy is punishable by imprisonment in the penitentiary not exceeding one (1) year.

CHAPTER 5

OFFICE OF CHILD SUPPORT SERVICES

§ 500. Office of Child Support Enforcement recognized—Duties

Cherokee Nation hereby recognizes the Office of Child Support Services ("CSS" or "Office") of the Human Services Department. The Legislature further recognizes that CSS may enter into contracts within and without Cherokee Nation for purposes of enforcement of child support orders. In all cases involving unmarried children under the age of eighteen (18) years or through the age of twenty (20) if regularly attending high school, the Court may order that child support be computed and/or collected by CSS.

1. When the Court orders that child support shall be computed and/or collected by CSS, the parties shall be ordered to provide proof of income to CSS within ten (10) business days of the court order. If a party does not comply with such order, then all income alleged by the opposing party shall be accepted as true.
2. When so ordered, CSS shall act as a referee of the Court, compute the amount(s) to be paid as child support, method(s) of payment, and all other necessary determinations within twenty (20) days of the court order. CSS shall provide such determinations to the parties and to the Court for placement in the case file. The Court shall accept the determinations of CSS as a child support order upon receipt.
3. If a party takes issue with a determination of CSS, the party may apply to the Court for a hearing on the matter. If an application for hearing is granted, the matter shall be heard within thirty (30) days.

§ 500A. Definitions

A. "**Address of record**" means an address for a party or a custodial person in a child support case that is used for service of process in child support actions. An address of record is a public record and may be different from the party's or custodial person's physical address.

B. "**Child**" means:

1. a person under eighteen (18) years of age; and
2. a person eighteen (18) or more years of age with respect to whom a child support order has been issued pursuant to the laws of a state.

C. "**Child support**" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

D. "Child support order":

1. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

2. includes:

a. a permanent or temporary order; and

b. an initial order or a modification of an order.

E. **"Court"** means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.

F. **"Custodial parent"** means a parent who has physical custody of a child.

G. **"Custodial party"** means a court-appointed caretaker who has physical custody of a child.

H. **"IV–D case"** means a case in which child support services are being provided under Cherokee Nation's child support plan as approved by the Federal Administration for Children and Families.

I. **"Modification"** means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

J. **"Non-custodial parent"** means a parent who does not have physical custody of a child.

§ 501. Costs in child support services cases

Costs incurred in a child support enforcement case through the Office of Child Support Services shall be recorded by the Court Clerk. Reasonable costs may be assessed by the Court against the noncustodial parent at the conclusion of the proceedings.

§ 502. Agreements to obtain certain necessary information

A. 1. The Office of Child Support Services shall maintain a central case registry on all Title IV–D (42 U.S.C. § 651 et seq.) cases and all child support orders established or modified in Cherokee Nation after the date of the enactment of this subsection.

2. In Title IV–D cases, the case registry shall include, but not be limited to, information required to be transmitted to the federal case registry pursuant to 42 U.S.C. § 654A.

B. 1. All orders entered after the date of the enactment of this subsection, which establish paternity or establish, modify or enforce a child support obligation shall state for all parties and custodians

subject to the order:

a. an address of record for service of process in support, visitation and custody actions, and

b. the address of record may be different from the party's or custodian's physical address.

2. The address shall be maintained by the central case registry. The order shall direct that any changes in the address of record shall be provided in writing to the Office of Child Support Services within thirty (30) days of the change. The address of record is subject to disclosure to a party or custodian upon request pursuant to the provisions of this section and rules promulgated by the Office of Child Support Services. The Office of Child Support Services may refuse to disclose address and location information if the Office has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to a party, custodian or child.

C. 1. All parties and custodians ordered to provide an address of record to the Office of child Support Services as specified in this section may, in subsequent child support actions, be served with process by regular mail to the last address of record provided to the Office of Child Support Services.

2. Proof of service shall be made by a certificate of mailing from a United States Post Office.

D. The Office of Child Support Services shall promulgate rules as necessary to implement the provisions of this section.

§ 503. Establishment—Enforcement and modification of orders for support—Confidential records

A. When a party has filed an application with the Child Support Services Office, the Office may petition the District Court for an order:

1. Requiring health insurance for the dependent children whenever it is available through employment at a reasonable cost;

2. Establishing paternity;

3. Requiring child support or other support;

4. Enforcing orders for paternity, child support, or other support;

5. Requiring that the obligor keep the Office informed of the name and address of the current employer of the obligor and of any health insurance information of the obligor within thirty (30) days of any change;

6. Providing for collection and distribution of child support monies; and

7. Assisting in the location of absent parents and their assets, in cooperation with federal agencies, other agencies of the various states, territories, and foreign nations requesting assistance with the enforcement of support orders entered in the United States and elsewhere.

B. The Office of Child Support Services may petition to modify an order of support, on request of the payor or payee, if the income of either party increases or decreases by fifteen percent (15%) or more or if the combined incomes of the parties increase or decrease such that the difference in the combined monthly incomes of the parties is fifteen percent (15%) more or less than the combined monthly income in the most recent support order or if there is a material change of circumstances for any of the parties.

C. Except as otherwise authorized by law, all files and records concerning the assistance and services provided under this section or concerning a putative father of a child born out of wedlock are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection/enforcement, paternity determination, or parent location.

§ 504. CSS attorneys represent Cherokee Nation

A. The attorneys for CSS represent Cherokee Nation and not the interests of any other party. Providing services under 43 CNCA § 500 et seq. does not create an attorney-client relationship with any other party.

B. No attorney providing services under 43 CNCA § 500 et seq. shall be authorized to accept service for any party other than the Office of Child Support Services or Cherokee Nation.

§ 505. Office of Child Support Services to follow Cherokee Nation child support guidelines

The amount of child support and other support shall be ordered and reviewed in accordance with the child support guidelines provided in 43 CNCA § 508.

§ 506. Child support

A. In all cases involving minor children, child support shall be determined or redetermined or as the case may be upon hearing an application of either parent for any affirmative relief.

1. A person under the age of twenty (20) and not graduated from a high school shall be considered a minor child provided the child is regularly attending public or private school.

2. A person under the age of eighteen (18) shall be considered a minor child.

B. The Court shall determine child support by referring the parties to the Cherokee Nation Office of Child Support Services (CSS) to act as referee to determine child support pursuant to guidelines established by 43 CNCA § 508 et seq.

C. Should either the payor or payee of child support take issue with the ruling of CSS, said party may appeal the child support order within ten (10) days of CSS's filing of the determination with the Court. Hearing on such appeal shall be a de novo review, however, either party may request the CSS appear before the Court to explain the determination made on the basis that CSS maintains expertise in child support determination.

D. Absent specific direction of the Court, all child support shall be due on the first day of each month.

E. The CSS may institute child support collection cases in the name of the Cherokee Nation on behalf of any payee for whom CSS is collecting support; nothing herein shall prevent any payee of child support from retaining independent counsel and collecting child support directly in the name of the payee.

F. Any attorney retained to collect child support for a payee shall provide notice to CSS of being so retained. Said attorney shall report all child support legal action and collection to CSS within ten (10) days of such action or collection.

CHAPTER 6

CHILD SUPPORT GUIDELINES

§ 507. Purpose

The purpose is to provide child support guidelines for Cherokee Nation. The child support guidelines as provided herein shall be used by the courts of Cherokee Nation in any proceeding which involves the care, custody and control of minor children and/or incompetents and the Court determines a need for child support to be provided by one or more parties.

§ 508. Child Support Guidelines

A. There shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded.

B. The Schedule of Basic Child Support Obligations, 43 O.S. § 119, as amended, assumes that all families incur certain child-rearing expenses and includes in the basic child support obligation an average amount to cover these expenses for various levels of the parents' combined income and number of children, comprised of housing, food, transportation, basic educational expenses, clothing, and entertainment.

C. The District Court shall have the authority to deviate from the guidelines, up or down, if the Court finds that doing so is in the best interest of the child or application would be unjust or inappropriate. The standard of proof shall be preponderance of the evidence.

§ 508A. Definitions

A. **"Child"** means:

1. a person under eighteen (18) years of age: and
2. a person eighteen (18) or more years of age with respect to whom a child support order has been issued pursuant to the laws of a state.

B. **"Child support"** means a payment of money, continuing support or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

C. **"Child support order"**:

1. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum: and
2. includes:
 - a. a permanent or temporary order, and
 - b. an initial order or a modification of an order.

D. **"Court"** means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.

E. **"Custodial parent"** means a parent who has physical custody of a child.

F. **"Custodial party"** means a court-appointed caretaker who has physical custody of a child.

G. **"Non-custodial parent"** means a parent who does not have physical custody of a child.

H. **"Obligee"** means the person or entity to whom a support obligation is owed.

I. **"Obligor"** means the person who is required to make payments under an order for support.

J. **"Overnight"** means the child is in the physical custody and control of a parent for an overnight period of at least twelve (12) hours, and that parent has made a reasonable expenditure of resources for the care of the child. The twelve- (12) hour period could be during the day if the child is under school age.

§ 508B. Computation of gross income—Imputed income—Self employment income—Fringe benefits—Social Security Title II benefits

A. As used in this act:

1. "**Earned income**" is defined as income received from labor or the sale of goods or services and includes, but is not limited to, income from:

- a. salaries;
- b. wages;
- c. tips;
- d. commissions;
- e. bonuses; and
- f. military pay.

2. "**Gross income**" includes earned and passive income from any source, except as excluded in this section.

3. "**Passive income**" is defined as all other income and includes, but is not limited to, income from:

- a. dividends;
- b. pensions;
- c. rent;
- d. interest income;
- e. trust income;
- f. support alimony being received from someone other than the other parent in this case;
- g. annuities;
- h. social security benefits;
- i. workers' compensation benefits;
- j. unemployment insurance benefits;
- k. disability insurance benefits;

l. gifts;

m. prizes;

n. gambling winnings;

o. lottery winnings; and

p. royalties.

B. Income specifically excluded is:

1. Actual child support received for children not before the Court;

2. Adoption assistance subsidy paid by the Department of Human Services;

3. Benefits received from means-tested public assistance programs including, but not limited to:

a. Temporary Assistance for Needy Families (TANF),

b. Supplemental Security Income (SSI),

c. food stamps, and

d. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

4. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child;

5. Payments received by the parent for the care of foster children.

C. 1. For purposes of computing gross income of the parents, gross income shall include for each parent whichever is the most equitable of:

a. all actual monthly income described in this section, plus such overtime and supplemental income as the Court deems equitable, or

b. the average of the gross monthly income for the time actually employed during the previous three (3) years, or

c. the minimum wage paid for a forty- (40) hour week, or

d. gross monthly income imputed as set forth in subsection (D) of this section.

2. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

D. Imputed income.

1. Instead of using the actual or average income of a parent, the Court may impute gross income to a parent under the provisions of this section if equitable.

2. The following factors may be considered by the court when making a determination of willful and voluntary underemployment or unemployment:

a. whether a parent has been determined by the Court to be willfully or voluntarily underemployed or unemployed, including whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the obligation of the parent to support his or her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future,

b. when there is no reliable evidence of income,

c. the past and present employment of the parent,

d. the education, training, and ability to work of the parent,

e. the lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent,

f. the role of the parent as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the ability of the parent to work outside the home, and the need of that parent to continue in that role in the future, or

g. any other factors deemed relevant to the particular circumstances of the case.

E. Self-employment income.

1. Income from self-employment includes income from, but not limited to. business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income.

2. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation. Amounts allowed by the Internal Revenue Service for accelerated depreciation or investment tax credits shall not be considered reasonable expenses.

3. The District or Administrative Court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount.

F. Fringe benefits.

1. Fringe benefits for inclusion as income or in-kind remuneration received by a parent in the course of employment, or operation of a trade or business, may be counted as income if they significantly reduce personal living expenses.

2. Such fringe benefits might include, but are not limited to: company car, housing, or room and board.

3. Basic Allowance for Housing, Basic Allowance for Subsistence, and Variable Housing Allowances for service members are considered income for the purposes of determining child support.

4. Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit such as employer contributions to portions of health insurance premiums or employer contributions to a retirement or pension plan.

G. Social Security Title II benefits.

1. Social Security Title II benefits received by a child shall be included as income to the parent on whose account the benefit of the child is drawn and applied against the support obligation ordered to be paid by that parent. If the benefit of the child is drawn from the disability of the child, the benefit of the child is not added to the income of either parent and not deducted from the obligation of either parent.

2. Child support greater than social security benefit. If the child support award due after calculating the child support guidelines is greater than the social security benefit received on behalf of the child, the obligor shall be required to pay the amount exceeding the social security benefit as part of the child support award in the case.

3. Child support equal to or less than social security benefits.

a. If the child support award due after calculating the child support guidelines is less than or equal to the social security benefit received on behalf of the child, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.

b. Any social security benefit amounts which are greater than the support ordered by the Court shall be retained by the caretaker for the benefit of the child and shall not be used as a reason for decreasing the child support order or reducing arrearages.

c. The child support computation form shall include a notation regarding the use of social security benefits as offset.

4. a. Calculation of child support as provided in subsection (F) of this section shall be effective no earlier than the date on which the motion to modify was filed.

b. The Court may determine if under the circumstances of the case, it is appropriate to credit social security benefits paid to the custodial person prior to a modification of child support against the past-due child support obligation of the noncustodial parent.

c. Any credit granted by the Court pursuant to subparagraph b of this paragraph shall be limited to the time period during which the social security benefit was paid, or the time period covered by a lump sum for past social security benefits.

§ 508C. Deductions from gross income for qualified other children

A. Deductions for other children of either parent who are qualified under this section may be considered by the Court for the purpose of reducing the gross income of the parent. Adjustments are available for a child:

1. Who is the biological, legal, or adopted child of the parent;
2. Who was born prior to the child in the case under consideration;
3. Whom the parent is actually supporting; and
4. Who is not before the Court to set, modify, or enforce support in the case immediately under consideration.

B. Children for whom support is being determined in the case under consideration, stepchildren, and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this deduction.

C. If the Court finds a parent has a parent-child relationship with a child not before the Court, the Court may grant a deduction for that child as set forth in subsection (D) of this section.

D. Calculation of deduction for qualified other children.

1. Out-of-home children.

a. To receive a deduction against gross income for child support provided pursuant to a court order for qualified other children whose primary residence is not in the home of the parent seeking deduction, the parent shall establish the existence of a support order and provide documented proof of support paid for the other child consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is immediately under consideration by the tribunal, but in

any event, such time period shall not be less than twelve (12) months.

b. Documented proof of support includes:

i. physical evidence of monetary payments to the caretaker of the child, such as canceled checks or money orders, and

ii evidence of payment of child support under another child support order, such as a payment history from a tribunal clerk or child support office.

c. The available deduction against gross income for either parent's qualified children not in the home of the parent is the actual documented court-ordered current monthly child support obligation of the qualified other children, averaged to a monthly amount of support paid over the most recent twelve-month period.

2. In-home children.

a. To receive a deduction against gross income for qualified prior-born other children whose primary residence is with the parent seeking deduction, but who are not part of the case being determined, the parent must establish a legal duty of support and that the child resides with the parent more than fifty percent (50%) of the time. Documents that may be used to establish that the parent and child share the same residence include the school or medical records showing the address of the child and the utility bills of the parents mailed to the same address, court orders reflecting the parent is the primary residential parent or that the parent shares the parenting time of the child fifty percent (50%) of the time.

b. The deduction for other qualified children shall be computed as a hypothetical child support order calculated using the deduction worksheet the gross income of the parents, the total number of qualified other children living in the home of the parent, and the Child Support Guideline Schedule.

c. The available deduction against gross income for the qualified in-home children of either parent is seventy-five percent (75%) of a hypothetical support order calculated according to these Guidelines, using the Deduction Worksheet, the gross income of the parent less any self-employment taxes paid, the total number of qualified other children living in the home of the parents, and the Child Support Guideline Schedule in 43 O.S. § 119, as amended.

§ 508D. Computation of child support as percentage of parents' combined gross income—Prospective adjustment—Transportation expenses—Support order summary form

A. All child support shall be computed as a percentage of the combined gross income of both parents. The Child Support Guideline Schedule as provided in 43 O.S. § 119, as amended, shall be used for such computation. The child support obligation of each parent shall be computed. The share of the obligor shall be paid monthly to the obligee and shall be due on a specific date.

B. In cases in which one parent has sole physical custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support.

C. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent.

D. 1. In cases of split physical custody, where each parent is awarded physical custody of at least one (1) of the children for whom the parents are responsible, the child support obligation for each parent shall be calculated by application of the Child Support Guidelines for each custodial arrangement.

2. The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation.

E. Child support shall be computed as set forth in subsections (A) through (D) of this section in every case, regardless of whether the custodial arrangement is designated as sole custody or joint custody.

F. The Court, to the extent reasonably possible, shall make provision in an order for prospective adjustment of support to address any foreseen changes including, but not limited to: changes in medical insurance, child care expenses, medical expenses, extraordinary costs, and the satisfaction of jointly acquired debt of the parents used as a deduction from the gross income of a parent.

§ 508E. Parenting time adjustment—Reduction in child support obligation

A. Parenting time adjustment.

1. The adjustment may be granted based upon a court order or agreement that the noncustodial parent is granted at least one hundred twenty-one (121) overnights of parenting time per twelve-(12) month period with the children in the case under consideration.

2. Average parenting time. If there are multiple children for whom support is being calculated, and the parent seeking the parenting time adjustment is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated.

B. In cases of split physical custody, either parent may be eligible for a parenting time adjustment.

C. Parenting time adjustments are not mandatory, but presumptive. The presumption may be rebutted in a case where the circumstances indicate the adjustment is not in the best interest of the child or that the increased parenting time by the noncustodial parent does not result in greater expenditures which would justify a reduction in the support obligation.

D. Reduction in child support obligation for additional parenting time.

1. If the parent receiving the parenting time adjustment is granted one hundred twenty-one (121) or more overnights of parenting time per twelve- (12) month period with a child, or an average of one hundred twenty-one (121) overnights with all applicable children, a reduction to the child support obligation of the parent may be made as set forth in this section.

2. A parenting time adjustment shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by a factor determined by the number of overnights granted to the noncustodial parent. The result shall be designated the adjusted combined child support obligation. In a case where the noncustodial parent is granted:

a. one hundred twenty-one (121) overnights to one hundred thirty-one (131) overnights, the factor shall be two (2);

b. one hundred thirty-two (132) overnights to one hundred forty-three (143) overnights, the factor shall be one and three-quarters (1.75); or

c. one hundred forty-four (144) or more overnights, the factor shall be one and one-half (1.5).

3. To determine the adjusted child support obligation of each parent, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.

4. a. The percentage of time a child spends with each parent shall be calculated by determining the number of overnights for each parent and dividing that number by three hundred sixty-five (365).

b. The share of the adjusted combined child support obligation for each parent shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent.

c. The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars (\$0.00).

5. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by a parent having more than two hundred five (205) overnights.

E. 1. Failure to exercise or exercising more than the number of overnights upon which the parenting time adjustment is based, is a material change of circumstances.

2. If the Court finds that the obligor has failed to exercise a significant number of the overnights provided in the court order necessary to receive the parenting time adjustment in a proceeding to modify the child support order, the Court may establish the amount that the obligor has underpaid due to the application of the parenting time adjustment as a child support judgment that may be enforced in the same manner as any other child support judgment.

3. The Court may rule that the obligor will not receive the parenting time adjustment for the next twelve- (12) month period. After a twelve- (12) month period during which the obligor did not receive the parenting time adjustment the obligor may petition the Court to modify the child support order. The obligor may be granted a prospective parenting time adjustment upon a showing that the obligor has actually exercised the threshold number of overnights in the preceding twelve (12) months. No retroactive modification or credit from the child support guidelines amount shall be granted based on this section.

§ 509. Child support orders to include provision for income assignment—Voluntary income assignment—In-kind payment

A. In all child support cases arising out of an action for divorce, paternity or other proceeding, the Court shall order the wage of the obligor subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless:

1. one (1) of the parties demonstrates and the Court finds there is good cause not to require immediate income withholding; or
2. a signed, written agreement is reached between the parties which provides for an alternative arrangement and approved by the Court.

B. The obligated party may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the Court and shall take effect after service on the payor.

C. With the consent of the custodial parent and under the supervision of the Office, the payor may make payments of in-kind goods or services. In-kind payments cannot be used to pay arrearages.

§ 510. Child support orders to include provision for health insurance and day care expenses

In all cases where child support is ordered, such order may include provisions for providing or sharing the expenses of health insurance and/or other out-of-pocket medical costs of the minor child(ren), and for employment-related day care expenses.

§ 511. Security or bond for payment of child support

The Court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the Court to ensure the payment of child support.

§ 512. Past due support payments as judgment—Arrearage payment schedule

A. Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the Court or administrative order of Cherokee Nation, another tribal government, or a state department of human services, or an equivalent state/tribal organization, is, on and after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1. have the full force and effect of any other judgment of Cherokee Nation, including the ability to be enforced by any method available under the laws of Cherokee Nation and the State of Oklahoma to enforce and collect money judgments; and

2. be entitled to full faith and credit as a judgment in Cherokee Nation and any state or tribal government.

3. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. Any amounts determined to be past due by the Court may subsequently be enforced by indirect civil contempt proceedings.

B. An arrearage payment schedule set by the Court or administrative order of Cherokee Nation shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

C. The Office of Child Support Services shall have the authority to negotiate a lump sum payment to settle a child support arrearage and interest due thereon. Consent of the payee shall be required.

§ 513. Modification, suspension or termination of income assignment order

A person obligated to pay support or the person entitled to the support may petition the Court to:

1. modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or

2. modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise.

§ 514. Interest on delinquent child support and judgments

If the order is established under Cherokee Nation law, delinquent court-ordered child support payments and child support judgments (whether accrual or arrearage) may draw interest at the rate of five percent (5%) per year, and the interest shall be collected in the same manner as the payments upon which the interest accrues. If the order is established under another jurisdiction's

laws, interest shall accrue based on the law of the jurisdiction from which the order originated. Private interest may be waived by the custodial parent/party and/or by the Court if the non-custodial parent makes regular, consistent payments and no arrearage exists.

§ 515. Child support computation form

A. A child support computation form shall be signed by the Judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. When services are not being provided by the Office of Child Support Services, a support order summary form shall be prepared by the attorney of record or the pro se litigant and presented to the Judge with all orders which establish paternity or establish, modify or enforce a child support obligation. No paternity or child support order shall be signed by the Judge without presentation of the support order summary form. After the order is signed by the Judge, the summary of support order form may be submitted to the to the Office of Child Support Services for collection and enforcement.

§ 516. Children not otherwise considered

A. Any parent that has child support calculated may submit a child support calculation for any child not otherwise considered in the calculation of child support, provided such parent is, in fact, the legal parent of such child and such parent actually supports the child to the extent identified in the child support calculation form.

B. The Court may consider any and all support provided to such child in determining the child support calculation and in its discretion may deduct the child support attributed to such parent in the same manner as for approved child support deductions.

§ 517. Full faith and credit for child support orders validly issued by foreign jurisdictions

A. General rule. The Office of Child Support Services:

1. shall enforce according to its terms a child support order made consistently with this section by a court of another state; and
2. shall not seek or make a modification of such an order except in accordance with subsections (E), (F), and (I).

B. Definitions. In this section:

1. "**Child**" means:

- a. a person under eighteen (18) years of age; and
- b. a person eighteen (18) or more years of age with respect to whom a child support order has been

issued pursuant to the laws of a state.

2. **"Child's home state"** means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

3. **"Child's state"** means the state in which a child resides.

4. **"child support"** means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

5. **"Child support order"**:

a. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

b. includes:

i. a permanent or temporary order; and

ii. an initial order or a modification of an order.

6. **"Contestant"** means:

a. a person (including a parent) who:

i. claims a right to receive child support;

ii. is a party to a proceeding that may result in the issuance of a child support order; or

iii. is under a child support order; or

b. a state or political subdivision of a state to which the right to obtain child support has been assigned.

7. **"Court"** means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.

8. **"Modification"** means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

9. **"State"** means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and a federally-recognized Indian tribe.

C. Requirements of child support order. A child support order made by a court of a state is made consistently with this section if a court that makes the order, pursuant to the laws of the state in which the court is located and subsections (E), (F) and (G) and:

1. has subject matter jurisdiction to hear the matter and enter such an order; and
2. has personal jurisdiction over the contestants; and
3. gives reasonable notice and opportunity to be heard to the contestants.

D. Continuing jurisdiction. A court of a state that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the state is the child's state or the residence of any individual contestant unless the court of another state, acting in accordance with subsections (E) and (F), has made a modification of the order.

E. Authority to modify orders. A court of a state may modify a child support order issued by a court of another state if:

1. the court has jurisdiction to make such a child support order pursuant to subsection (I), and
2. a. the court of the other state no longer has continuing, exclusive jurisdiction of the child support order because that state no longer is the child's state or the residence of any individual contestant; or
b. each individual contestant has filed written consent with the state of continuing, exclusive jurisdiction for a court of another state to modify the order and assume continuing, exclusive jurisdiction over the order.

F. Recognition of child support orders. If one or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

1. If only one (1) court has issued a child support order, the order of that court must be recognized.
2. If two or more courts have issued child support orders for the same obligor and child, and only one (1) of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.
3. If two or more courts have issued child support orders for the same obligor and child, and more than one of the courts would have continuing, exclusive jurisdiction under this section, an order

issued by a court in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

4. If two or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

5. The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (D).

G. Enforcement of modified orders. A court of a state that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (E) and (F).

H. Choice of law.

1. In general. In a proceeding to establish, modify, or enforce a child support order, the forum state's law shall apply except as provided in paragraphs 2 and 3.

2. Law of state of issuance of order. In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the state of the court that issued the order.

3. Period of limitation. In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum state or the state of the court that issued the order, whichever statute provides the longer period of limitation.

I. Registration for modification. If there is no individual contestant or child residing in the issuing state, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in a state with jurisdiction over the nonmovant for the purpose of modification.

§ 518. Cooperation with other IV–D programs

The Cherokee Nation Office of Child Support Services shall extend the full range of services available under its IV–D program to respond to all requests from, and cooperate with, state, tribe, and other IV–D agencies.

TITLE 44

MEDIA AND PRESS

CHAPTER 1

INDEPENDENT PRESS

§ 1. Short title

This act shall be known and may be cited as the Independent Press Amendment Act of 2009.

§ 2. Purpose

This act affirms the policy regarding the Cherokee Nation's press. It is imperative to have measures in place to ensure the freedom of the press and to ensure the tribal publications have the independence to report objectively.

§ 3. Constitutional rights

The Constitution of Cherokee Nation provides that the principles of free speech and free press, the rights of the people to assemble and petition for redress of grievances shall not be abridged.

§ 4. Policy, an independent Cherokee media

The Cherokee Nation's Publications Department shall be independent from any undue influence and free of any particular political interest. It is the duty of the Publications Department to use any necessary forms of electronic and print media to report without bias the activities of the government and the news of interest to have informed citizens.

§ 5. Providing for independent print and electronic publications

A newspaper and other forms of electronic media shall be published periodically to report news and provide a forum for all views of the Cherokees.

§ 6. Editorial Board

A. An Editorial Board is hereby created and shall consist of five (5) members. At least three (3) Board members must (i) be at least 25 years of age, (ii) have quality experience in the management and operations of publications, (iii) be of good character and have a reputation of integrity, (iv) be physically able to carry out the duties of office, and (v) certify he or she will adhere to the standards of accepted ethics of journalism as defined by the Society of Professional Journalists and endorsed by the Native American Journalists Association. The other Board members must (i) be at least 25 years of age, (ii) have quality experience in business management, (iii) be of good character and have a reputation of integrity, and (iv) be physically able to carry out the duties of office.

B. The Principal Chief shall appoint two (2) members of the Board who must be citizens of Cherokee Nation; the Council shall appoint two (2) members of the Board who must be citizens of Cherokee Nation; and the fifth member shall be appointed by the initial four (4) members and must

be a member of a federally-recognized tribe. All members shall be subject to confirmation by the Council and the Principal Chief.

C. One (1) member shall serve as Chairperson, one (1) member shall serve as Vice-Chairperson and one (1) member shall serve as Secretary. Officers shall be designated by the Editorial Board at the first meeting of each fiscal year.

D. The terms of office of the Board members shall be six (6) years. The term for the Seat 4 Board Member shall commence October 1, 2009 and expire on October 1, 2014; the term for the Seat 5 Board Member shall commence January 1, 2010 and expire on January 1, 2015.

E. Board Members shall serve their terms of office free from political influence from any Executive or Legislative Officials of any Branch, Division or Department of the government of the Nation and may be removed only for cause subject to a hearing by the Supreme Court. A petition for removal for cause may be brought by a vote of the majority of Council Members, or the Principal Chief. Except as authorized under the Constitution of Cherokee Nation, no member of the Board 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. The Board Members shall not participate in any political campaign or be involved in any tribal political activity, except to exercise his or her right as a citizen to express his or her individual opinion and cast his or her right to vote.

F. The Board Members shall be provided a monthly stipend to be paid after the first meeting of each month. The stipend for Board Officers will be Three Hundred Fifty Dollars (\$350.00) monthly and the stipend for other Board Members will be Three Hundred Dollars (\$300.00) monthly. The Board Members shall be provided reimbursement of reasonable expenses incurred in the pursuit of their duties in accordance with the policies of Cherokee Nation.

§ 7. Powers and duties

The Editorial Board shall have the following powers and duties:

1. To establish and enforce an editorial policy that will be fair and responsible in reporting of general news, current events and issues of Cherokee concern including activities of the community, language, culture, history and other subjects which will inform the Cherokee citizenry about their government, tribe, and culture.
2. To ensure the operational structure is sound and that the duties and obligations required of the Board are fulfilled.
3. To review departmental policies to ensure fairness and professionalism in all department practices.
4. To hold periodic public meetings in order to conduct official department business and policy review.

5. To publish electronically, at least on a quarterly basis, copies of Council meeting minutes and travel expenses of elected officials on the Cherokee Phoenix website to fulfill the intent of previous legislative acts requiring such publications.

§ 8. Executive Editor

A. The Executive Editor must (i) be at least 25 years of age, (ii) have a bachelor's degree in journalism or a related field from a college or university, or an appropriate combination of education and experience, (iii) be of good character and have a reputation of integrity, (iv) be physically able to carry out the duties of office, (v) certify he or she will adhere to the standards of accepted ethics of journalism as defined by the Society of Professional Journalists and endorsed by the Native American Journalists Association, (vi) have experience necessary for the successful operation of the publication, and (vii) be a citizen of Cherokee Nation.

B. Whenever a vacancy occurs the Editorial Board shall recommend to the Principal Chief an Executive Editor for appointment.

C. The Executive Editor shall serve his or her term of office free from political influence from any department of the government of the Nation and may be removed only for cause. The Executive Editor shall not, 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. The Executive Editor shall not participate in any political campaign or be involved in any tribal political activity, except to exercise his or her right as a citizen to express his or her individual opinion and cast his or her right to vote.

CHAPTER 2

PRESS PROTECTION

§ 21. Short title

This act shall be referred as the "Free Press Protection and Journalist Shield Act of 2012".

§ 22. Purpose

The purpose of this act is to affirm the independence of a free press in Cherokee Nation by providing protection of journalistic sources and information from disclosure in any Cherokee Nation proceeding.

§ 23. Definitions

For the purposes of this act:

1. "**Cherokee Nation proceeding**" includes any proceeding or investigation before or by any

judicial, legislative, executive or administrative body within Cherokee Nation.

2. **"Information"** includes any written, oral or pictorial news or any digital or tangible record.

3. **"Journalist"** means any person who is a reporter, photographer, editor, commentator, journalist, correspondent, announcer, videographer, or other individual regularly engaged in obtaining, writing, reviewing, editing, or otherwise preparing news for any newspaper, periodical, press association, newspaper syndicate, wire service, website, radio or television station, or other news service. Any individual employed by any such news service in the performance of any of the above-mentioned activities shall be deemed to be regularly engaged in such activities.

4. **"Medium of communication"** includes any newspaper, other periodical, book, pamphlet, website, podcast, news service, wire service, news or feature syndicate, broadcast station or network, cable television system, video, live stream, or other record.

5. **"Processing"** includes compiling, storing and editing of information.

6. **"Published information"** means any information disseminated to the public by the person from whom disclosure is sought.

7. **"Unpublished information"** includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, photographs, video clips or other data of any type not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.

§ 24. Protection of sources and other information—Exceptions

A. No journalist shall be required to disclose in a Cherokee Nation proceeding either:

1. The source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or

2. Any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public, unless the court finds that the party seeking the information or identity has established by clear and convincing evidence that such information or identity is relevant to a significant issue in the action and could not with due diligence be obtained by alternate means.

B. This section does not apply with respect to the content or source of allegedly defamatory information, in a civil action for defamation wherein the defendant asserts a defense based on the content or source of such information.

TITLE 45

MINES AND MINING

Reserved for Future Use

TITLE 46

MORTGAGES

Reserved for Future Use

TITLE 47

MOTOR VEHICLES

HIGHWAY SAFETY CODE

MISCELLANEOUS LAWS

HIGHWAY SAFETY CODE

CHAPTER 1

WORDS AND PHRASES DEFINED

§ 1–101. Definition of words and phrases

The following words and phrases when used in this title shall, for the purpose of this title, have the meanings respectively ascribed to them in this chapter, except when the context otherwise requires or other definitions are provided. Section captions are a part of this chapter.

§ 1–101.1. Ancient vehicle

A motor vehicle owned by a citizen of this Nation, which is thirty (30) years of age or older, based upon the date of manufacture thereof, and which travels on highways of this state primarily incidental to historical or exhibition purposes only.

§ 1–102. Arterial street

Any U.S. or state-numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

§ 1–103. Authorized emergency vehicles—Equipment

Vehicles of fire departments, ambulances and police vehicles, including vehicles owned or

operated by the Federal Bureau of Investigation, are authorized emergency vehicles; such vehicles shall be equipped with siren capable of giving an audible signal, as required by law, and a flashing red light.

§ 1–103.1. Automobile

Every motor vehicle of the type constructed and used for the transportation of persons for purposes other than for hire or compensation. This shall include all vehicles of the station wagon type whether the same are called station wagons, or ranch wagons, van wagons, except those used for commercial purposes, suburbans, town and country, or by any other name, except when owned and used as a school bus or motor bus by a school district or a religious corporation or society as elsewhere provided by law.

§ 1–104. Bicycle

Every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty (20) inches in diameter.

§ 1–105. Bus

Every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

§ 1–106. Business district

The territory contiguous to and including a highway when within any six hundred (600) feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations and public buildings which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the highway.

§ 1–107. Cancellation of driver's license

The annulment or termination by formal action of the Department of a person's driver's license because of some error or defect in the license or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation.

§ 1–107.1. Class A commercial motor vehicle

Any combination of vehicles, except a Class D motor vehicle, with a gross combined weight rating of twenty-six thousand one (26,001) or more pounds provided the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of ten thousand (10,000) pounds.

§ 1-107.2. Class B commercial motor vehicle

Any single vehicle, except a Class D motor vehicle, with a gross vehicle weight rating of twenty-six thousand one (26,001) or more pounds, or any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds gross vehicle weight rating. This class shall apply to a bus with a gross vehicle weight rating of twenty-six thousand one (26,001) or more pounds and designed to transport sixteen (16) or more persons, including the driver.

§ 1-107.3. Class C commercial motor vehicle

Any single vehicle, except a Class D motor vehicle, with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds, or any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds gross vehicle weight rating, which is:

1. Required to be placarded for hazardous materials under 49 C.F.R., Part 172, subpart F; or
2. Designed by the manufacturer to transport sixteen (16) or more persons, including the driver.

§ 1-107.4. Class D motor vehicle

Any motor vehicle or combination of vehicles, regardless of weight, which:

1. Is marked and used as a firefighting vehicle;
2. Is designed and used solely as a recreational vehicle;
3. Is a single or combination vehicle with a gross combined weight rating of less than twenty-six thousand one (26,001) pounds; or
4. Is a single or combination farm vehicle with a gross combined weight rating of more than twenty-six thousand one (26,001) pounds if:
 - a. It is entitled to be registered with a farm tag and has a farm tag attached thereto, and
 - b. It is controlled and operated by a farmer, his family or his employees, and
 - c. It is used to transport either agricultural products, farm machinery, farm supplies or any combination of those materials to or from a farm, and
 - d. It is not used in the operations of a common or contract motor carrier, and
 - e. It is used within one hundred fifty (150) air miles of the person's farm or as otherwise provided by federal law.

Provided, however, a Class D Motor Vehicle shall not include any vehicle which is:

1. Designed to carry sixteen or more passengers, including the driver; or
2. Required to be placarded for hazardous materials under 49 C.F.R., Part 172, subpart F.

§ 1–108. Commercial chauffeur and chauffeur

A. Commercial chauffeur. Every person who operates a motor vehicle while in use as a common carrier of persons or property.

B. Chauffeur. Every person who is employed by another for the principal purpose of operating a motor vehicle and every person who operates a motor vehicle of more than two (2) tons rated capacity that is required by law to have a commercial tag attached thereto and every person who operates a school bus transporting school children to and from school.

§ 1–109. Commissioner

The Commissioner of the Department of Public Safety of the State of Oklahoma.

§ 1–110. Controlled-access highway

Every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

§ 1–111. Crosswalk

A. That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

B. Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

§ 1–112. Dealer

Every person engaged in the business of buying, selling or exchanging vehicles of a type to be registered hereunder and who has an established place of business for such purpose in this Nation.

§ 1–113. Department

The Department of Public Safety of the State of Oklahoma, acting directly or through its duly-authorized officers and agents.

§ 1–114. Driver

Every person who drives or is in actual physical control of a vehicle.

§ 1–115. Essential parts

All integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.

§ 1–116. Established place of business

The place actually occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and a large share of his business is transacted.

§ 1–117. Explosives

Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, i. e., with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the Interstate Commerce Commission. The term "explosives" shall include all material which is classified as Class A, Class B and Class C explosives by the Interstate Commerce Commission, and includes but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonant fuse, instantaneous fuse, igniter cord, igniters, and some special fireworks. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.

§ 1–118. Farm tractor

Every motor vehicle designed and used primarily as a farm implement, for drawing plows, mowing machines and other implements of husbandry.

§ 1–119. Flammable liquid

Any liquid which has a flash point of 70° F., or less, as determined by a tagliabue or equivalent closed-cup test device and having a vapor pressure not exceeding 40 psia at 100 F.

§ 1–120. Foreign vehicle

Every vehicle of a type required to be registered hereunder brought into this Nation from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this Nation.

§ 1–120.1. Gross combination weight rating (GCWR)

The value specified by the manufacturer as the loaded weight of a combination or articulated vehicle. In the absence of a value specified by the manufacturer, the gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and any load thereon.

§ 1–121. Gross vehicle weight rating (GVWR)

The gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

§ 1–122. Highway

The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

§ 1–123. Manufactured home

"Manufactured home" means and includes every vehicle defined as a manufactured home as defined in 47 O.S. § 1102.

§ 1–124. Identifying number

The numbers, and letters if any, on a vehicle designated by the Oklahoma Tax Commission for the purpose of identifying the vehicle.

§ 1–125. Implement of husbandry

Every vehicle designed and adapted exclusively for agricultural, horticultural or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways. Farm wagon type tank trailers of not over one thousand two hundred (1,200) gallons capacity, used during the liquid fertilizer season as field storage "nurse tanks" supplying the fertilizer to a field applicator and moved on highways only for bringing the fertilizer from a local source of supply to farms or field or from one farm or field to another, shall be considered implements of husbandry for purposes of this act. Trailers or semitrailers owned by a person engaged in the business of farming and used exclusively for the purpose of transporting farm products to market or for the purpose of transporting to the farm material or things to be used thereon shall also be considered implements of husbandry for purposes of this act.

§ 1–126. Intersection

A. The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

B. Where a highway includes two roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

§ 1–127. Laned roadway

A roadway which is divided into two or more clearly marked lanes for vehicular traffic.

§ 1–128. License to operate a motor vehicle

Any operator's, commercial chauffeur's or chauffeur's license or any other license or permit to operate a motor vehicle issued under the laws of Oklahoma including:

1. Any temporary license or instruction permit;
2. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license;
3. Any nonresident's operating privilege as defined herein.

§ 1–129. Lienholder

A person holding a security interest in a vehicle.

§ 1–130. Local authorities

Every county, municipal and other local board or body having authority to enact laws relating to traffic under the Constitution and laws of this Nation.

§ 1–131. Mail

To deposit in the United States mails properly addressed and with postage prepaid.

§ 1–132. Manufacturer

Every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at an established place of business in the State of Oklahoma or within Cherokee Nation.

§ 1–133. Metal tire

Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

§ 1–133.1. Minibike

Any self-propelled vehicle or motor-driven cycle having less than an eight-inch (8") wheel rim, or less than a forty-inch (40") wheel base or less than a twenty-five-inch (25") seat height.

§ 1–134. Motor vehicle

Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails; provided, however, the definition of "motor vehicle" herein shall not include implements of husbandry as defined in 47 CNCA § 1–125.

§ 1–135. Motorcycle

Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor or a motorized bicycle.

§ 1–136. Motor-driven cycle

Every motorcycle and motor scooter, equipped with a motor which produces not to exceed five (5) brake horsepower at full throttle without a governor as determined by a dynamometer test and designed to travel on not more than three (3) wheels in contact with the ground.

§ 1–136.1. Motorized bicycle

Every vehicle having fully operative pedals for propulsion by human power, an automatic transmission and a motor with a cylinder capacity not exceeding fifty (50) cubic centimeters, which produces no more than two (2) brake horsepower, and is capable of propelling the vehicle at a maximum design speed of not more than thirty (30) miles per hour on level ground.

§ 1–137. Nonresident

Every person who is not a resident of this Nation.

§ 1–138. Nonresident's operating privilege

The privilege conferred upon a nonresident by the laws of this Nation pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this Nation.

§ 1–139. Official traffic-control devices

All signs, barricades, signals, markings and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning

or guiding traffic.

§ 1–140. Operator

Every person, other than a commercial chauffeur or chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

§ 1–141. Owner

A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with a right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Code.

§ 1–142. Park, parking, and public parking lot

A. "Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

B. A public parking lot is any parking lot on right-of-way dedicated to public use or owned by the state or a political subdivision thereof.

§ 1–143. Pedestrian

Any person afoot.

§ 1–144. Person

Every natural person, firm, copartnership, association or corporation.

§ 1–145. Pneumatic tire

Every tire in which compressed air is designed to support the load.

§ 1–146. Pole trailer

Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

§ 1–147. Police officer

Every sheriff, constable, marshal, policeman, highway patrolman, and any other officer who is authorized to direct or regulate traffic or make arrests for violations of Cherokee Nation laws.

§ 1–148. Private road or driveway

Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

§ 1–149. Railroad

A carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

§ 1–150. Railroad sign or signal

Any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

§ 1–151. Railroad train

A steam engine, diesel, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

§ 1–152. Reconstructed vehicle

Every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition or substitution of essential parts, new or used.

§ 1–152.1. Recreational vehicle

For the sole purpose of a classified driver's license system, a recreational vehicle shall be defined as a self-propelled or towed vehicle that is equipped to serve as temporary living quarters for recreational, camping or travel purposes and is used solely as a family or personal conveyance.

§ 1–153. Registration

The registration certificate or certificates and registration plates issued under the laws of Oklahoma pertaining to the registration of vehicles.

§ 1–154. Residence district

The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred (300) feet or more is in the main

improved with residences or residences and buildings in use for business.

§ 1–155. Revocation of driver's license

The termination by formal action of the Oklahoma Department of Public Safety regarding a person's driver's license or privilege to operate a motor vehicle on the public highways, which termination shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the Department after the expiration of the period of revocation as hereinafter provided.

§ 1–156. Right-of-way

The privilege of the immediate use of the roadway.

§ 1–157. Road tractor

Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

§ 1–158. Roadway and shoulder

A. Roadway. That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

B. Shoulder. The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

§ 1–159. Safety zone

The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

§ 1–160. School bus

Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school, provided, however, that this definition of school bus shall not be extended to include buses normally used in city transit which may be used part time for transportation of school children within such cities during some portion of the day.

§ 1–161. Security

Cash, negotiable securities, or corporate security bond deposited with the Commissioner of Public Safety and placed in the custody of the National Treasurer to secure payment of a judgment or judgments arising out of a motor vehicle accident which occurred prior to the demand for posting of security.

§ 1-162. Semitrailer

Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

§ 1-163. Sidewalk

That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

§ 1-164. Solid tire

Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

§ 1-165. Special mobilized machinery

Special purpose machines, either self-propelled or drawn as trailers or semitrailers, which derive no revenue from the transportation of persons or property, whose use of the highways is only incidental, and whose useful revenue-producing service is performed at destinations in an area away from the traveled surface of an established open highway, and which carry no load other than their own weight, which cannot be divided for all practical purposes. This definition shall include a truck or truck tractor when used while drawing special mobilized machinery but this shall not be construed as exempting from license and registration the pulling unit truck or truck tractor as required by the motor vehicle license and registration.

§ 1-166. Specially-constructed vehicle

Every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

§ 1-167. Stand or standing

Means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

§ 1-168. State

A state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of the Dominion of Canada.

§ 1-169. Stop

When required means complete cessation from movement.

§ 1-170. Stop or stopping

When prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

§ 1-171. Street

The entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

§ 1-172. Streetcar

A car other than a railroad train for transporting persons or property and operating upon rails principally within a municipality.

§ 1-173. Suspension of driver's license

The temporary withdrawal by formal action of the Department of a person's driver's license or privilege to operate a motor vehicle on the public highways.

§ 1-173.1. Tank vehicle

Any commercial motor vehicle designed to transport any liquid, powdered or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include but are not limited to cargo tanks and portable tanks as defined by 49 C.F.R., Part 171. Provided however, the term "tank vehicle" shall not include a portable tank having a rated capacity of under one thousand (1,000) gallons.

§ 1-174. Taxicab

Taxicab shall mean and include any motor vehicle for hire, designed to carry seven (7) persons or less, operated upon any street or highway, or on call or demand, accepting or soliciting passengers indiscriminately for transportation for hire between such points along streets or highways as may be directed by the passenger or passengers so being transported; but this classification shall not include motor vehicles of seven (7) passenger capacity or less operated by the owner where the cost of operation is shared by fellow workmen between their homes and the place of regular daily employment, when not operated for more than two (2) trips per day, nor shall the classification

include automobiles operated by the owner where the cost of operation is shared by the passengers on a "share the expense plan," nor shall this classification include motor vehicles transporting students from the public school system when said motor vehicle is so transporting under contract with public, private, or parochial school board or governing body.

§ 1–175. Through highway

Every highway or portion thereof on which vehicular traffic is given preferential right-of-way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right-of-way to vehicles on such through highway in obedience to either a stop sign or a yield sign, when such signs are erected as provided in this act.

§ 1–176. Trackless trolley coach

Every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

§ 1–177. Traffic

Pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together, while using any highway for purposes of travel.

§ 1–178. Traffic-control signal

Any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

§ 1–179. Traffic lane

The portion of the traveled way for the movement of a single line of vehicles.

§ 1–180. Trailer

Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle, provided however, the definition of trailer herein shall not include implements of husbandry as defined in 47 CNCA § 1–125.

§ 1–181. Transporter

Every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer.

§ 1–181.1. Travel trailer

Any vehicular portable structure built on a chassis which is not propelled by its own power but is towed by another vehicle and is used as a temporary dwelling for travel, recreational or vacation use. A travel trailer shall have a body width not exceeding eight (8) feet in travel mode and an overall length not exceeding forty (40) feet, including the hitch or coupling.

§ 1-182. Truck

Every motor vehicle designed, used or maintained primarily for the transportation of property.

§ 1-183. Truck tractor

A. Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn; and

B. For the purposes of 47 O.S. § 14-103(C)(3), the term truck-tractor shall also include oil field rig-up trucks when towing a trailer or semitrailer.

§ 1-184. Turnpike and Turnpike Authority

A. The words "Turnpike Authority" or "Authority" shall mean the Oklahoma Turnpike Authority, created by 69 O.S.1951 § 653 as amended, or, if said Authority shall be abolished, the board, body, or commission succeeding to the principal functions thereof or to whom the powers given by this act to the Authority shall be given by law.

B. A turnpike is a limited access grade separated expressway financed and operated by the Oklahoma Turnpike Authority upon which a toll is charged for the use thereof.

§ 1-185. Urban district

The territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than one hundred (100) feet for a distance of a quarter of a mile or more.

§ 1-186. Vehicle

Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks; provided, however, the definition of "vehicle" as used in this act shall not include implements of husbandry as defined in 47 CNCA § 1-125.

CHAPTER 2

APPLICATION

§ 2–101. Application of code

This title shall apply to all persons subject to the jurisdiction of Cherokee Nation as determined by Cherokee Nation or federal law.

§ 2–102. Cherokee Nation

"Cherokee Nation" is the government of Cherokee Nation and geographically is the territory of Cherokee Nation as of 1893.

§ 2–103. Indian

Any person who is a member or who is eligible for membership in a federally-recognized tribe, nation or band of Indians.

§ 2–104. Tribal citizen

Any person who is a citizen or who is eligible for citizenship in Cherokee Nation.

§ 2–105. Offense

An offense is a violation of any provision under this code which is punishable only by assessment of a fine and costs.

§ 2–106. Crime

A crime is any violation of a provision of this code which is not designated as an "offense" and if committed under the laws of the State of Oklahoma would constitute a misdemeanor or felony.

CHAPTER 4

ANTI-THEFT LAWS

§ 4–101. Exceptions from provisions of this chapter

This chapter does not apply to the following unless a title or registration has been issued on such vehicles under this act:

1. a vehicle moved solely by animal power;
2. an implement of husbandry, except as provided in 47 CNCA §§ 4–102 and 4–104;
3. special mobilized machinery;
4. a self-propelled invalid wheelchair or tricycle.

§ 4–102. Unauthorized use of vehicle or implement of husbandry

A person not entitled to possession of a vehicle or implement of husbandry who, without the consent of the owner and with intent to deprive him, temporarily or otherwise, of the vehicle or implement of husbandry or its possession, takes, uses or drives the vehicle or implement of husbandry is guilty of a crime.

§ 4–103. Receiving or disposing of a vehicle

A person not entitled to the possession of a vehicle who receives, possesses, conceals, sells or disposes of it, knowing it to be stolen or converted under circumstances constituting a crime, is guilty of a crime.

§ 4–104. Damaging or tampering with vehicle or implement of husbandry

A. A person, who, with intent and without right to do so, injures or tampers with any vehicle or implement of husbandry or in any other manner damages any part or portion of said vehicle or implement of husbandry or any accessories, appurtenance or attachments thereto is guilty of a crime.

B. A person, who, without right to do so and with intent to commit a crime, climbs into or upon a vehicle or implement of husbandry whether it is in motion or at rest, attempts to manipulate any of the levers, starting mechanism, brakes or other mechanism or device of a vehicle or implement of husbandry while the same is at rest and unattended, or sets in motion any vehicle or implement of husbandry while the same is at rest and unattended is guilty of a crime.

C. This section shall not apply as stated in 47 CNCA § 11–1002.

§ 4–105. Stolen, converted, recovered and unclaimed vehicles

A. It shall be the duty of every sheriff, marshal, chief of police or peace officer to make immediate report to the Department of Public Safety of all vehicles reported to their respective jurisdictions as being stolen or recovered. Such report shall be made as prescribed by the Department.

B. An owner or a lienholder may report the theft of a vehicle, or its conversion if a crime, to the Department, but the Department may disregard the report of a conversion unless a warrant has been issued for the arrest of a person charged with the conversion. A person who has so reported the theft or conversion of a vehicle shall, forthwith after learning of its recovery, report the recovery to the Department.

C. An operator of a place of business for garaging, repairing, parking or storing vehicles for the public, in which a vehicle remains unclaimed for a period of thirty (30) days, shall, within five (5) days after the expiration of that period, report the vehicle as unclaimed to the Department. Such report shall be on a form prescribed by the Department.

A vehicle left by its owner whose name and address are known to the operator or his employee is not considered unclaimed. A person who fails to report a vehicle as unclaimed in accordance with this subsection forfeits all claims and liens for its garaging, parking or storing and is guilty of a crime punishable by a fine of not more than Twenty-five Dollars (\$25.00) for each day his failure to report continues.

D. The Department shall maintain and appropriately index cumulative public records of stolen, converted, recovered and unclaimed vehicles reported to it pursuant to this section. The Department may make and distribute weekly lists of such vehicles so reported to it to peace officers upon request without fee and to others for the fee, if any, the Department prescribes.

E. Any peace officer who has reason to believe or upon receiving information that a motor vehicle has been stolen shall have and is hereby vested with authority to confiscate and hold such vehicle until satisfactory proof of ownership is established.

§ 4-106. False report of theft or conversion

A person who knowingly makes a false report of the theft or conversion of a vehicle to a peace officer or to the Department is guilty of a crime.

§ 4-107. Removed, falsified or unauthorized identification

A. Any person or persons who shall destroy, remove, cover, alter or deface, or cause to be destroyed, removed, covered, altered or defaced, the engine number or other distinguishing number of any vehicle in this Nation, without first giving notice of such act to the Cherokee Nation Tax Commission, upon such form as the Commission may prescribe, or any person who shall give a wrong description in any application for the registration of any vehicle in this Nation for the purpose of concealing or hiding the identity of such vehicle, shall be deemed guilty of a crime.

B. A person who buys, receives, possesses, sells or disposes of a vehicle or an engine for a vehicle, knowing that the identification number of the vehicle or engine has been removed or falsified, shall, upon conviction, be guilty of a crime.

C. A person who buys, receives, possesses, sells or disposes of a vehicle or an engine for a vehicle, with knowledge that the identification number of the vehicle or engine has been removed or falsified and with intent to conceal or misrepresent the identity of the vehicle or engine, shall, upon conviction, be guilty of a crime.

D. A person who removes a license plate from a vehicle or affixes to a vehicle a license plate not authorized by law for use on said vehicle with intent to conceal or misrepresent the identity of the vehicle or its owner shall, upon conviction, be guilty of a crime.

E. As used in this section:

1. "Falsify" includes alter and forge.
2. "Identification number" includes an identifying number, serial number, engine number or other distinguishing number or mark, placed on a vehicle or engine by its manufacturer or by authority of the Cherokee Nation Tax Commission or in accordance with the laws of another state, tribe, or country.
3. "Remove" includes deface, cover and destroy.

F. An identification number may be placed on a vehicle or engine by its manufacturer in the regular course of business or placed or restored on a vehicle or engine by authority of the Cherokee Nation Tax Commission without violating this section; an identification number so placed or restored is not falsified.

§ 4-108. False statements of material facts—Punishment

Any person who shall knowingly make any false statement of a material fact, either in his application for the certificate of title herein provided for, or in any assignment thereof, or who, with intent to procure or pass title to a motor vehicle which he knows, or has reason to believe, has been stolen, shall receive or transfer possession of the same from or to another, or who shall have in his possession any motor vehicle which he knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, shall be deemed guilty of a crime. This provision shall not be exclusive of any other penalties prescribed by an existing or future law for the larceny or unauthorized taking of a motor vehicle.

§ 4-109. Altering or forging certificate of title

Any person who shall alter or forge, or cause to be altered or forged, any certificate of title issued by the Commission, pursuant to the provisions of this act, or any assignment thereof, or who shall hold or use any such certificate or assignment, knowing the same to have been altered or forged, shall be deemed guilty of a crime.

§ 4-110. Offenses in connection with certificates of title

A. Except as otherwise authorized by law, it shall be unlawful for any person to commit any of the following acts:

1. To lend or to sell to, or knowingly permit the use of by, one not entitled thereto any certificate of title or number plate issued to or in the custody of the person so lending or permitting the use thereof;
2. To alter or in any manner change a certificate of title, registration certificate or number plate issued under the laws of this Nation or any state;
3. To purchase identification or number plates on an assigned certificate of title. This paragraph

shall be applicable to all persons except bona fide registered dealers in used motor vehicles who are holders of current and valid used motor vehicle dealers' licenses;

4. To sell or dispose of, in any manner, a used vehicle without delivering to the purchaser an Oklahoma certificate of title in such purchaser's name or one properly and completely assigned to him at the time of sale.

Anyone violating any of the provisions of this subsection, upon conviction, shall be guilty of a crime and shall be fined not less than Ten Dollars (\$10.00) and not to exceed One Hundred Dollars (\$100.00).

B. Except as otherwise authorized by law, no person shall:

1. Lend or sell to, or knowingly permit the use of by, one not entitled thereto any certificate of title issued for a manufactured home, manufactured home registration receipt, manufactured home registration decal or excise tax receipt;

2. Alter or in any manner change a certificate of title issued for a manufactured home under the laws of this Nation or any state;

3. Remove or alter a manufactured home registration receipt, manufactured home registration decal or excise tax receipt attached to a certificate of title or attach such receipts to a certificate of title with the intent to misrepresent the payment of the required excise tax and registration fees;

4. Purchase identification, manufactured home registration receipt, manufactured home registration decal or excise tax receipt on an assigned certificate of title.

Anyone violating the provisions of this subsection, upon conviction, shall be guilty of a crime.

C. Any violation of any portion of this section where a specific penalty has not been imposed shall constitute a crime and upon conviction thereof the person having violated it shall be fined not less than Ten Dollars (\$10.00) and not to exceed One Hundred Dollars (\$100.00).

CHAPTER 10

ACCIDENTS AND ACCIDENT REPORTS

§ 10–101. Provisions of chapter apply throughout Cherokee Nation

The provisions of this chapter shall apply upon highways and elsewhere throughout Cherokee Nation.

§ 10–102. Accidents involving death or personal injury

A. The driver of any vehicle involved in an accident resulting in injury to or death of any person

shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of 47 CNCA § 10–104. Every such stop shall be made without obstructing traffic more than is necessary.

B. Any person willfully, maliciously, or feloniously failing to stop, or to comply with said requirements under such circumstances, shall be guilty of a crime.

C. The Commissioner of Public Safety shall revoke the license or permit to drive and any nonresident operating privilege of the person so convicted.

§ 10–103. Accidents involving damage to vehicle

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of 47 CNCA § 10–104. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a crime. In addition to the criminal penalties imposed by this section, any person violating the provisions of this section shall be subject to liability for damages in an amount equal to three (3) times the value of the damage caused by the accident. Said damages shall be recoverable in a civil action. Nothing in this section shall prevent a Judge from ordering restitution for any damage caused by a driver involved in an accident provided for in this section.

§ 10–104. Duty to give information and render aid

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his correct name, address and registration number of the vehicle he is driving, and shall upon request and if available exhibit his operator's or chauffeur's license and his security verification form, as defined in 47 O.S. § 7–600, to the person struck or the driver or occupant of or person attending any vehicle collided with, and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

§ 10–105. Duty upon striking unattended vehicle

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the correct name and address of the driver and owner of the vehicle striking the unattended vehicle, and provide said operator or owner with information from his security verification form, as defined by 47 O.S. § 7–600, or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking, and

providing information from his security verification form, as defined by 47 O.S. § 7-600, and a statement of the circumstances thereof.

§ 10-106. Duty upon striking fixtures upon a highway

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license and his security verification form, as defined in 47 O.S. § 7-600, and shall make report of such accident when and as required in 47 CNCA § 10-108.

§ 10-107. Immediate notice of accident

The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately, by the quickest means of communication, give notice of such accident to the local law enforcement department, or to the office of the county sheriff or the nearest office of the State Highway Patrol after complying with the requirements of 47 CNCA § 10-104.

§ 10-108. Written report of accident—Notice to other parties—Ancillary proceedings

A. The operator of a motor vehicle which is in any manner involved in a collision upon any road, street, highway or elsewhere within this Nation resulting in bodily injury to or death of any person or in which it is apparent that damage to one vehicle or other property is in excess of Three Hundred Dollars (\$300.00) shall forward a written report of such collision to the Department if settlement of the collision has not been made within six (6) months after the date of the accident and provided that if a settlement has been made a report of such settlement must be made by the parties.

B. Notwithstanding the provisions of 47 O.S. § 7-202, if any party involved in a collision files a report under this section, the Department shall notify all other parties involved in the collision, as specified in the report, that a report has been filed and all other parties shall then furnish the Department, within ten (10) days, such information as the Department may request to determine whether the parties were in compliance with the requirements of 47 O.S. § 7-600 et seq. at the time of the collision. Upon a finding that an owner or driver was not in compliance with 47 O.S. § 7-600 et seq., the Department shall then commence proceedings under the provisions of 47 O.S. § 7-201 et seq. and § 7-301 et seq.

§ 10-109. Form of report

A. The form of the report required by this section shall be prescribed by the Commissioner, and the Commissioner may cause to be prepared such blanks and shall make such blanks available to the motoring public by leaving a supply with marshals, sheriffs, chiefs of police, justices of the peace, judges of the district court and other officials as the Commissioner may deem advisable.

B. Such report, in addition to such other information as may be prescribed by the Commissioner, shall contain information to enable the Commissioner to determine whether the requirements for the deposit of security under 47 O.S. § 7-202 are inapplicable by reason of the existence of insurance or other exceptions specified in this act, and shall be accompanied by a copy of an estimate made by some motor vehicle agency or established garage as to the cost of repairing the vehicle of which the person making the report was the operator or owner, which report shall be signed by an authorized representative of such agency or garage.

§ 10-110. Additional information

The Department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient in the opinion of the Department.

§ 10-111. When driver unable to report

A. An accident report is not required under this chapter from any person who is physically incapable of making report during the period of such incapacity.

B. Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in 47 CNCA § 10-107 and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.

§ 10-112. False reports

Any person who gives information in reports as required in 47 CNCA § 10-108, 10-110 or 10-111 knowing or having reason to believe that such information is false shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned for not more than one (1) year, or both.

§ 10-113. Accident report forms

A. The Department may prepare and upon request supply to marshals, police departments, coroners, sheriffs, garages and other suitable agencies or individuals forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing and the persons and vehicles involved.

B. Every accident report required to be made in writing shall be made on the appropriate form approved by the Department and shall contain all of the information required therein unless not available.

§ 10-114. Penalty for failure to report

The Commissioner of Public Safety may suspend the license or permit to drive and any nonresident operating privileges of any person failing to report an accident as herein provided until such report has been filed, and the Commissioner may extend such suspension not to exceed thirty (30) days. Any person convicted of failing to make a report as required herein shall be punished as provided in 47 CNCA § 17–101.

§ 10–115. Public inspection of reports relating to accidents

A. All accident reports made by persons involved in accidents shall be without prejudice to the individual so reporting and shall be for the confidential use of the Department or other state or tribal agencies having use for the records for accident prevention purposes, or for the administration of the laws of this Nation relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the Department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident.

B. All accident reports and supplemental information filed in connection with the administration of the laws of this Nation relating to the deposit of security or proof of financial responsibility shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted, except, however, that such reports and supplemental information may be examined by any person named therein or by his representative designated in writing.

C. No reports or information mentioned in this section shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the Department shall furnish upon demand of any party to such trial, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the Department in compliance with law.

CHAPTER 11

RULES OF THE ROAD

ARTICLE I. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

ARTICLE II. TRAFFIC SIGNS, SIGNALS AND MARKINGS

ARTICLE III. DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING, ETC.

ARTICLE IV. RIGHT-OF-WAY

ARTICLE V. PEDESTRIANS' RIGHTS AND DUTIES

ARTICLE VI. TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

ARTICLE VII. SPECIAL STOPS REQUIRED

ARTICLE VIII. SPEED RESTRICTIONS

ARTICLE IX. RECKLESS DRIVING, DRIVING WHILE INTOXICATED AND NEGLIGENT HOMICIDE

ARTICLE X. STOPPING, STANDING AND PARKING

ARTICLE XI. MISCELLANEOUS RULES

ARTICLE XII. OPERATION OF BICYCLES AND PLAY VEHICLES

ARTICLE XIII. MAINTENANCE, CONSTRUCTION AND SAFETY ZONES

ARTICLE I. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

§ 11–101. Provisions of chapter refer to vehicles upon the highways—Exceptions

The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon the highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of Chapter 10 and Article IX of this chapter shall apply upon highways, turnpikes and public parking lots throughout the Nation.

§ 11–102. Required obedience to traffic laws

It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a crime for any person to do any act forbidden or fail to perform any act required in this chapter.

§ 11–103. Obedience to police officers

No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control or regulate traffic.

§ 11–104. Persons riding animals or driving animal-drawn vehicles

Every person riding an animal or driving any animal-driven vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

§ 11–105. Persons working on highways—Exceptions

Unless specifically made applicable, the provisions of this chapter except those contained in Article IX hereof shall not apply to persons, teams, motor vehicles and other equipment, while actually engaged in work upon the surface of a highway, or to persons, motor vehicles and other equipment while actually engaged in construction, maintenance or repair of public utilities provided that all highway and public utility operations shall be protected by adequate warning signs, signals, devices or flagmen, but the provisions of this chapter shall apply to such persons and vehicles when traveling to or from such work.

§ 11–106. Authorized emergency vehicles

A. The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privilege set forth in this section, but subject to the conditions herein stated.

B. The driver of an authorized emergency vehicle may:

1. Park, or stand, irrespective of the provisions of this chapter;
2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed limits so long as he does not endanger life or property;
4. Disregard regulations governing direction of movement or turning in specified directions.

C. The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of 47 CNCA § 12–218, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

D. The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

§ 11–107. Military convoys exempt from municipal traffic regulation—Right-of-way—Exceptions

The military forces of the United States and organizations of the National Guard, performing any military duty, shall not be restricted by municipal traffic regulations, and shall have the right-of-way on any street or highway through which they may pass against all, except carriers of the United States mail, fire engines, ambulances and police vehicles in the necessary discharge of their respective duties. Said mounted military moving in convoy shall have lights burning, with lead and trail vehicles prominently marked, and shall travel, while inside the corporate limits of a city or town, in compliance with such speeds as are legally posted within the corporate limits of the

city or town and shall maintain a closed interval of not more than seventy-five (75) feet.

ARTICLE II. TRAFFIC SIGNS, SIGNALS AND MARKINGS

§ 11–201. Obedience to and required traffic-control devices

A. The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this act, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this act.

B. No provision of this act for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

§ 11–202. Traffic-control signal legend

Whenever traffic is controlled by traffic-control signals exhibiting different colored lights or colored lighted arrows successively one at a time, or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green indication:

a. Vehicular traffic facing a circular green signal, except when prohibited under 47 CNCA § 11–1302, may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

b. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

c. Unless otherwise directed by a pedestrian-control signal, as provided in 47 CNCA § 11–203, pedestrians facing any green signal except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

2. Steady yellow indication:

a. Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that

the related green movement is being terminated or that a red indication will be exhibited immediately thereafter.

b. Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in 47 CNCA § 11–203, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway.

3. Steady red indication:

a. Vehicular traffic facing a steady circular red signal alone shall stop at a clearly-marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in subparagraph b of this paragraph.

b. Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right or to turn left from a one-way street into a one-way street after stopping as required by subparagraph a of this paragraph. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

c. In order to prohibit right turns or left turns as prescribed in subparagraph b of this paragraph on the red signal after the required stop, a municipality must erect clear, concise signs informing drivers that such turns are prohibited. The Highway Department shall specify the design of the sign to be used for this purpose, and it shall be used uniformly throughout the state.

d. Unless otherwise directed by a pedestrian-control signal as provided in 47 CNCA § 11–203, pedestrians facing a steady circular red signal alone shall not enter the roadway.

In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

§ 11–203. Pedestrian-control signals

Whenever special pedestrian-control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" are in place, such signals shall indicate as follows:

1. Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way in the direction of the signal by the drivers of all vehicles.

2. Wait or Don't Walk. No pedestrian shall start to cross the roadway in the direction of such

signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

§ 11–204. Flashing signals

A. Whenever an illuminated red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

1. Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

B. This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in 47 CNCA § 11–701.

§ 11–204.1. Lane use control signals

When lane use control signals are placed over individual lanes, said signals shall indicate and apply to drivers of vehicles as follows:

1. Green indication—Vehicular traffic may travel in any lane over which a green signal is shown;

2. Steady yellow indication—Vehicular traffic is thereby warned that a lane control change is being made;

3. Steady red indication—Vehicular traffic shall not enter or travel in any lane over which a red signal is shown; and

4. Flashing yellow indication—Vehicular traffic may use the lane only for the purpose of approaching and making a left turn.

§ 11–205. Pedestrian-actuated school crossing signals

Whenever a pedestrian-actuated school crossing signal is provided, it shall require obedience by vehicular traffic and pedestrians in accordance with 47 CNCA §§ 11–202 and 11–203.

§ 11–206. Display of unauthorized signs, signals or markings

A. No person shall place, maintain or display upon or in view of any highway any unauthorized

sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which projects any flashing or revolving beams of light, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any street or highway any traffic sign or signal bearing thereon any commercial advertising; provided, however, that the governing board of any city or town may permit, under such conditions as the said board may deem proper, commercial or other advertising upon any traffic sign located on streets or highways within said city or town and not designated as either state or federal highways or extensions thereof.

B. This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

C. Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

§ 11–207. Interference with official traffic-control devices or railroad signs or signals

No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof.

ARTICLE III. DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING, ETC.

§ 11–301. Driving on right side of roadway—Exceptions

A. Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
2. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
3. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon;
4. Upon a roadway restricted to one-way traffic; or

5. Upon a roadway having four or more lanes for moving traffic and providing for two-way movement of traffic.

B. Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane when available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

C. Upon any roadway having four (4) or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under paragraph 2 of subsection (A) of this section. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway.

§ 11–302. Passing vehicles proceeding in opposite directions

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one (1) line of traffic in each direction each driver shall give to the other at least one-half (1/2) of the main-traveled portion of the roadway as nearly as possible.

§ 11–303. Overtaking a vehicle on the left—Signal

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

1. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

2. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

3. Every driver who intends to pass another vehicle proceeding in the same direction, which requires moving his vehicle from one lane of traffic to another, shall first see that such movement can be made with safety and shall proceed to pass only after giving a proper signal by hand or mechanical device.

§ 11–304. When overtaking on the right is permitted

A. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the

following conditions:

1. When the vehicle overtaken is making or about to make a left turn;
2. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;
3. Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

B. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

§ 11–305. Limitations on overtaking on the left

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred (100) feet of any vehicle approaching from the opposite direction.

§ 11–306. Further limitations on driving to left of center of roadway

A. No vehicle shall be driven on the left side of the roadway under the following conditions:

1. When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
2. When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing unless otherwise indicated by official traffic-control devices;
3. When the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct or tunnel.

B. The foregoing limitations shall not apply upon a one-way roadway; nor under the conditions described in 47 CNCA § 11–301(A)(2), nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

§ 11–307. No-passing zones

A. Cherokee Nation by designated authority is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

B. Where signs or markings are in place to define a no-passing zone as set forth in subsection (A) of this section no driver shall at any time drive to the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

§ 11–308. One-way roadways and rotary traffic island

A. Cherokee Nation may designate any street or highway or any separate roadway under their respective jurisdictions for one-way traffic and shall erect appropriate signs giving notice thereof.

B. Upon a roadway designated and sign posted for one-way traffic a vehicle shall be driven only in the direction designated.

C. A vehicle passing around a rotary traffic island shall be driven only to the right of such islands.

§ 11–308A. Speed limits—Traffic control regulations—Violations

Cherokee Nation may set speed limits and promulgate regulations governing uniform traffic control to comply with the provisions of this title for the reasonable and safe operation of motor vehicles on property situated within the Nation and owned by or under the control of the public trust.

Speed limits and regulations so established shall be enforceable when appropriate signs giving notice thereof are erected. Any person driving on such property in violation of the speed limit or regulation so established shall, upon conviction, be punished in the same manner as provided for persons convicted of violating other provisions of this chapter.

§ 11–309. Driving on roadways laned for traffic

Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply.

1. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety and then given a signal, not less than the last one hundred (100) feet traveled by the vehicle, of his intention to change lanes.

2. Upon a roadway which is divided into three (3) lanes, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and

such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is sign posted to give notice of such allocation.

3. Upon a roadway which is divided into four (4) or more lanes, a vehicle proceeding at less than the maximum posted speed, except when reduced speed is necessary for safe operation, shall not impede the normal flow of traffic by driving in the left lane. Such vehicle shall be driven in the right-hand lane except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

4. Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

§ 11–310. Following too closely

A. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

B. The driver of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residential district and which is following another truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or another vehicle.

C. No vehicle which has more than six (6) tires in contact with the road shall approach from the rear of another vehicle which has more than six (6) tires in contact with the road closer than three hundred (300) feet except when passing such said vehicle.

D. Motor vehicles being driven upon any roadway outside of a business or residential district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. The distance between such vehicles shall be a minimum of two hundred (200) feet under all conditions. This provision shall not apply to funeral processions.

§ 11–311. Driving on divided highways

Whenever any highway has been divided into two (2) or more roadways by leaving an intervening space or by a physical barrier or clearly-indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an

opening in such physical barrier or dividing section or space or at a cross-over or intersection as established unless specifically prohibited by public authority.

§ 11–312. Restricted access

No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

§ 11–313. Restrictions on use of controlled-access roadway

Cherokee Nation may prohibit the use of any such roadway by pedestrians, bicycles or other nonmotorized traffic or by any person operating a motor-driven cycle. Cherokee Nation adopting any such prohibitory regulations shall erect and maintain official signs on the controlled-access roadway on which such regulations are applicable and when so erected no person shall disobey the restrictions stated on such signs.

ARTICLE IV. RIGHT-OF-WAY

§ 11–401. Vehicle approaching or entering intersection

A. The driver of a vehicle on a county road approaching an intersection with a tribal or federal highway shall stop and yield the right-of-way to a vehicle which has entered the intersection or which is so close thereto as to constitute an immediate hazard.

B. When two (2) vehicles enter or approach an intersection from different highways at approximately the same time, except in subsection (A) of this section, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

C. The right-of-way rules declared in subsections (A) and (B) of this section are modified at through highways and otherwise as hereinafter stated in this chapter.

§ 11–402. Vehicle turning left at intersection

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn.

§ 11–403. Vehicle entering stop or yield intersection

A. Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in 47 O.S. § 15–108.

B. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by 47 CNCA § 11–703(D) and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard, but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection shall yield the right-of-way to the vehicle so proceeding.

C. The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions, or shall stop if necessary as provided in 47 CNCA § 11–703(E), and shall yield the right-of-way to any pedestrian legally crossing the roadway on which he is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard. Said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection shall yield to the vehicle so proceeding, provided, however, that if such driver is involved in a collision with a pedestrian in a crosswalk or vehicle in the intersection after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield right-of-way.

D. Where two or more vehicles face stop, slow, warning or caution signs or signals on two or more intersecting cross streets, and are approaching so as to enter the intersection at the same time, where each vehicle is required to stop, the vehicle coming from the right shall have the right-of-way. Where each vehicle is required to slow the vehicle coming from the right shall have the right-of-way. Where each vehicle is required to take caution, the vehicle coming from the right shall have the right-of-way. Where one vehicle is required to stop and the other to slow or take caution, the one slowing or taking caution shall have the right-of-way. Where one vehicle is required to slow and the other to take caution, the one required to take caution shall have the right-of-way. In any event, a vehicle which has already entered the intersection shall have the right-of-way over one which has not so entered the intersection.

§ 11–404. Vehicle entering highway from private road or driveway

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on said highway.

§ 11–405. Operation of vehicles on approach of authorized emergency vehicles

A. Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 47 O.S. § 12–218, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

B. This section shall not operate to relieve the driver of an authorized emergency vehicle from the

duty to drive with due regard for the safety of all persons using the highway.

ARTICLE V. PEDESTRIANS' RIGHTS AND DUTIES

§ 11–501. Pedestrians subject to traffic regulations

A. A pedestrian shall obey the instructions of any official traffic-control device specifically applicable to him, unless otherwise directed by a police officer.

B. Pedestrians shall be subject to traffic and pedestrian-control signals as provided in 47 CNCA §§ 11–202 and 11–203.

C. At all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter.

§ 11–502. Pedestrians' right-of-way in crosswalks

A. When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

C. Subsection (A) shall not apply under the conditions stated in 47 CNCA § 11–503(B).

D. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

§ 11–503. Crossing at other than crosswalks

A. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

B. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

C. Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

§ 11–504. Drivers to exercise due care

Notwithstanding the foregoing provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

§ 11–505. Pedestrians to use right half of crosswalks

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

§ 11–506. Pedestrians on roadways or bridges

A. Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

B. Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction and shall yield to approaching vehicles.

C. It shall be unlawful for any person to enter upon any portion of a bridge for the purpose of diving or jumping therefrom into a lake, river or stream for recreation, and it shall be unlawful for a pedestrian to use a bridge where sidewalks are not provided for the purpose of standing or sightseeing.

§ 11–507. Pedestrians soliciting rides or business

No person shall stand in a roadway for the purpose of soliciting a ride, donation, employment or business from the occupant of any vehicle.

ARTICLE VI. TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

§ 11–601. Required position and method of turning at intersections

The driver of a vehicle intending to turn at an intersection shall do so as follows:

1. Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

2. Left turns on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the

left of the center of the intersection.

3. Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

4. Local authorities in their respective jurisdictions may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs.

§ 11–602. Turning on curve or crest of grade prohibited

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet.

§ 11–603. Starting parked vehicle

No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

§ 11–604. Turning movements and required signals

A. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in 47 CNCA § 11–601, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

B. A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.

C. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

§ 11–605. Signals by hand and arm or signal lamps

A. Any stop or turn signal when required herein shall be given either by means of the hand and

arm or by signal lamps, except as otherwise provided in subsection (B) of this section.

B. Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four (24) inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen (14) feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

§ 11–606. Method of giving hand-and-arm signals

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

1. Left turn. Hand and arm extended horizontally.
2. Right turn. Hand and arm extended upward.
3. Stop or decrease speed. Hand and arm extended downward.

ARTICLE VII. SPECIAL STOPS REQUIRED

§ 11–701. Obedience to signal indicating approach of train

A. Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

1. A clearly-visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
2. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
3. A railroad train approaching within approximately one thousand five hundred (1,500) feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;
4. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

B. No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

§ 11–702. Certain vehicles must stop at all railroad grade crossings

A. The driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing and the driver shall not shift gears while crossing the track or tracks.

B. No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

§ 11-703. Stop signs and yield signs

A. Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in 47 O.S. § 15-108.

B. Every stop sign and every yield sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as near as practicable to the nearest line of the intersecting roadway, however such yield signs shall not be erected upon the approaches of but one of the intersecting streets.

C. Every stop sign shall bear the word "Stop". Every yield sign hereafter erected or replaced shall bear the word "Yield". Every stop sign and every yield sign shall at nighttime be rendered luminous by internal illumination, or by a floodlight projected on the face of the sign, or by efficient reflecting elements in or on the face of the sign.

D. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly-marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

E. The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly-marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

§ 11-704. Emerging from alley, driveway or building

The driver of a vehicle within a business or residence district emerging from an alley, driveway or

building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

§ 11–705. Meeting or overtaking stopped school bus—Reporting violations

A. The driver of a vehicle meeting or overtaking a school bus that is stopped to take on or discharge school children, and on which the red loading signals are in operation, is to stop his vehicle before it reaches the school bus and not proceed until the loading signals are deactivated and then proceed past such school bus at a speed which is reasonable and with due caution for the safety of such school children and other occupants.

B. Every school bus used for the transportation of schoolchildren shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height and in addition shall be equipped with visual signals meeting the requirements of 47 O.S. § 12–218, which shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

C. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

D. If the driver of a school bus witnesses a violation of the provisions of subsection (A) of this section, within twenty-four (24) hours of the alleged offense, he shall report the violation, the vehicle color, license tag number, and the time and place such violation occurred to the law enforcement authority of the municipality where the violation occurred. The law enforcement authority of Cherokee Nation shall issue a letter of warning on the alleged violation to the person in whose name the vehicle is registered. A warning letter issued pursuant to this subsection shall not be recorded on the driving record of the person to whom such letter was issued. Issuance of a warning letter pursuant to this section shall not preclude the imposition of other penalties as provided by law.

§ 11–705.1. Church buses—Definition—Meeting and overtaking stopped bus—Signs and signals

A. A church bus is a vehicle operated by a nonprofit religious organization which transports persons including school-age children to and from religious services.

B. The driver of a vehicle meeting or overtaking a church bus that is stopped to take on or discharge passengers, and on which the red loading signals are in operation, is to stop his vehicle before it reaches the church bus and not proceed until the loading signals are deactivated and then proceed past such bus at a speed which is reasonable and with due caution for the safety of such

occupants.

C. Every church bus used for the transportation of persons to and from religious services shall bear upon the front and rear thereof plainly visible signs containing the words "CHURCH BUS" in letters not less than eight (8) inches in height and in addition may be equipped with visual signals meeting the requirements of 47 O.S. § 12-218, which shall be actuated by the driver of said church bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging passengers.

D. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a church bus which is on a different roadway or when upon a controlled-access highway and the church bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

ARTICLE VIII. SPEED RESTRICTIONS

§ 11-801. Basic rule and maximum limits

A. Any person driving a vehicle on a highway shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface and width of the highway and any other conditions then existing, and no person shall drive any vehicle upon a highway at a speed greater than will permit him to bring it to a stop within the assured clear distance ahead.

B. Except when a special hazard exists that requires lower speed for compliance with subsection (A) of this section, the limits specified in this act or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

1. Sixty-five (65) miles per hour in other locations during daytime.
2. Fifty-five (55) miles per hour in such other locations during nighttime. Daytime means from a half hour before sunrise to a half hour after sunset. Nighttime means at any other hour.
3. Seventy (70) miles per hour in such other locations which are four-lane divided highways.
4. No person shall drive a truck, truck tractor with semitrailer or pole-trailer attached or any other combination of vehicles at a speed greater than a maximum of sixty (60) miles per hour in the day and fifty-five (55) miles per hour during the nighttime.
5. No person shall drive a pickup truck at a greater speed than is prescribed in subsection (B) of this section; except when such pickup truck is hauling livestock, then and in that event the maximum speed of such pickup truck shall not exceed sixty (60) miles per hour day or fifty-five (55) miles per hour at night. A pickup truck, as used in this act, shall apply to all vehicles having a rated load capacity of three-quarter (3/4) ton or less.

6. No person shall drive a school bus at a speed greater than a maximum of fifty (50) miles per hour except on turnpikes and interstate highways where the maximum shall be sixty-five (65) miles per hour.

7. On any highway outside of a municipality, the speed limit in a properly marked school zone shall be a maximum of twenty-five (25) miles per hour, provided the zone is marked with movable school zone signs, the signs placed at least one hundred (100) yards on each side of the area of the school proper. These signs shall not be placed upon or left standing on any part of the roadway except during the school day and the period immediately after the closing of school when children are, or are expected to be, crossing the highway in said school area; provided that such signs shall be removed from the roadway at all times when school is actually assembled and in no event shall such signs be placed upon the roadway more than one (1) hour prior to the assembly of school in the morning nor left standing on the roadway for more than one (1) hour after the dismissal of school in the evening. The Cherokee Nation shall mark such school zones, or entrances and exits onto highways by buses or students, so that the maximum speed provided by this section shall be established therein. Exits and entrances to controlled-access highways which are within such school zones shall be marked in the same manner as other highways. The county commissioners shall mark such school zones along the county roads so that the maximum speed provided by this section shall be established therein. Said signs may be either permanent or temporary. The Cherokee Nation shall give priority over all other signing projects to the foregoing duty to mark school zones. The Department shall also provide other safety devices for school zones which are needed in the opinion of the Department. The Cherokee Nation shall mark such school zones located within Indian country.

8. No person shall drive any vehicle at a greater maximum speed than twenty-five (25) miles per hour through school zones unless otherwise marked.

9. No person shall drive any vehicle on a highway in any park or wildlife refuge at a rate of speed in excess of thirty-five (35) miles per hour. Provided, however, that the provisions of this paragraph shall not apply to any state or federal designated highway within such areas.

10. No person shall drive any vehicle or combination of vehicles with solid rubber or metal tires at a speed greater than the maximum of ten (10) miles per hour.

The maximum speed limits set forth in this act may be altered as authorized in 47 CNCA §§ 11–802 and 11–803.

C. The driver of every vehicle shall, consistent with the requirements of subsection (A), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hillcrest, when driving upon any narrow or winding roadway, and when special hazard exists with respects to pedestrians or other traffic, or by reason of weather or highway conditions.

§ 11–801A. Maximum speed limits—Suspension of existing conflicting law

No person shall drive a vehicle on a road or highway at a speed in excess of fifty-five (55) miles per hour unless, pursuant to federal law, a greater speed limit is authorized or established; provided, however, that the speed limit on rural interstate highways, as defined by federal law, shall be a maximum of sixty-five (65) miles per hour. This act, Section 11–1101 et seq. of this title, shall cease to be effective when the "Federal–Aid Highway Amendments of 1974." (Public Law 93–643), 23 U.S.C. § 101, or a substantially similar successor law with sanctions, ceases to be in effect; or by proclamation of the Principal Chief that an emergency no longer exists and this maximum speed is no longer warranted; or by resolution of the Council of the Cherokee Nation that an emergency no longer exists and this maximum speed is no longer warranted. This act shall suspend but not repeal all other laws in conflict and such laws shall resume their effectiveness when this act ceases to be in effect.

§ 11–801B. Restriction on cancellation of automobile insurance policies

No insurer shall, directly or indirectly, use traffic tickets or convictions for traffic offenses as a basis for cancellation of automobile insurance policies or increasing insurance premium rates for automobile insurance policies where such ticket or conviction is for exceeding the speed limit specified in this act, but not exceeding the speed limit previously in force where the violation occurred; nor shall any insurer in any way penalize or adversely affect any insured for any such violation or conviction.

§ 11–801C. Restrictions on recording or assessing points for speed violations

The Oklahoma Department of Public Safety shall not record or assess points for traffic violations or convictions for traffic offenses on any licensee's traffic record as maintained by said Department, where such violation or conviction is for exceeding the speed limit specified in this act, but not exceeding the speed limit previously in force where the violation occurred.

§ 11–801D. Restriction on recording or assessing points for out-of-state speed violations

The Department of Public Safety shall not record or assess points against a licensee for out-of-state violations or convictions of exceeding such state's speed limits, provided such licensee did not exceed the speed limit previously in force as of January 1, 1974, in the state where the violation or conviction occurred.

§ 11–802. Establishment of tribal speed zones

Whenever Cherokee Nation shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the highway system, said Cherokee Nation may determine and declare a reasonable and safe maximum limit thereat which, when appropriate signs giving notice thereof are erected, shall be effective at all times, or during hours of daylight or darkness or at such other times as may be determined at such intersection or other place or part of the highway.

§ 11–803. When local authorities may and shall alter maximum limits

A. Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under this article is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which:

1. Decreases the limit at intersections; or
2. Increases the limit within an urban district, but not to more than sixty-five (65) miles per hour during daytime or fifty-five (55) miles per hour during nighttime; or
3. Decreases the limit outside an urban district, but not to less than thirty-five (35) miles per hour.

B. Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under this act for an urban district.

C. Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

D. As to streets and highways within the corporate limits which have been constructed or reconstructed with state or federal funds, local authorities shall have joint authority with Cherokee Nation to establish or alter speed limits; and provided further, that no local authority shall impose speed limits on any such street or highway substantially lower than those justified by the highway design, capacity, and traffic volume as determined by engineering studies, of less than thirty-five (35) miles per hour.

§ 11–804. Minimum speed regulation

A. No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

B. Whenever Cherokee Nation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, Cherokee Nation or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

§ 11–805. Special speed limitation on motor-driven cycles

No person shall operate any motor-driven cycle or any motor scooter, at any time, at a speed greater than thirty-five (35) miles per hour. However, all motor-driven cycles and motor scooters shall at all times conform to 47 CNCA § 11–801(A).

As used in this article, "motor-driven cycle" shall mean every bicycle with motor attached, and every motor scooter with wheel diameters twelve (12) inches or less, measured from one side of the rim to the other.

§ 11–806. Special speed limitations

A. No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is sign posted as provided in this section.

B. Cherokee Nation and local authorities may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if they shall thereupon find that such structure cannot, with safety to itself, withstand vehicles driving at speeds otherwise permissible under this act, they shall determine and declare the maximum speed of vehicles which such structure can safely withstand, and may cause and permit suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred (100) feet before each end of such structure.

C. Where any tribal or federal highway shall be under construction or repair or a detour shall have been designated by reason of construction or repairs in progress and Cherokee Nation shall have determined a maximum safe, careful and prudent speed on such highway or detour during the period of such construction or repairs and shall have plainly posted at each terminus thereof and at not less than each half mile along the route thereof such determined maximum speed, no person shall drive any vehicle upon such portion of such highway or upon such detour at a speed in excess of the speed so determined and posted.

D. Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said Cherokee Nation and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety as provided in subsections (B) and (C) of this section.

§ 11–807. Charging violations and rule in civil actions

A. In every charge of violation of any speed regulation in this article, the complaint, also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the maximum speed applicable within the district or at the location.

B. The provision of this article declaring maximum speed limitations shall not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

C. Every person convicted of violating any provision of this article shall be guilty of a crime and upon conviction shall be fined in a sum of not less than Ten Dollars (\$10.00) and not more than Two Hundred Dollars (\$200.00), or shall be sentenced to serve a term of not less than five (5) days nor more than thirty (30) days in jail, or by both such fine and imprisonment.

§ 11–808. Radar interference devices—Advertising, sale, manufacture or distribution prohibited—Exemption—Penalties

A. It shall be unlawful for any person to operate a motor vehicle upon any public road, street, highway or turnpike of this state when such vehicle is equipped with any device designed for the purpose of, or capable of:

1. Jamming or distorting signals emitted by radar; or
2. Transmitting a signal capable of being received by radar.

B. It shall be unlawful to manufacture, advertise for sale, sell or otherwise distribute any such device in this Nation.

C. A license issued by the Federal Communications Commission for the use of such device shall exempt operation of such device from the provisions of this act.

D. Any person convicted of violating subsection (A) or (B) of this section shall be punished by a fine of not more than Two Hundred Dollars (\$200.00).

§ 11–809. Exemptions

The provisions of this act shall not apply to:

1. Any receiver of radio waves of any frequency lawfully licensed by any state or federal agency;
2. Any such device owned or operated by the federal or state or Nation government or any political subdivision used by employees thereof in their official duties, or the sale of any such device to law enforcement agencies for use in their official duties; or
3. Any citizens band radio.

ARTICLE IX. RECKLESS DRIVING, DRIVING WHILE INTOXICATED AND NEGLIGENT HOMICIDE

§ 11–901. Reckless driving

A. It shall be deemed reckless driving for any person to drive a motor vehicle in a careless or wanton manner without regard for the safety of persons or property or in violation of the conditions

outlined in 47 CNCA § 11–801.

B. Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days, or by fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment; on a second or subsequent conviction punishment shall be imprisonment for not less than ten (10) days nor more than six (6) months, or by fine of not less than One Hundred Fifty Dollars (\$150.00) nor more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

§ 11–902. Persons under the influence of alcohol or other intoxicating substance or combination thereof

A. It is unlawful and punishable as provided in subsection (C) of this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this nation who:

1. Has a blood or breath alcohol concentration, as defined in 47 CNCA § 756, of eight-hundredths (0.08) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq., and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

C. 1. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a crime for the first offense and shall: a) participate in a substance abuse assessment and evaluation approved by the District Court and shall follow all recommendations made in the assessment and evaluation, b) be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and c) be fined not more than One Thousand Dollars (\$1,000.00).

2. Any person who within ten (10) years following the completion of the execution of any sentence

or deferred judgment for a violation of this section or a violation pursuant to the provisions of any law of any state prohibiting the offenses provided in subsection (A) of this section and is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection (A) of this section shall be deemed guilty of a crime and shall be sentenced to: a) participate in a substance abuse assessment and evaluation approved by the District Court and shall follow all recommendations made in the assessment and evaluation at the defendant's expense, or b) incarceration for not less than one (1) year and not to exceed three (3) years and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or c) treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph. However, if the treatment recommended for the defendant does not include residential or inpatient treatment for a period of not less than ten (10) days, the person shall serve a term of imprisonment of at least ten (10) days.

3. Any person who is convicted of a third or subsequent offense pursuant to the provisions of this section or a violation pursuant to the provisions of any law of any state or a violation pursuant to the provisions of any law of any federally-recognized Indian tribe shall participate in a substance abuse assessment and evaluation as approved by the District Court and shall be sentenced to: a) follow all recommendations made in the substance abuse assessment and evaluation at the defendant's expense, followed by not less than one (1) year of supervision and periodic testing at the defendant's expense, four hundred eighty (480) hours of community service, and use of an ignition interlock device, or b) incarceration for not less than one (1) year and not more than three (3) years and a fine of not more than Five Thousand Dollars (\$5,000.00), or c) treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph. However, if the person does not undergo residential or inpatient treatment the person shall serve a term of imprisonment of at least ten (10) days.

D. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The Court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-five Dollars (\$75.00). The facility shall, within seventy-two (72) hours, submit a written report to the Court for the purpose of assisting the Court in its final sentencing determination.

§ 11-902.1. Course for drinking drivers

As used in this act:

1. Course for drinking drivers means a course designed to inform the offender about alcohol or drugs and driving, and encourages the participants to reassess their use of alcohol or other drugs, and driving behavior, in order to select practical alternatives.
2. Satisfactory completion of a course means that the institution or agency conducting the course verifies that the participant has satisfactorily met the requirements of the course.

§ 11–902.2. Courts—Conditional participation in drinking drivers course

In any case in a municipal or District Court of proper jurisdiction wherein the defendant is charged with actual physical control of or operation of a motor vehicle while under the influence of or impaired by alcohol or a drug, the Court may:

A. Upon a plea of guilty or nolo contendere, or stipulation by the defendant, or a verdict, but before a judgment of guilt is entered, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings upon the condition that the defendant enroll in, attend and successfully complete, at his own expense, a course for drinking drivers as provided by this act; or

B. Upon a conviction, suspend the execution of sentence, with or without probation, upon the condition that the defendant enroll in, attend and successfully complete, at his own expense, a course for drinking drivers as provided by this act.

§ 11–902.3. Institutions and organizations that may offer courses—Fees—Limitations on enrollment

A. Courses for drinking drivers shall be offered only by nonprofit educational institutions of higher learning, governmental or nonprofit organizations.

B. Enrollment fees for those attending the courses shall not exceed Fifty Dollars (\$50.00).

C. Enrollment in the course shall not be limited to persons ordered to enroll, attend and successfully complete the course under the provisions of 47 CNCA § 11–902.2.

D. All courses for drinking drivers shall be approved by the Department of Public Safety.

E. Any institution conducting a course for drinking drivers shall notify the prosecutor and the court of all persons who successfully complete such course as a condition to a deferred or suspended sentence pursuant to 47 CNCA § 11–902.2.

§ 11–902.4. Operating or being in actual physical control of motor vehicle while under the influence while under age—Penalties

A. It is unlawful, and punishable as provided in subsection (B) of this section, for any person under twenty-one (21) years of age to drive, operate, or be in actual physical control of a motor vehicle within this Nation who:

1. has any measurable quantity of alcohol in the person's blood or breath at the time of a test administered within two (2) hours after an arrest of the person;

2. exhibits evidence of being under the influence of any other intoxicating substance as shown by analysis of a specimen of the person's blood, breath, saliva, or urine in accordance with the

provisions of 47 O.S. § 752; or

3. exhibits evidence of the combined influence of alcohol and any other intoxicating substance.

B. Any person under twenty-one (21) years of age who violates any provision of this section shall be subject to the seizure of the driver license of that person at the time of arrest or detention and the person, upon conviction, shall be guilty of operating or being in actual physical control of a motor vehicle while under the influence while under age and shall be punished:

1. for a first conviction, by:

a. a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00),

b. assignment to and completion of twenty (20) hours of community service,

c. requiring the person to attend and complete a treatment program, or

d. any combination of fine, community service, or treatment;

2. upon a second conviction, by:

a. assignment to and completion of not less than two hundred forty (240) hours of community service, and

b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device or devices for a period of not less than thirty (30) days.

In addition, a second conviction may be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection (D) of this section, or by both; or

3. upon a third or subsequent conviction, by:

a. assignment to and completion of not less than four hundred eighty (480) hours of community service, and

b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device or device for a period of not less than thirty (30) days.

In addition, a third or subsequent conviction may be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection (D) of this section, or by both.

C. The Court may assess additional community service hours in lieu of any fine specified in this section.

D. In addition to any penalty or condition imposed pursuant to the provisions of this section, the person shall be subject to:

1. upon a first conviction:

a. the cancellation or denial of driving privileges as ordered by the Court,

b. the continued installation of an ignition interlock device or devices, at the expense of the person after the mandatory period of cancellation, denial or revocation of driving privileges;

2. upon a second or subsequent conviction:

a. the cancellation or denial of driving privileges,

b. an assessment of the person's degree of alcohol abuse, which may result in treatment as deemed appropriate by the Court, and

c. the continued installation of an ignition interlock device or devices, at the expense of the person, after the mandatory period of cancellation, denial or revocation of driving privileges.

E. Nothing in this section shall be construed to prohibit the filing of charges pursuant to 47 CNCA § 11-902 when the facts warrant.

F. As used in this section:

1. The term "**conviction**" includes a juvenile delinquency adjudication by a court; and

2. The term "**revocation**" includes the cancellation or denial of driving privileges by any states Department of Public Safety.

§ 11-903. Negligent homicide

A. When the death of any person ensues within one (1) year as a proximate result of injury received by the driving of any vehicle by any person sixteen (16) years of age or older in reckless disregard of the safety of others, the person so operating such vehicle shall be guilty of negligent homicide.

B. Any person convicted of negligent homicide shall be guilty of a crime.

C. The Commissioner of Public Safety shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted of negligent homicide.

§ 11–904. Person involved in personal injury accident while under influence of alcohol or other intoxicating substance—Causing great bodily injury

A. Any person who is involved in a personal injury accident while driving or operating a motor vehicle within this state and who is in violation of the provisions of 47 CNCA § 11–902(A) may be charged with a violation of the provisions of this subsection as follows:

1. Any person who is convicted of a violation of the provisions of this subsection shall be deemed guilty of a crime.

2. Any person who is convicted of a second or subsequent violation of the provisions of this subsection shall be deemed guilty of a crime.

B. 1. Any person who causes an accident resulting in great bodily injury to any person other than himself while driving or operating a motor vehicle within this state and who is in violation of the provisions of 47 CNCA § 11–902(A) may be charged with a violation of the provisions of this subsection. Any person who is convicted of a violation of the provisions of this subsection shall be deemed guilty of a crime.

2. As used in this subsection, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

ARTICLE X. STOPPING, STANDING AND PARKING

§ 11–1001. Stopping, standing or parking outside of business or residence districts

A. Upon any highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred (200) feet in each direction upon such highway.

B. This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

§ 11–1002. Officers authorized to remove illegally stopped vehicle

A. Whenever any police officer finds a vehicle standing upon a highway in violation of any of the provisions of 47 CNCA § 11–1001, such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.

B. Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any underpass where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

C. When any vehicle is left standing or abandoned upon a highway in violation of this section and at such a place or in such manner as to interfere or prevent the maintenance of said highway, the Cherokee Nation Marshal's Office or its designee may remove such vehicle or request the driver or other persons in charge thereof to move the same to some place of safety off the highway without charge to the owner of the vehicle.

§ 11–1003. Stopping, standing or parking prohibited in specified places

A. No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk;
2. In front of a public or private driveway;
3. Within fifteen (15) feet of a fire hydrant;
4. Within an intersection;
5. On a crosswalk;
6. Within twenty (20) feet of a crosswalk at an intersection;
7. Within thirty (30) feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;
8. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the authority having jurisdiction indicates a different length by signs or markings;
9. Within fifty (50) feet of the nearest rail of a railroad crossing;
10. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance (when properly sign posted);
11. Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
13. Upon any bridge or other elevated structure upon a highway or within a highway underpass;
14. At any place where official signs prohibit stopping.

B. No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

§ 11–1004. Additional parking regulations

A. Except as otherwise provided in this section, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen (18) inches of the right-hand curb.

B. Local authorities may by ordinance permit parking of vehicle with the left-hand wheels adjacent to and within eighteen (18) inches of the left-hand curb of a one-way roadway.

C. Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless Cherokee Nation has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

D. Cherokee Nation with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

§ 11–1005. Authorized emergency vehicles; vehicles used in construction or maintenance of highways—Excepted from certain provisions

Provisions of this article shall not apply to authorized emergency vehicles or to vehicles or machinery used in the construction or maintenance of highways, and such vehicles or machinery may be operated on any part of the road, whether same is open to traffic or closed, when such operation is necessary in the maintenance or construction of said highway; provided, that the Department of Highways or Cherokee Nation shall protect all such operations with adequate warnings, signs, signals, lights, devices, or flagmen.

§ 11–1006. Parking of vehicles on posted private property—Penalty—Liability of landowner

A. It shall be unlawful to place or park a motor vehicle or a trailer upon the posted private property of another, without first obtaining permission from the landowner or the person in charge of such property, except where said placing or parking is casual or involuntary.

B. Violation of the terms of this section shall be considered to be a crime and upon conviction violators shall be fined not to exceed Twenty Dollars (\$20.00) and, in addition thereto, shall pay any and all reasonable and necessary charges incurred by the landowner or other person in having any vehicle or trailer removed from his property and stored.

C. The landowner or person in charge of the land shall not be liable for any damages which may occur to a trespassing vehicle or trailer under the terms of this section, while the same is trespassing or while it is being removed from his property, or while it is in storage.

§ 11–1007. Placing or parking vehicle in parking space designated and posted for physically-disabled persons—Penalties—Reciprocity agreements

A. It shall be unlawful for any person to place or park a motor vehicle in any parking space on private property accessible to the public and where the public is invited or public property that is designated and posted as a reserved area for parking of motor vehicles of a physically disabled person unless such is eligible for a detachable insignia as a physically disabled person under the provisions of 47 CNCA § 15–112, and such insignia is displayed as provided in 47 CNCA § 15–112 or regulations adopted pursuant thereto.

B. Violation of these provisions shall be a crime and upon conviction such person shall be fined not more than Fifty Dollars (\$50.00) and, in addition thereto, such person shall pay any and all reasonable and necessary charges incurred by the landowner or other person in having any motor vehicle removed from the property and stored.

C. The Cherokee Nation Marshal is hereby authorized to enter into reciprocity agreements with other states for the purpose of recognizing handicapped parking permits issued by those states.

§ 11–1008. Power of Cherokee Nation Marshal's Office to enforce act

The Cherokee Nation Marshal's Office may enact and enforce any ordinance, rule or regulation adopted in conformity with this act. Such ordinance shall also authorize the Nation to investigate accidents on private property where the public is invited or on public property.

ARTICLE XI. MISCELLANEOUS RULES

§ 11–1101. Unattended motor vehicle

The person driving or in charge of a motor vehicle shall not permit it to stand unattended without first stopping the engine, and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

§ 11–1102. Limitations on backing

No vehicle shall be backed upon any street or highway except for such distance as may be

necessary to permit the vehicle to enter the proper driving lane from a parked position. Such backing shall be done only after the driver of said vehicle has ascertained that such movement can be made without endangering other traffic.

§ 11–1103. Riding on motorcycles

No person shall drive a motorcycle, motor scooter, or a motorbicycle while transporting more than one (1) passenger, except a motorcycle, motor scooter or motorbicycle factory-designed for the purpose of carrying additional passengers.

§ 11–1104. Obstruction to driver's view or control—Overloading school bus

A. No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

B. No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or to interfere with his control over the driving mechanism of the vehicle.

C. No school bus shall be operated on the streets or highways in this Nation when loaded with passengers in excess of the number for which such bus is designed to carry. The number of passengers determined by the local school board which the bus is designed to carry shall be posted in a conspicuous place on the bus.

§ 11–1105. Opening and closing vehicle doors

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

§ 11–1106. Driving on mountain highways

The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible.

§ 11–1108. Following fire apparatus and other emergency vehicles prohibited

A. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

B. The driver of any vehicle other than one on official business shall not follow any emergency vehicle or shall not purposely drive to any location on a highway where an emergency exists which would interfere with the free movement of authorized emergency vehicles or any other traffic using

the high-way at that location. For the purpose of this subsection the definition of emergency shall include traffic accidents, airplane accidents, disasters, explosions, civil disturbances and (without limitation by the foregoing) any other related circumstances which tend to cause traffic congestion.

The purpose of this subsection is to eliminate sightseers and other persons who do not have official business at the scene of an emergency, and whose presence would tend to cause traffic congestion.

§ 11–1110. Putting glass, etc., on highway prohibited

A. No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substances likely to injure any person, animal or vehicle upon such highway.

B. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

C. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

D. No person shall throw any substance at a standing vehicle or any occupant thereof, nor shall any person throw any substance at a person on or adjacent to a highway.

§ 11–1112. Child passenger restraint system required for certain vehicles—Exemptions

A. Every driver when transporting a child under four (4) years of age in a motor vehicle operated on the roadways, streets, or highways of this state shall provide for the protection of said child by properly using a child passenger restraint system, or a properly secured seat belt in the rear seat of the motor vehicle. For purposes of 47 CNCA §§ 11–1112 and 11–1113, "child passenger restraint system" means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the United States Department of Transportation.

B. Children four (4) or five (5) years of age shall be protected by use of a child passenger restraint system or a seat belt.

C. The provisions of this section shall not apply to:

1. A nonresident driver transporting a child in this state; and
2. The driver of a school bus, taxicab, moped, motorcycle, or other motor vehicle not required to be equipped with safety belts pursuant to state or federal laws; and
3. The driver of an ambulance or emergency vehicle; and
4. A driver of a vehicle if all of the seat belts in the vehicle are in use; and
5. The transportation of children who for medical reasons are unable to be placed in such devices.

D. A law enforcement officer is hereby authorized to stop a vehicle if it appears that the driver of the vehicle has violated the provisions of this section and to give an oral warning to said driver. The warning shall advise the driver of the possible danger to children resulting from the failure to install or use a child passenger restraint system or seat belts in the motor vehicle.

E. A violation of the provisions of this section shall not be admissible as evidence in any civil action or proceeding for damages.

F. In any action brought by or on behalf of an infant for personal injuries or wrongful death sustained in a motor vehicle collision, the failure of any person to have the infant properly restrained in accordance with the provisions of this section shall not be used in aggravation or mitigation of damages.

G. Any person convicted of violating subsection (A) or (B) of this section shall be punished by a fine of Ten Dollars (\$10.00) and shall pay a maximum of Fifteen Dollars (\$15.00) court costs thereof. This fine shall be suspended in the case of the first offense upon proof of purchase or acquisition by loan of a child passenger restraint system. Provided, the Department of Public Safety shall not assess points to the driving record of any licensed or unlicensed person convicted of a violation of this section.

§ 11–1113. Reserved

§ 11–1114. Allowing passenger to ride outside of compartment

A. No operator of a motor vehicle shall allow a passenger to ride outside the passenger compartment of the vehicle on the streets, highways or turnpikes of Cherokee Nation; provided, this section shall not apply to persons so riding on private property or for parades or special events nor shall this section apply to passengers riding on the bed of a pickup truck.

B. Any person convicted of violating the provisions of subsection (A) of this section shall be punished by a fine of Fifteen Dollars (\$15.00) and shall pay court costs of Sixty Dollars (\$60.00) provided the Department of Public Safety shall not assess points to the driving record of any licensed or unlicensed person convicted of a violation of this section.

§ 11–1115. Railroad crossings

At a railroad-highway grade crossing, a person operating a Class A, B or C commercial motor vehicle as described in 47 CNCA §§ 1-107.1, 1-107.2 and 1-107.3 shall not negotiate the crossing if there is:

1. Insufficient space to drive completely through the crossing without stopping; or
2. Insufficient clearance for the undercarriage of the vehicle.

ARTICLE XII. OPERATION OF BICYCLES AND PLAY VEHICLES

§ 11–1201. Effect of regulations

A. It is an offense and punishable by fine of not less than One Dollar (\$1.00) nor more than Twenty-five Dollars (\$25.00) for any person to do any act forbidden or fail to perform any act required in this article.

B. The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this article.

C. These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

§ 11–1202. Traffic laws apply to persons riding bicycles

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this act, except as to special regulations in this article and except to those provisions of this act which by their nature can have no application.

§ 11–1203. Riding on bicycle

A. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

B. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

§ 11–1204. Clinging to vehicles

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

§ 11–1205. Riding on roadways and bicycle paths

A. Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

B. Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

C. Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders

shall use such path and shall not use the roadway.

§ 11–1206. Carrying articles

No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handle bars.

§ 11–1207. Lamps and other equipment on bicycles

A. Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear of a type approved by the Department which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.

B. Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

ARTICLE XIII. MAINTENANCE, CONSTRUCTION AND SAFETY ZONES

§ 11–1301. Driving through safety zones prohibited

No vehicle shall at any time be driven through or within a safety zone.

§ 11–1302. Maintenance and construction zones

A. Cherokee Nation within its jurisdiction may close roads and highways to traffic while such highway is under repair, maintenance or construction and, in exercising such authority, shall erect or cause to be erected control devices and barricades to warn and notify the public that said highway has been closed to traffic.

B. When any highway has been closed to traffic under the provisions of subsection (A) and traffic-control devices or barricades have been erected, it shall be unlawful for any person to drive any vehicle through, under, over, or around such traffic-control devices or barricades, or otherwise to enter said closed area; except, that the provisions of this subsection shall not apply to persons while engaged in the construction, maintenance and repair of said highway or to persons entering therein for the protection of lives or property; provided that persons having their places of residence or places of business within such closed area may travel, when possible to do so, through such area at their own risk.

C. Whenever construction, repair and maintenance of any highway is being performed under traffic, the governing body having jurisdiction over said highway shall erect, or cause to be erected, traffic-control devices to warn and guide the public, and every person using such highway shall obey all signs, signals, markings, flagmen or other traffic-control devices which are placed to

regulate, control, and guide traffic through the construction or maintenance area.

D. No person shall remove, change, modify, deface or alter any traffic-control device or barricade which has been erected on any highway under the provisions of this article.

E. Nothing in this article shall relieve contractors, agents, servants or employees from liability for failure to perform any of the duties imposed herein.

F. Any person who violates any provision of this article shall be guilty of a crime and upon conviction thereof shall be subject to a fine not to exceed One Hundred Dollars (\$100.00) and imprisonment in a penal institution not to exceed thirty (30) days, or both such fine and imprisonment, and shall be liable for any damage to property, or injury to or death to persons caused by such violations.

CHAPTER 12

EQUIPMENT OF VEHICLES

ARTICLE IV. OTHER EQUIPMENT

ARTICLE VI. MOTORCYCLES

ARTICLE IV. OTHER EQUIPMENT

§ 12-417. Safety belt law

A. 1. Every operator and front seat passenger of a passenger car operated in the jurisdiction of the Cherokee Nation shall wear a properly adjusted and fastened safety seat belt system, required to be installed in the motor vehicle when manufactured pursuant to 49 C.F.R. § 571.208.

2. For the purposes of this section, "**passenger car**" shall mean "vehicle" as defined in 47 CNCA § 1-186. "Passenger car" shall include the passenger compartment of pickups, vans, minivans, and sport utility vehicles, "Passenger car" shall not include trucks, truck-tractors, recreational vehicles, motorcycles, or motorized bicycles. "Passenger car" shall not include a vehicle used primarily for farm use which is registered and licensed pursuant to the provisions of 68 CNCA § 1258.

B. This section shall not apply to persons eligible for an exception for medical reasons pursuant to 59 O.S. § 495 and any other similar statute of another state.

C. This section shall not apply to an operator of a motor vehicle while performing official duties as a route carrier of the U.S. Postal Service.

D. Fine and court costs for violating the provisions of this section shall not exceed Twenty Dollars (\$20.00) plus Sixty Dollars (\$60.00) court costs.

ARTICLE VI. MOTORCYCLES

§ 12-609. Motorcycle and motor scooter

The following equipment shall be required on all motorcycles and all motor scooters except on actual trail rides conducted outside of public roads and highways:

1. Rear View Mirrors. All vehicles covered under this section shall be equipped with two mirrors, containing a reflection surface of not less than three (3) inches in diameter, mounted one on each side of the vehicle and positioned so as to enable the operator to clearly view the roadway for a distance of two hundred (200) feet to the rear of his vehicle.
2. Windshield. All vehicles covered under this section shall be equipped with a windshield of sufficient quality, size and thickness to protect the operator from foreign objects, except that in lieu of such windshield the operator shall wear goggles or face shield of material and design to protect him from foreign objects.
3. Brakes. All vehicles covered under this section shall be equipped with brakes adequate to control the movement of same to stop and hold such vehicles, including two (2) separate means of applying the brakes, one means shall be effective to apply the brakes to the front wheel and one means shall be effective to apply the brakes to the rear wheels. All such vehicles shall be equipped with a stop lamp on the rear of the vehicle, which shall display a red or amber light or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight, and which shall be actuated upon application of the service brake.
4. Speedometer. All vehicles covered under this section shall be equipped with a properly operating speedometer capable of registering at least the maximum legal speed limit for that vehicle.
5. Fenders. All vehicles covered under this section shall be equipped with a fender over each wheel. All fenders shall be of the type provided by the manufacturer.
6. Lights. All vehicles covered under this section shall carry at least one (1) lighted headlamp capable of showing a white light visible at least three hundred (300) feet in the direction in which the same are proceeding, and one (1) tail lamp mounted on the rear which, when lighted, shall emit a red light plainly visible from at least three hundred (300) feet to the rear, and such lights required by this section shall be burning whenever such vehicles are in motion during the period from one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the streets are not clearly discernible at a distance of at least five hundred (500) feet ahead.
7. Headgear. No person under eighteen (18) years of age shall operate or ride upon any vehicle covered under this section unless such person is equipped with and wearing on the head a crash helmet of a type which complies with standards established by the Department of Public Safety. All crash helmets shall consist of lining, padding and chin straps and be of the type as not to distort

the view of the driver. The Commissioner of the Department of Public Safety is hereby authorized to approve or disapprove protective headgear and eye-protective devices sold and required herein, and to issue and enforce regulations establishing standards and specifications for approval thereof. The Commissioner shall publish lists of all approved protective headgear and eye-protective devices by name and type. Provided, however, the Department may not recommend one brand in preference to another if quality is identical.

CHAPTER 14

SIZE, WEIGHT AND LOAD

§ 14-107. Definitions

As used in this chapter:

1. **"Axle load"** means the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.
2. **"Nondivisible"** means any load or vehicle exceeding applicable length or weight which, if separated into smaller loads or vehicles, would;
 - a. compromise the intended use of the vehicle;
 - b. destroy the value of the load or vehicle; or
 - c. require more than eight (8) hours to dismantle using appropriate equipment.
3. **"Tandem axle"** means any two or more consecutive axles whose centers are more than forty (40) inches apart, but not more than ninety-five (95) inches apart.

§ 14-109. Overload, any axle or gross weight

A. On any road or highway within Cherokee Nation:

1. No single axle weight shall exceed twenty thousand (20,000) pounds; and
2. The total gross weight in pounds imposed thereon by a vehicle or combination of vehicles shall not exceed the value given in the following table corresponding to the distance in feet between the extreme axles of the group measured longitudinally to the nearest foot:

Distance in Feet Between the Extremes of Any Group of 2 or More Consecutive Axles	Maximum Load in Pounds Carried on Any Group of 2 or More Consecutive Axles

	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles
4	34,000	----	----	----	----
5	34,000	----	----	----	----
6	34,000	----	----	----	----
7	34,000	----	----	----	----
8	34,000	42,000	----	----	----
9	39,000	42,500	----	----	----
10	40,000	43,500	----	----	----
11	----	44,000	----	----	----
12	----	45,000	50,000	----	----
13	----	45,500	50,500	----	----
14	----	46,500	51,500	----	----
15	----	47,000	52,000	----	----
16	----	48,000	52,500	58,000	----
17	----	48,500	53,500	58,500	----
18	----	49,500	54,000	59,000	----
19	----	50,000	54,500	60,000	----
20	----	51,000	55,500	60,500	66,000
21	----	51,000	56,000	61,000	66,500
22	----	52,500	56,500	61,500	67,000
23	----	53,000	57,500	62,500	68,000
24	----	54,000	58,000	63,000	68,500
25	----	54,500	58,500	63,500	69,000
26	----	56,000	59,500	64,000	69,500
27	----	57,500	60,000	65,000	70,000
28	----	59,000	60,500	65,500	71,000
29	----	60,500	61,500	66,000	71,500
30	----	62,000	62,000	66,500	72,000
31	----	63,500	63,500	67,000	72,500
32	----	64,000	64,000	68,000	73,500
33	----	----	64,500	68,500	74,000
34	----	----	65,000	69,000	74,500
35	----	----	66,000	70,000	75,000
36	----	----	68,000	70,500	75,500
37	----	----	68,000	71,000	76,000
38	----	----	69,000	72,000	77,000
39	----	----	70,000	72,500	77,500
40	----	----	71,000	73,000	78,000
41	----	----	72,000	73,500	78,500
42	----	----	73,000	74,000	79,000
43	----	----	73,280	75,000	80,000
44	----	----	73,280	75,500	80,500
45	----	----	73,280	76,000	81,000
46	----	----	73,280	76,500	81,500

47	----	----	73,500	77,500	82,000
48	----	----	74,000	78,000	83,000
49	----	----	74,500	78,500	83,500
50	----	----	75,500	79,000	84,000
51	----	----	76,000	80,000	84,500
52	----	----	76,500	80,500	85,000
53	----	----	77,500	81,000	86,000
54	----	----	78,000	81,500	86,500
55	----	----	78,500	82,500	87,000
56	----	----	79,500	83,000	87,500
57	----	----	80,000	83,500	88,000
58	----	----	----	84,000	89,000
59	----	----	----	85,000	89,500
60	----	----	----	85,500	90,000

B. Except as to gross limits, the table in subsection (A) of this section shall not apply to a truck-tractor and dump semitrailer when used as a combination unit. In no event shall the maximum load in pounds carried by any set of tandem axles exceed thirty-four thousand (34,000) pounds for vehicles exempt from the table; however, any vehicle operating with split tandem axles or tri-axles shall adhere to the table.

C. Special permits may be issued as provided in this title for divisible loads for vehicle configurations in excess of six (6) axles. The permits may not exceed the Table "B" federal weights formula imposed by 23 U.S.C. § 127. Vehicles moving under the permits shall not traverse H-15 bridges or less without the express approval of the Secretary of Transportation.

D. Except for loads moving under special permits as provided in this title, no department or agency of this Nation or any county, city, or public entity thereof shall pay for any material that exceeds the legal weight limits moving in interstate or intrastate commerce in excess of the legal load limits of this Nation.

E. Exceptions to this section will be:

1. Utility or refuse collection vehicles used by counties, cities, or towns or by private companies contracted by counties, cities, or towns if the following conditions are met:

a. calculation of weight for a utility or refuse collection vehicle shall be "Gross Vehicle Weight". The "Gross Vehicle Weight" of a utility or refuse collection vehicle may not exceed the otherwise applicable weight by more than fifteen percent (15%). The weight on individual axles must not exceed the manufacturer's component rating which includes axle, suspension, wheels, rims, brakes, and tires as shown on the vehicle certification label or tag, and

b. utility or refuse collection vehicles operated under these exceptions will not be allowed to operate on interstate highways;

2. Vehicles transporting timber, pulpwood, and chips in their natural state, vehicles transporting oil field fluids, oil field equipment, or equipment used in oil and gas well drilling or exploration, and vehicles transporting grain, if the following conditions are met:

- a. the vehicles are registered for the maximum allowable rate.
- b. the vehicles do not exceed five percent (5%) of the gross limits set forth in subsection (A) of this section, and
- c. the vehicles operating pursuant to the provisions of this paragraph will not be allowed to operate on the National System of Interstate and Defense Highways; and

3. Vehicles transporting rock, sand, gravel, and coal if the following conditions are met:

- a. the vehicles are registered for the maximum allowable rate.
- b. the vehicles do not exceed five percent (5%) of the axle limits set forth in subsection (A) of this section, and
- c. the vehicles operating pursuant to the provisions of this paragraph will not be allowed to operate on the National System of Interstate and Defense Highways.

F. Utility or refuse collection vehicles, vehicles transporting timber, pulpwood, and chips in their natural state, vehicles transporting oil field equipment or equipment used in oil and gas well drilling or exploration, vehicles transporting rock, sand, gravel, and coal and vehicles transporting grain, operating under exceptions shall purchase an annual special overload permit for One Hundred Dollars (\$100.00).

G. For purposes of this section, "utility vehicle" shall mean any truck used by a private utility company, county, city, or town for the purpose of installing or maintaining electric, water, or sewer systems.

CHAPTER 15

RESPECTIVE POWERS OF STATE AND LOCAL AUTHORITIES

§ 15–103. Rights of owners of real property

Nothing in this act shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, and not as a matter of right, from prohibiting such use, or from requiring other or different or additional conditions than those specified in this act, or otherwise regulating such use as may seem best to such owner.

§ 15–112. Physical disability insignia

A. As used in this section:

1. "Physical disability" means an illness, disease, injury or condition by reason of which a person:

a. Cannot walk two hundred (200) feet without stopping to rest, or

b. Cannot walk without the use of or assistance from a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistant device, or

c. Is restricted to such an extent that the person's forced (respiratory) expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/hg on room air at rest, or

d. Must use portable oxygen, or

e. Has functional limitations which are classified in severity as Class III or Class IV according to standards set by the American Heart Association, or

f. Is severely limited in his or her ability to walk due to an arthritic, neurological, or orthopedic condition.

2. "Physician" means any person holding a valid license to practice medicine and surgery, osteopathy, or chiropractic, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes.

B. Cherokee Nation adopts the physical disability insignia and issued by Department of Public Safety wherein it issues a detachable insignia indicating physical disability to any person who submits an application on forms furnished by the Department, together with a certificate signed by a physician stating that the applicant has a physical disability. The certificate of the physician and the detachable insignia shall each bear an expiration date reflecting the date estimated by the physician to be the termination date of such physical disability unless the physical disability is certified by the physician to be permanent.

C. The Department shall, upon request by a physician, provide said physician temporary insignias indicating physical disability to be issued, at the discretion of the physician, to any person who has a physical disability. The temporary insignia shall bear an expiration date reflecting the date estimated by the physician to be the termination date of such physical disability, which shall not be later than six (6) months from the date of issuance.

D. A physician may sign a certificate stating that a person has a physical disability, as provided in subsection (B) of this section, or issue to a person a temporary insignia indicating physical disability, as provided in subsection (C) of this section, only if care and treatment of the illness, disease, injury or condition causing the physical disability of such person falls within the authorized scope of practice of said physician.

E. Cherokee Nation shall have the power to formulate, adopt and promulgate rules and regulations as may be necessary to implement and administer the provisions of this section, including, but not limited to, prescribing the manner in which the detachable insignia and the temporary insignia are to be displayed on a motor vehicle.

§ 15–112.1. Parking places—Authorized use

No person shall be allowed to park in a handicapped parking place other than the person to whom the insignia indicating physical disability is issued.

§ 15–113. Penalties

Any person who knowingly makes or procures the making of a false statement in an application or certificate submitted pursuant to this act or any person who knowingly makes unauthorized use of an insignia issued pursuant to this act is guilty of a crime and upon conviction shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). This penalty shall be stated on all applications and certificates.

CHAPTER 16

PARTIES AND PROCEDURE UPON ARREST

§ 16–101. Parties to a crime

A. Classification of parties. The parties to crimes are classified as:

1. Principals, and
2. Accessories.

B. Principals defined. All persons concerned in the commission of crime, and whether they directly commit the act constituting the offense or aid and abet in its commission, though not present, are principals.

C. Accessories defined. All persons who, after the commission of any crime, conceal or aid the offender, with the knowledge that he has committed a crime, and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.

§ 16–102. Offenses by persons owning or controlling vehicles

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

§ 16–103. Public officers and employees—Exceptions

The provisions of Chapters 10, 11, 12 and 14, applicable to drivers of vehicles upon the highways, shall apply to the drivers of all vehicles owned or operated by the United States, the State of Oklahoma or any county, city, town, district or any other political subdivision of the state or of Cherokee Nation, subject to such specific exceptions as are set forth in this act.

§ 16–104. Procedure upon arrest for crime

Whenever a person is arrested for any violation of this act declared herein to be a crime, which if committed under the laws of Oklahoma would be a felony, he shall be dealt with in like manner as upon arrest for the commission of any other crime.

§ 16–105. When person must be taken immediately before a Magistrate

Whenever any person is halted by a peace officer for any violation of this act not amounting to a crime but designated as an offense, he shall be taken without unnecessary delay before the proper Magistrate, as specified in 47 CNCA § 16–110, in either of the following cases:

1. When the person demands an immediate appearance before a Magistrate; or
2. In any other event when the person is issued a traffic citation by an authorized person and refuses to give his written promise to appear in court as hereinafter provided.

§ 16–106. When officer has option to take person before a Magistrate

Whenever any person is halted by a peace officer for any violation of this act and is not required to be taken before a Magistrate as hereinbefore provided, the person shall, in the discretion of the officer, either be given a traffic citation as hereinafter provided, or be taken without unnecessary delay before the proper Magistrate, as specified in 47 CNCA § 16–110 in any of the following cases:

1. When the person does not furnish satisfactory evidence of identity or when the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court;
2. Deleted;
3. When the person is charged with a violation of 47 O.S. § 13–103, relating to the refusal of a driver of a vehicle to submit such vehicle to an inspection and test; or
4. Deleted.

§ 16–108. Other criminal violations—Procedure

- A. Whenever a person is halted by a peace officer or highway patrolman for any violation of this

title punishable as a crime, which if committed under the laws of Oklahoma would be misdemeanor, the officer may proceed in accordance with the Bail Bond Procedure Act, 22 CNCA § 1115 et seq.

B. If the person charged with the violation is a minor, then the citing peace officer shall ascertain from the minor the name and address of his parents or legal guardian, and said officer shall cause a copy of the "violation" to be mailed to the address of the parents or legal guardian, within three (3) days after the date of violation.

C. Whenever a person is halted by a peace officer or highway patrolman for any violation of this title punishable as a offense, the officer shall proceed in accordance with the Bail Bond Procedure Act, 22 CNCA § 1115 et seq.

§ 16–109.1. Authority of officer at scene of accident

Except for crimes which would be a felony if committed under the laws of Oklahoma, a police officer at the scene of a traffic accident may issue a written notice to appear to any driver of a vehicle involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this title in connection with the accident.

In such cases the officer shall be endorsed as a witness and shall appear if said case is tried.

§ 16–112. Failure to obey notice to appear

A. It shall be unlawful for any person to violate his written promise to appear given to an officer upon the issuance of a notice to appear regardless of the disposition of the charge for which such notice to appear was originally issued.

B. A written promise to appear in court may be complied with by an appearance by counsel.

§ 16–113. Procedure prescribed herein not exclusive

The foregoing provisions of this chapter shall govern all peace officers in making arrests without a warrant for violations of any provisions of Chapters 10, 11, 12 or 14, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

§ 16–114. Arrest of traffic violators without warrant

A peace officer may, without a warrant, arrest a person for any moving traffic violation of which the arresting officer or another police officer in communication with the arresting officer has sensory or electronic perception including perception by radio, radar and reliable speed-measuring devices.

CHAPTER 17

PENALTIES

§ 17–101. Penalties for crimes which would be a misdemeanor under Oklahoma law—Plea of guilty by written statement—Acts not otherwise punishable by imprisonment

A. It is a crime for any person to violate any of the provisions of this title unless such violation is by this title or other law of Cherokee Nation designated as an offense.

B. 1. Every person convicted of a crime, which under the laws of Oklahoma would be a misdemeanor, which includes a violation of any of the provisions of 47 CNCA §§ 10–101 through 14–121 or 16–101 through 16–114 for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00) or by imprisonment for not more than ten (10) days; for a second such conviction within one (1) year thereafter such person shall be punished by a fine of not less than Twenty Dollars (\$20.00) nor more than Two Hundred Dollars (\$200.00) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine or not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

2. Any person violating the provisions of 47 CNCA §§ 10–101 through 14–121 or 16–101 through 16–114, where a jail sentence is not mandatory may, in the discretion of the prosecuting attorney wherein the offense occurred, be permitted to enter a plea of guilty by written statement by the person charged to be presented to the Court wherein the case is filed. A remittance covering the fine and costs may be considered and received with the same force and effect as a written plea of guilty.

C. Unless another penalty is in this title or by the laws of this Nation provided, every person convicted of a crime, which under the laws of Oklahoma would be a misdemeanor, for the violation of any other provision of this title shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

D. Provided, however, notwithstanding any provision of law to the contrary, any offense, including traffic offenses, in violation of any of the provisions of this title which is not otherwise punishable by a term of imprisonment or confinement shall be punishable by a term of imprisonment not to exceed one day in the discretion of the Court, in addition to any fine prescribed by law.

§ 17–102. Penalty for crimes

Any person who is convicted of a violation of any of the provisions of this act herein or by the laws of this Nation declared to constitute a crime, which under the law of Oklahoma would be a felony, shall be punished by maximum imprisonment provided by 25 U.S.C. § 1302(7).

CHAPTER 18

RECORDS AND REPORTS OF CONVICTIONS

§ 18–101. Record of traffic cases—Report of convictions to department

A. Every Magistrate or Judge of a Court shall keep or cause to be kept a record of every traffic complaint, traffic citation or other legal form of traffic charge deposited with or presented to said Court or its traffic-violations bureau, and shall keep a record of every official action by said Court or its traffic-violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal and the amount of fine or forfeiture resulting from every said traffic complaint or citation deposited with or presented to said Court or traffic-violations bureau.

B. Within ten (10) days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this act or other law regulating the operation of vehicles on highways every said Magistrate of the Court or Clerk of the Court of record, in which such conviction was had or bail was forfeited shall prepare and immediately forward to the Department an abstract of the record of said Court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct. A report need not be made of any conviction involving the illegal parking or standing of a vehicle. The Court shall not make such a report of a conviction involving speeding if the speed limit is not exceeded by more than ten (10) miles per hour.

C. Said abstract must be made upon a form furnished by the Department and shall include the name and address of the party charged, the number, if any, of his operator's or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited and the amount of the fine or forfeiture as the case may be.

D. Every court of record shall also forward a like report to the Department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

CHAPTER 20

EFFECT AND SHORT TITLE OF ACT

§ 20–101. Uniformity of interpretation

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 20–102. Effect of headings

Chapter, article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article or section hereof.

§ 20–103. Short title

This act may be cited as the Uniform Vehicle Code.

§ 20–105. Constitutionality

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

MISCELLANEOUS LAWS

CHAPTER 67

CHEMICAL TESTS

§ 752. Administration of tests—Authorization—Liability—Laboratories—Independent analysis—Costs

A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician's assistant, duly certified by any state, an employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood, or other qualified person authorized by the Oklahoma Board of Tests for Alcohol and Drug Influence acting at the request of a law enforcement officer may withdraw blood for purpose of having a determination made of its concentration of alcohol or the presence or concentration of other intoxicating substance. Only qualified persons authorized by the Board may collect breath, saliva or urine, or administer tests of breath under the provisions of this Title.

B. If the person authorized to withdraw blood as specified in subsection (A) of this section is presented with a written statement:

1. authorizing blood withdrawal signed by the person whose blood is to be withdrawn;
2. signed by a duly authorized peace officer that the person whose blood is to be withdrawn has agreed to the withdrawal of blood;
3. signed by a duly authorized peace officer that the person whose blood is to be withdrawn has been placed under arrest and that the officer has probable cause to believe that the person, while intoxicated, has operated a motor vehicle in such manner as to have caused the death or serious physical injury of another person, or the person has been involved in a traffic accident and has been removed from the scene of the accident that resulted in the death or great bodily injury, as defined

in Cherokee Nation Code Annotated, of any person to a hospital or other health care facility outside Cherokee Nation before the law enforcement officer was able to effect an arrest for such offense; or

4. in the form of an order from a district court that blood be withdrawn, the person authorized to withdraw the blood and the hospital or other health care facility where the withdrawal occurs may rely on such a statement or order as evidence that the person has consented to or has been required to submit to the clinical procedure and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to perform the procedure, the employer of such person, and the hospital or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

C. No person specified in subsection (A) of this section, no employer of such person, and no hospital or other health care facility where blood is withdrawn shall incur any civil or criminal liability as a result of the proper withdrawal of blood when acting at the request of a law enforcement officer, or when acting in reliance upon a signed statement or court order if the act is performed in a reasonable manner according to generally accepted clinical practice. No person specified in subsection (A) of this section shall incur any civil or criminal liability as a result of the proper collection of breath, saliva or urine when acting at the request of a law enforcement officer or when acting pursuant to a court order.

D. The blood, breath, saliva or urine specimens obtained shall be tested by the appropriate test as determined by the Board, or tested by a laboratory that is exempt from the Board rules to determine the alcohol concentration thereof, or the presence or concentration of any other intoxicating substance which might have affected the ability of the person tested to operate a motor vehicle safely.

E. When blood is withdrawn or saliva or urine is collected for testing of its alcohol concentration or other intoxicating substance presence or concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess blood, saliva or urine specimen shall be retained by a laboratory approved by the Board, in accordance with the rules and regulations of the Board, or by a laboratory that is exempt from the Board rules, for sixty (60) days from the date of collection. At any time within that period, the tested person or his or her attorney may direct that such blood, saliva or urine specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional blood, saliva or urine specimen prior to the completion of the independent analysis, except the analyst performing the independent analysis and agents of the analyst.

F. When a test of breath is performed for the purpose of determining the alcohol concentration thereof, except when such test is performed by means of an automated analyzer as designated by the Board, a sufficient quantity of breath, or of the alcohol content of a fixed or measured quantity of breath, shall be obtained, in accordance with the rules and regulations of the Board, to enable the tested person, at his or her own option and expense, to have an independent analysis made of such

specimen. The excess specimen of breath, or of its alcohol content, shall be retained by the law enforcement agency employing the arresting officer, in accordance with the rules and regulations of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person, or his or her attorney, may direct that such specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional specimen of breath, or of its alcohol content, prior to the completion of the independent analysis thereof, except the analyst performing the independent analysis and agents of the analyst.

G. The costs of collecting blood, breath, saliva or urine specimens for the purpose of determining the alcohol or other intoxicating substance thereof, by or at the direction of a law enforcement officer, shall be borne by the law enforcement agency employing such officer; provided, if the person is convicted for any offense involving the operation of a motor vehicle while under the influence of or while impaired by alcohol or an intoxicating substance, or both, as a direct result of the incident which caused the collection of blood, saliva or urine specimens, an amount equal to the costs shall become a part of the court costs of the person and shall be collected by the court and remitted to the law enforcement agency bearing the costs. The cost of collecting, retaining and sending or delivering to an independent laboratory the excess specimens of blood, breath, saliva or urine for independent analysis at the option of the tested person shall also be borne by such law enforcement agency. The cost of the independent analysis of such specimen of blood, breath, saliva or urine shall be borne by the tested person at whose option such analysis is performed. The tested person, or his or her agent, shall make all necessary arrangements for the performance of such independent analysis other than the forwarding or delivery of such specimen.

H. Tests of blood or breath for the purpose of determining the alcohol concentration thereof, and tests of blood, saliva or urine for the purpose of determining the presence or concentration of any other intoxicating substance therein, under the provisions of this Title, whether administered by or at the direction of a law enforcement officer or administered independently, at the option of the tested person, on the excess specimen of such person's blood, breath, saliva or urine, to be considered valid and admissible in evidence under the provisions of this Title, shall have been administered or performed in accordance with the rules and regulations of the Board, or performed by a laboratory that is exempt from the Board rules.

I. Any person who has been arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol, any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance who is not requested by a law enforcement officer to submit to a test shall be entitled to have an independent test of his or her blood, breath, saliva or urine which is appropriate as determined by the Board for the purpose of determining its alcohol concentration or the presence or concentration of any other intoxicating substance therein, performed by a person of his or her own choosing who is qualified as stipulated in this section. The arrested person shall bear the responsibility for making all necessary arrangements for the administration of such independent test and for the independent analysis of any specimens obtained, and bear all costs thereof. The failure or inability of the arrested person to obtain an independent test shall not preclude the admission of other competent evidence bearing upon the

question of whether such person was under the influence of alcohol, or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance.

J. Any agency or laboratory certified by the Board or any agency or laboratory that is exempt from the Board rules, which analyses breath, blood, or urine shall make available a written report of the results of the test administered by or at the direction of the law enforcement officer to:

1. the tested person, or his or her attorney; and
2. the Office of the Attorney General.

The results of the tests provided for in this Title shall be admissible in civil actions.

§ 756. Admission of evidence shown by tests

A. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol or any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, evidence of the alcohol concentration in the blood or breath of the person as shown by analysis of the blood or breath of the person performed in accordance with the provisions of 47 CNCA § 752 or evidence of the presence or concentration of any other intoxicating substance as shown by analysis of such person's blood, breath, saliva, or urine specimens in accordance with the provisions of 47 CNCA § 752 is admissible. Evidence that the person has refused to submit to either of said analyses is also admissible. For the purpose of this Title, when the person is under the age of twenty-one (21) years, evidence that there was, at the time of the test, any measurable quantity of alcohol is prima facie evidence that the person is under the influence of alcohol in violation of 47 CNCA § 11-906.4. For persons twenty-one (21) years of age or older:

1. Evidence that there was, at the time of the test, an alcohol concentration of five-hundredths (0.05) or less is prima facie evidence that the person was not under the influence of alcohol;
2. Evidence that there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than eight-hundredths (0.08) is relevant evidence that the person's ability to operate a motor vehicle was impaired by alcohol. However, no person shall be convicted of the offense of operating or being in actual physical control of a motor vehicle while such person's ability to operate such vehicle was impaired by alcohol solely because there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than eight-hundredths (0.08) in the blood or breath of the person in the absence of additional evidence that such person's ability to operate such vehicle was affected by alcohol to the extent that the public health and safety was threatened or that said person had violated a state statute or local ordinance in the operation of a motor vehicle; and
3. Evidence that there was, at the time of the test, an alcohol concentration of eight-hundredths (0.08) or more shall be admitted as prima facie evidence that the person was under the influence of

alcohol.

B. For purposes of this Title, "**alcohol concentration**" means grams of alcohol per one hundred (100) milliliters of blood if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested.

C. To be admissible in a proceeding, the evidence must first be qualified by establishing that the test was administered to the person within two (2) hours after the arrest of the person.

§ 761. Operation of motor vehicle while ability impaired by consumption of alcohol—Penalties—Suspensions—Violation not bondable

A. Any person who operates a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of alcohol shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

B. Upon the receipt of a certified report from a court that a person has forfeited bond or has been convicted or has pleaded guilty to two or more offenses of subsection (A) of this section, the Commissioner of the Department of Public Safety shall suspend the driving privilege of such person for a period of six (6) months. Such suspension shall not be subject to modification.

C. The violations as set out in this section shall not be bondable under 22 CNCA § 1115.3.

CHAPTER 74

UNIFORM CERTIFICATE OF TITLE ACT

§ 1111.1. Short title

This act may be cited as the "Cherokee Nation Uniform Certificate of Title Act of 2004."

§ 1111.2. Applicability of supplemental principles of law

Unless displaced by the particular provisions of this act, the principles of law and equity supplement its provisions.

§ 1111.3. Definitions

A. In this act:

1. "**Buyer**" means a person that buys or contracts to buy an ownership interest in a vehicle.

2. "**Buyer in ordinary course of business**" means a person that buys a vehicle in good faith, without knowledge that the sale violates the rights of another person in the vehicle, and in ordinary

course from a person, other than a pawnbroker, in the business of selling vehicles of that kind. A person buys a vehicle in ordinary course if the sale comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire a vehicle under a pre-existing contract for sale. Only a buyer that takes possession of the vehicle or has a right to recover the vehicle from the seller under Uniform Commercial Code Article 2 may be a buyer in ordinary course of business. The term does not include a person that acquires a vehicle in a transfer in bulk or as security for or in total or partial satisfaction of a money debt. A buyer in ordinary course of business does not lose that status solely because the certificate of title was not executed to the buyer.

3. **"Cancel,"** with respect to a certificate of title or a certificate of origin, means to make the certificate ineffective.

4. **"Certificate of origin"** means a record, created or authorized by a manufacturer or importer as the manufacturer's or importer's proof of identity of a vehicle.

5. **"Certificate of title"** means the record, created or authorized by the CNTC, that is evidence of ownership of a vehicle and designated a certificate of title by the CNTC.

6. **"Create,"** with respect to a certificate of title, means to bring the certificate of title into existence by making or authorizing the record that constitutes the certificate of title.

7. **"Deliver"** means to voluntarily give possession of a record to the recipient or to transmit it, by any reasonable means, properly addressed to the recipient and with the cost of delivery provided.

8. **"Electronic"** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

9. **"Electronic certificate of origin"** means a certificate of origin consisting of information that is stored solely in an electronic medium and retrievable in perceivable form.

10. **"Electronic certificate of title"** means a certificate of title consisting of information that is stored solely in an electronic medium and retrievable in perceivable form.

11. **"Execute"** means to sign and deliver a record on, attached to, accompanying, or logically associated with a certificate of title or certificate of origin for the purpose of transferring ownership of the vehicle covered by the certificate.

12. **"Importer"** means a person authorized by a manufacturer to bring into and distribute in the United States new vehicles manufactured outside the United States.

13. **"Jurisdiction"** means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally-recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

14. **"Lessee in ordinary course of business"** means a person that leases a vehicle in good faith, without knowledge that the lease violates the rights of another person, and in ordinary course of business from a person, other than a pawnbroker, in the business of selling or leasing vehicles of that kind. A person leases in ordinary course if the lease to the person comports with the usual or customary practices in the kind of business in which the lessor is engaged or with the lessor's own usual and customary practices. A lessee in ordinary course of business may lease for cash, by exchange of other property, or on secured or unsecured credit, and may acquire a vehicle or certificate of title covering a vehicle under a preexisting lease contract. Only a lessee that takes possession of the vehicle or has a right to recover the vehicle from the lessor under Uniform Commercial Code Article 2A may be a lessee in ordinary course of business. A person that acquires a vehicle in bulk or as security for or in total or partial satisfaction of a money debt is not a lessee in ordinary course of business.

15. **"Lien creditor"** means:

- a. a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- b. an assignee for the benefit of creditors from the time of assignment;
- c. a trustee in bankruptcy from the date of the filing of the petition; or
- d. a receiver in equity from the time of appointment.

16. **"Manufacturer"** means a person that manufactures, fabricates, assembles, or completes new vehicles.

17. **"Office"** means Cherokee Nation Tax Commission (CNTC).

18. **"Owner"** means a person having legal title to a vehicle.

19. **"Owner of record"** means the owner of a vehicle as indicated in the files of the CNTC.

20. **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

21. **"Purchase"** means to take by sale, lease, mortgage, pledge, consensual lien, security interest, gift, or any other voluntary transaction that creates an interest in a vehicle.

22. **"Purchaser"** means a person that takes by purchase.

23. **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

24. **"Secured party"** means:

a. a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

b. a person that is a consignor under Uniform Commercial Code Article 9;

c. a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

d. a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or

e. a person that holds a security interest arising under Uniform Commercial Code Section 2-401, 2-505, 2-711(3), or 2A-508(5).

25. **"Secured party of record"** means the secured party first indicated in the files of the CNTC.

26. **"Security interest"** means an interest in goods that secures payment or performance of an obligation. The term includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Uniform Commercial Code Article 9. The term does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Uniform Commercial Code Section 2-401, but a buyer may also acquire a security interest by complying with Uniform Commercial Code Article 9. Except as otherwise provided in Uniform Commercial Code Section 2-505, the right of a seller or lessor of goods under Uniform Commercial Code Article 2 or 2A to retain or acquire possession of the goods is not a security interest, but a seller or lessor may also acquire a security interest by complying with Uniform Commercial Code Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Uniform Commercial Code Section 2-401 is limited in effect to a reservation of a security interest. Whether a transaction in the form of a lease creates a security interest is determined pursuant to Uniform Commercial Code Section 1-203.

27. **"Security interest statement"** means a record, created or authorized by a secured party, that indicates a security interest in a vehicle.

28. **"Sign"** means, with present intent to authenticate or adopt a record, to:

a. make or adopt a tangible symbol; or

b. attach to or logically associate with the record an electronic sound, symbol, or process.

29. **"Termination statement"** means a record, created or authorized by the secured party under 47 CNCA § 1111.24 or the debtor under 47 CNCA § 1111.22, that:

- a. identifies the security interest statement to which it relates; and
- b. indicates either that it is a termination statement or that the identified security interest statement is not effective.

30. "**Title brand**" means a designation of previous damage, use, or condition that this act or law other than this act requires to be indicated on a certificate of title or a certificate of origin.

31. "**Transfer**" means to convey, voluntarily or involuntarily, an interest in a vehicle.

32. "**Transferee**" means a person that takes by transfer.

33. "**Vehicle**" means any type of motorized, wheeled device in, upon, or by which an individual or property may be lawfully and customarily transported on a road or highway, or a commercial, recreational, travel, or other trailer, including manufactured homes. The term does not include:

- a. specialized mobile equipment not designed primarily for transportation of individuals or property on a road or highway;
- b. an implement of husbandry; or
- c. a wheelchair or similar device designed for use by an individual having a physical impairment.

34. "**Written certificate of origin**" means a certificate of origin consisting of information that is inscribed on a tangible medium.

35. "**Written certificate of title**" means a certificate of title consisting of information that is inscribed on a tangible medium.

B. The following definitions in other laws apply to this act:

1. "**Account debtor**," UCC Section 9–102(a)(3).
2. "**Agreement**," UCC Section 1–201(b)(3).
3. "**Collateral**," UCC Section 9–102(a)(12).
4. "**Debtor**," UCC Section 9–102(a)(28).
5. "**Good faith**," UCC Section 1–201(b)(20).
6. "**Lease**," UCC Section 2A–103(a)(j).
7. "**Lessee**," UCC Section 2A–103(1)(n).

8. "**Lessor**," UCC Section 2A–103(a)(p).
9. "**Manufactured home**" UCC Section 9–102(a)(53).
10. "**Merchant**," UCC Section 2–104(1).
11. "**Notice; Knowledge**," UCC Section 1–202.
12. "**Representative**," UCC Section 1–201(b)(33).
13. "**Sale**," UCC Section 2–106(1).
14. "**Security agreement**," UCC Section 9–102(a)(73).
15. "**Seller**," UCC Section 2–103(1)(o).
16. "**Send**," UCC Section 1–201(b)(36).
17. "**Value**," UCC Section 1–204.

§ 1111.4. Law governing vehicles covered by certificate of title or certificate of origin

A. In this section, "certificate of title" includes a certificate of title created or authorized by a government agency of any jurisdiction which is permitted to create or authorize the certificate of title.

B. The local law of the jurisdiction under whose certificate of title a vehicle is covered governs all issues relating to the certificate of title, from the time the vehicle becomes covered by the certificate of title until the vehicle ceases to be covered by the certificate of title, even if there is no other relationship between the jurisdiction and the vehicle or its owner.

C. For purposes of this section, a vehicle becomes covered by a certificate of title when an application for a certificate of title and the fee are received by the CNTC in accordance with this act, or when an application for a certificate of title and the fee are received in another jurisdiction pursuant to the certificate of title law of that jurisdiction.

D. For purposes of this section and Uniform Commercial Code Article 9, a security interest statement that is effective under 47 CNCA § 1111.24 constitutes an application for a certificate of title if:

1. the debtor is located or has a place of business in this jurisdiction; and
2. an existing certificate of title covering the vehicle has not been created in another jurisdiction.

E. For purposes of this section, a vehicle ceases to be covered by a certificate of title at the earlier

of the time the certificate of title ceases to be effective under the law pursuant to which it was created, or the time the vehicle subsequently becomes covered by another certificate of title, other than a certificate of title initiated only by a security interest statement, created in any jurisdiction.

F. If a vehicle is not covered by a certificate of title, but a certificate of origin has been created for the vehicle:

1. if the parties to the certificate have chosen the law of a jurisdiction, the law of that jurisdiction applies to the certificate of origin, even if this jurisdiction bears no other relation to the certificate of origin; and

2. in the absence of an agreement effective under paragraph 1 of this subsection, and except as provided in subsection (G) of this section, the rights and obligations of the parties are determined by the law that would be selected by application of this jurisdiction's conflict of laws principles.

G. An agreement otherwise effective under paragraph 1 of subsection (F) of this section is not effective to the extent that application of the law of the jurisdiction designated would be contrary to a fundamental policy of the jurisdiction whose law would govern in the absence of agreement under paragraph 1 of subsection (F). of this section

H. In the absence of an agreement as to choice of law, if a vehicle is not covered by a certificate of title or a certificate of origin, the rights and obligations of the parties to the certificate are determined by the choice of law principles of this jurisdiction.

§ 1111.5. Exclusions

Unless the vehicle is covered by a certificate of title, this act does not apply to a vehicle owned by the United States, the government of a country other than the United States, an Indian tribe, a state, or a local government of a state.

§ 1111.6. Vehicle identification number, make and model year

A. For each vehicle covered by a certificate of title, the CNTC must record as the vehicle identification number in the files of the CNTC the vehicle identification number, if any, assigned by its chassis manufacturer or importer.

B. If a vehicle is completed by a manufacturer using a chassis produced by another manufacturer, the make of the manufacturer that completes the vehicle must be used to describe the complete vehicle in the files of the CNTC that relate to the vehicle.

C. The model year of a complete new vehicle is the model year of chassis manufacture and must be the only model year indicated in the files of the CNTC that relates to the vehicle.

§ 1111.7. Execution of certificate of origin

A. If a manufacturer or importer creates or is authorized or required to create a certificate of origin for a vehicle, upon transfer of ownership of the vehicle it shall execute a certificate of origin to the transferee or deliver a signed certificate of origin to the CNTC.

Each succeeding transferor shall execute to the next transferee or sign and deliver to the CNTC all certificates of origin covering the vehicle which are known to the transferor.

B. For the purpose of obtaining a certificate of title, a buyer may require that the buyer's transferor execute to the buyer a written certificate of origin.

§ 1111.8. Cancellation of electronic certificate

If a written certificate of origin is created, any electronic certificate of origin covering the vehicle is canceled and replaced by the written certificate of origin.

§ 1111.9. Application for certificate of title

A. Subject to 47 CNCA § 1111.20, an application for a certificate of title must contain:

1. the owner's name and physical address and, if different, an address for receiving communications by United States mail;
2. the vehicle identification number as provided in 47 CNCA § 1111.6;
3. a description of the vehicle including, as required by the CNTC, the make, model, model year, and body type;
4. an indication of all security interests in the vehicle which are known to the applicant;
5. any title brand known to the applicant and, if known, the jurisdiction that created the title brand;
6. a signed record disclosing the vehicle's odometer reading, as required under law other than this act to be provided by the transferor when ownership of the vehicle is transferred;
7. if the application is made in connection with a transfer of ownership, the transferor's and transferee's names, physical addresses and, if different, addresses for receiving communications by United States mail, and the sales price if any, and the date of the transfer;
8. if the application includes a direction to terminate a security interest statement, the secured party's name and address for receiving communications; and
9. the signature of the owner.

B. An application for a certificate of title may contain electronic communication addresses of the owner and the transferor.

C. Except as otherwise provided in 47 CNCA § 1111.21 or 1111.22, if an application for a certificate of title includes a transfer of ownership or a direction to terminate a security interest statement, the application must be accompanied by all existing certificates of origin and any certificate of title covering the vehicle, created or authorized in any jurisdiction, which are known to the applicant, executed to the owner or other transferee by the transferor. Except as otherwise provided in Section 22, if the application includes a direction to terminate a security interest statement, the application must be accompanied by a termination statement under Section 26.

D. If an application for a certificate of title does not include a transfer of ownership or a direction to terminate a security interest statement, except as otherwise provided in 47 CNCA § 1111.23, the application must be accompanied by all existing certificates of origin and certificates of title covering the vehicle known to the applicant, created or authorized in any jurisdiction, evidencing the applicant as owner of the vehicle.

E. If there is no existing certificate of origin or certificate of title covering the vehicle known to the applicant, created or authorized in any jurisdiction, an application for a certificate of title must be accompanied by all existing information or records of the vehicle's ownership known to the applicant. Information submitted under this subsection is part of the application for the certificate of title and must be indicated in the files of the CNTC.

F. A power of attorney, including a simple power of attorney, may be used to meet the requirements of this section, unless prohibited by law other than this act.

G. The CNTC may require that the application for a certificate of title be accompanied by any tax or fee payable by the applicant under the law of this jurisdiction in connection with the acquisition or use of a vehicle, or evidence of payment of that tax or fee.

H. A security interest statement is subject to subsection (G) of this section, and is an application for a certificate of title under 47 CNCA § 1111.4.

§ 1111.10. Creation of an cancellation of certificate of title

A. Unless an application for a certificate of title is rejected under subsection (C) of this section, the CNTC shall create a certificate of title upon submission of an application that complies with 47 CNCA § 1111.9 and payment of all taxes and fees.

B. The CNTC may create a written certificate of title or, if the CNTC authorizes or creates electronic certificates of title, an electronic certificate of title, at the option of the secured party of record or, if no security interest is indicated in the files of the CNTC, at the option of any owner of record. If no request is made by an owner of record or secured party, the CNTC may create a written certificate of title or an electronic certificate of title.

C. The CNTC may reject an application for a certificate of title only if:

1. the application does not comply with 47 CNCA § 1111.9;
2. there is a reasonable basis for concluding that the application is fraudulent or would facilitate a fraudulent or illegal act; or
3. the application otherwise does not comply with law other than this act.

D. Rejection of an application affects only the applicant's ownership and does not alter the receipt or effect of a security interest statement under 47 CNCA § 1111.4, 1111.24, or 1111.25.

E. If the CNTC has created a certificate of title, it may cancel the certificate of title only if the CNTC could have rejected the application under subsection (C) and after providing an opportunity for a hearing. At this hearing the applicant and any other interested party may present evidence in support of the application. The CNTC shall provide at least thirty (30) days' notice of the opportunity for a hearing, served in person or sent by regular mail to the applicant, the owner of record, and all secured parties indicated in the files of the CNTC.

F. Cancellation of a certificate of title, or rejection of an application for a certificate of title, does not alter the receipt or effect of a security interest statement under 47 CNCA § 1111.4, 1111.24, or 1111.25 or Uniform Commercial Code Article 9.

§ 1111.11. Contents of certificate of title

A. Except as otherwise provided in 47 CNCA § 1111.20, a certificate of title must contain:

1. the date the certificate of title was created;
2. except as otherwise provided in 47 CNCA § 1111.25(B), the name and address of any secured party of record showing that status and an indication of the existence of any additional security interests disclosed under 47 CNCA § 1111.9 or indicated in a security interest statement effective under 47 CNCA § 1111.24, or otherwise indicated in the files of the CNTC or on a certificate of title created in any jurisdiction and submitted to the CNTC;
3. all title brands known to the CNTC, including brands previously indicated on a certificate of title or certificate of origin created in this jurisdiction or another jurisdiction; and
4. the information required for an application pursuant to 47 CNCA § 1111.9(A)(1) through (6).

B. The indication of a title brand on the certificate of title may use abbreviations, but not symbols, and must identify any jurisdiction whose certificate of title indicated the title brand. If the meaning of the previous title brand is not easily ascertainable or cannot be accommodated on the certificate of title, the certificate of title may state: "Previously branded in [the jurisdiction in which the title brand was previously indicated]."

C. If a vehicle was previously registered for use in a jurisdiction outside the United States, the

CNTC shall indicate on the certificate of title that the vehicle was previously registered in that jurisdiction.

D. A certificate of title must contain a form for the owner to sign in executing the certificate.

§ 1111.12. Certificate of title and certificate of origin not subject to judicial process

A. A certificate of title or a certificate of origin does not by itself provide a right or a means to obtain possession of the vehicle covered by the certificate and is not itself subject to garnishment, attachment, levy, replevin, or other judicial process against property. However, this act does not prohibit enforcement of a security interest in, levy on, or foreclosure of a statutory or common law lien on, a vehicle, as permitted under law other than this act. The absence of an indication of a statutory or common law lien on a certificate of title does not invalidate the lien.

B. This section does not relieve a person of any duty under this act or law other than this act or preclude any remedies in personam.

§ 1111.13. Other information

A. The CNTC may accept a submission of information relating to a vehicle for inclusion in the files of the CNTC, even if the requirements for a certificate of title, an application for a certificate of title, a security interest statement, or a termination statement have not been met.

B. A submission of information under this section must include, to the extent practicable, the information required under 47 CNCA § 1111.9 for an application for a certificate of title.

C. To effectuate the law of this jurisdiction, the CNTC may require a person to provide other information relating to a vehicle, as required for payment of taxes or for issuance or renewal of license tags.

D. The CNTC may require a person submitting information under this section to provide a bond in the form and amount determined by the CNTC. Any bond must provide for indemnification of any secured party or other interested party against any expense, loss, or damage resulting from the submission and inclusion of the information in the files of the CNTC.

E. A submission of information under this section and its inclusion in the files of the CNTC is not a certificate of title, an application for a certificate of title, a security interest statement, or a termination statement and does not provide a basis for transferring or determining ownership of a vehicle or receipt or termination of a security interest statement.

§ 1111.14. Maintenance of files

A. For each record filed in the CNTC, the CNTC shall:

1. ascertain the vehicle identification number of the vehicle to which the record applies;

2. create or maintain a file that indicates the vehicle identification number of the vehicle to which the record applies and the information in the record, including the date and time the record was delivered to the CNTC;

3. maintain the file for public inspection, subject to subsection (D); and

4. index each file so as to be accessible by the vehicle identification number for the vehicle and any other indexing methods provided by the CNTC.

B. The CNTC shall maintain files of the information contained in all certificates of title created under this act. Each file must be accessible by the vehicle identification number for the vehicle covered by the certificate and any other indexing method used by the CNTC.

C. Each file maintained under this section must include all indicated security interests, title brands, and stolen property reports applicable to the vehicle, and the name and address of any known secured party or claimant to ownership.

D. Files of the CNTC are subject to the Cherokee Nation Freedom of Information Act, 67 CNCA § 101 et seq., (LA 25–01), as amended, and other law as applicable.

§ 1111.15. Delivery of certificate of title

A. Upon creation of a certificate of title, the CNTC shall promptly deliver the certificate of title, if written, or a record evidencing an electronic certificate of title, if electronic, to the secured party of record, if any, at the address shown on the security interest statement submitted by the secured party of record and, unless previously provided to the owner of record, shall deliver a record evidencing the certificate of title to that owner at the address indicated in the files of the CNTC. If no secured party is indicated in the files of the CNTC, the certificate of title or record evidencing the electronic certificate of title must be delivered to the owner of record. The secured party of record, if any, may elect to have the CNTC create a written certificate of title. The owner of record also may make such an election but only if no secured party is indicated in the files of the CNTC.

B. Within a reasonable period not to exceed fifteen (15) business days after receipt of a request for a written certificate of title pursuant to subsection (A), the CNTC shall create and deliver the certificate to the person making the request.

C. If a written certificate of title is created, any existing electronic certificate of title covering the vehicle is canceled. The cancellation must be noted in the files of the CNTC with an indication of the date and time of the cancellation.

D. Any existing written certificate of title must be canceled before an electronic certificate of title is created. The cancellation must be noted on the face of the written certificate of title and in the files of the CNTC with an indication of the date and time of the cancellation.

§ 1111.16. Transfer

A. Upon sale of a vehicle located in this jurisdiction or covered by a certificate of title created in this jurisdiction, a person authorized to execute the certificate of title or certificate of origin covering the vehicle, as promptly as practicable and in compliance with this act and any law other than this act, shall execute the certificate to the buyer. The buyer of a vehicle located in this jurisdiction or covered by a certificate of title created in this jurisdiction has a specifically enforceable right to require the seller to execute the certificate of title or certificate of origin to the buyer.

B. Execution of a certificate of title covering the vehicle created in any jurisdiction satisfies the requirement in subsection (A) of this section.

C. Execution of a certificate of title covering a vehicle created in any jurisdiction or a certificate of origin transfers the transferor's legal title to the vehicle to the transferee.

D. As between the parties to the transfer and their assignees and successors, a transfer of legal title is not rendered ineffective by a failure to execute a certificate of title or certificate of origin as provided in this section. However, except as otherwise provided in 47 CNCA § 1111.18 or 1111.19, a transfer of legal title without execution of a certificate of title covering the vehicle created in any jurisdiction is not effective as to other persons claiming an interest in the vehicle.

§ 1111.17. Notice of transfer without application

A transferor or transferee of legal title to a vehicle may submit a signed record to the CNTC evidencing the transfer, without filing an application for a certificate of title, in accordance with standards and procedures established by the CNTC. The record may evidence the transfer of legal title between the transferor and transferee but is not effective as to other persons claiming an interest in the vehicle.

§ 1111.18. Power to transfer

A. A purchaser of a vehicle acquires all interests that the transferor had or had power to transfer, except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person having voidable title to a vehicle has power to transfer a good title to a good faith purchaser for value. If ownership of a vehicle has been transferred in a transaction of purchase, the purchaser has the power to transfer good title to a good faith purchaser for value even though:

1. the transferor was deceived as to the identity of the purchaser in the transaction of purchase;
2. the transfer in the transaction of purchase was in return for a check that was later dishonored;
3. it was agreed that the transaction of purchase was to be a "cash sale";

4. the transfer in the transaction of purchase was procured through fraud punishable as larcenous under the criminal law; or

5. a certificate of title was not executed.

B. Entrusting of a vehicle to a merchant that deals in vehicles or other goods of that kind gives the merchant the power to transfer all rights of the entruster to a buyer in ordinary course of business or, to the extent of the lessee's interest, to a lessee in ordinary course of business, even if the certificate of title is not executed to the buyer or lessee. In this subsection, "entrusting" includes any relinquishment of possession and any acquiescence in retention of possession of the vehicle regardless of any condition expressed between the parties to the relinquishment or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the vehicle was larcenous under the criminal law.

C. This section is subject to Uniform Commercial Code Section 2A-303.

§ 1111.19. Other transferees of vehicle covered by certificate of title

A. Except as otherwise provided in this section or in 47 CNCA § 1111.18, a transferee of a vehicle takes subject to:

1. a valid security interest in the vehicle indicated on the certificate of title; and
2. if the certificate of title contains a statement that the vehicle is or may be subject to security interests not shown on the certificate of title, a valid security interest not so indicated.

B. If, during the period a security interest in a vehicle is perfected by any method under the law of any jurisdiction, the CNTC creates a written certificate of title that does not indicate that the vehicle is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate, a buyer of the vehicle, other than a person in the business of selling or leasing vehicles of that kind, takes free of the security interest if the buyer:

1. in good faith gives value, receives possession of the vehicle, and obtains execution of the written certificate of title; and
2. does not have notice of the security interest in the vehicle.

C. A buyer in ordinary course of business or a lessee in ordinary course of business of a vehicle takes free of a security interest, including a security interest indicated on the certificate of title, created by the buyer's seller or the lessee's lessor, even if the security interest is perfected, the buyer or lessee knows of its existence, and the certificate was not executed to the buyer or lessee.

§ 1111.20. Effect of incorrect information or omission

A. Except as otherwise provided in this section, a certificate of title, certificate of origin, security

interest statement, or other record otherwise satisfying the requirements of this act is effective even if it contains incorrect information or required information is omitted.

B. In addition to any rights provided under 47 CNCA § 1111.18 or 1111.19, if a certificate of title, certificate of origin, security interest statement, or other record is seriously misleading because it contains incorrect information or omits required information, a purchaser of the vehicle covered by the record takes free of any claim or interest the validity of which is dependent on the correct information or omitted information, which would have been contained in the record if the correct or omitted information had been provided, to the extent that the purchaser gives value in reasonable reliance on the incorrect information or the absence of the omitted information.

C. Except as otherwise provided in subsection (D) of this section or in 47 CNCA § 1111.24(C), a description of the vehicle covered by a certificate of title, certificate of origin, security interest statement, or other record otherwise satisfying the requirements of this act is sufficient, and not seriously misleading, even if the description and vehicle identification number are not specific and accurate, if the information, including the vehicle identification number, reasonably identifies the vehicle.

D. With respect to a security interest or other interest indicated in the files of the CNTC and not indicated on a written certificate of title, if a search of the files of the CNTC using the correct vehicle identification number, name of the debtor, or other required information, using the CNTC's standard search logic, if any, would disclose the security interest or other interest, a failure to indicate the information specifically or accurately is not seriously misleading.

§ 1111.21. Transfer of ownership by operation of law

A. In this section:

1. "By operation of law" means pursuant to a law or judicial order affecting ownership of a vehicle:

a. on account of death, divorce, merger, consolidation, dissolution, or bankruptcy;

b. through the exercise of the rights of a lien creditor or a person with a common law or statutory lien or other nonconsensual lien; or

c. through other legal process.

2. "Transfer-by-law statement" means a record signed by a transferee containing:

a. a statement that, by operation of law, the transferee has acquired or has the right to acquire the ownership of the owner of record;

b. the name and mailing address of the owner of record and the transferee and any other information required by 47 CNCA § 1111.8(A);

c. documentation sufficient to establish the transferee's interest or right to acquire the ownership of the owner of record; and

d. a statement:

i. that the certificate of title is an electronic certificate of title;

ii. that the transferee does not have possession of the written certificate of title created in the name of the owner of record; or

iii. that the transferee is delivering the written certificate of title to the CNTC with the transfer-by-law statement.

B. If a transfer-by-law statement is delivered to the CNTC with the fee and taxes and documentation satisfactory to the CNTC as to the transferee's ownership interest or right to acquire the ownership of the owner of record, unless the transfer-by-law statement is rejected by the CNTC for a reason set forth in 47 CNCA § 1111.9, the CNTC shall:

1. accept receipt of the transfer-by-law statement;

2. promptly send notice to the owner of record and to all persons indicated in the files of the CNTC as having a security interest in the vehicle that a transfer-by-law statement has been received by the CNTC;

3. amend its records to reflect the transfer;

4. cancel the certificate of title created in the name of the owner of record listed in the transfer-by-law statement, whether or not the certificate has been delivered to the CNTC;

5. create a new certificate of title pursuant to 47 CNCA § 1111.9, indicating the transferee as owner of record; and

6. deliver the new certificate of title pursuant to 47 CNCA § 1111.19.

C. This section does not affect the rights and obligations of a secured party in the enforcement of a security interest under Uniform Commercial Code Article 9.

§ 1111.22. Application for transfer of ownership or termination of security interest statement without certificate of title or certificate of origin

A. The CNTC shall create a certificate of title upon receiving an application that includes a transfer of ownership or a direction to terminate a security interest statement but is not accompanied by submission of a signed certificate of title or certificate of origin only if:

1. all other requirements under 47 CNCA §§ 1111.9 and 1111.10 are met;

2. the applicant has provided an affidavit stating facts that indicate the applicant is entitled to a transfer of ownership or termination of the effectiveness of a security interest statement:

3. at least forty-five (45) days before the CNTC creates the certificate of title, notice of the application was sent to all persons having an interest in the vehicle as indicated in the files of the CNTC, and no objection from any of these persons has been received by the CNTC; and

4. the applicant presents other documentation required by the CNTC to evidence the applicant's ownership or right to termination of the security interest statement, and there is no credible information available to the CNTC indicating theft, fraud, or any undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vehicle.

B. Unless the value of the vehicle is less than One Thousand Dollars (\$1,000.00), the CNTC may require an applicant under subsection (A) to post a bond or provide an equivalent source of indemnity or security, in a form prescribed by the CNTC, providing for indemnity of any owner, purchaser, or other claimant, for any expense, loss, delay, or damage, including reasonable attorneys' fees but not consequential damages, resulting from creation of a certificate of title or termination of a security interest statement. The bond or other source of indemnity may not exceed twice the value of the vehicle as determined by the CNTC.

C. If the CNTC has not received a claim for indemnity within one (1) year after creation of the certificate of title under subsection (A) of this section, the CNTC shall release any required bond, indemnity, or other security.

D. In lieu of the requirements of subsection (B) of this section, the CNTC may include in the certificate of title created under subsection (A) of this section an indication that the certificate of title was created without submission of a signed certificate of title or termination statement. If no credible information indicating theft, fraud, or any undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vehicle has been received by the CNTC within one (1) year after creation of the certificate of title, upon a request in a form and manner specified by the CNTC, the CNTC shall remove the indication from the certificate of title.

§ 1111.23. Replacement certificates of title

A. If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes unavailable or illegible, the secured party of record or, if there is no secured party indicated in the files of the CNTC, the owner of record may make application for and obtain a replacement certificate of title in the name of the owner of record by furnishing information satisfactory to the CNTC in accordance with this section.

B. An application for a replacement certificate of title must be submitted in a record signed by the applicant and, except as otherwise permitted by the CNTC, must comply with 47 CNCA § 1111.8.

C. The existing certificate of title must be submitted to the CNTC with the application for a

replacement certificate of title, unless it has been lost, stolen, destroyed, or is otherwise unavailable.

D. A replacement certificate of title created by the CNTC must comply with 47 CNCA § 1111.10 and conspicuously state that it is a replacement certificate of title.

E. If a person receiving a replacement certificate of title subsequently obtains possession of the original certificate, the person shall promptly destroy the original certificate.

§ 1111.24. Effectiveness of security interest statement

A. A security interest statement sufficient under subsection (B) of this section is effective upon receipt by the CNTC and tender of the applicable fee. An effective security interest statement is an application for a certificate of title for purposes of 47 CNCA § 1111.4 and Uniform Commercial Code Article 9 Section 9–303.

B. A security interest statement is sufficient if it includes the name of a debtor, the name of a secured party or a representative of a secured party, and a description of the vehicle, and one of the following conditions is met:

1. the debtor has signed a security agreement that provides a description of the vehicle;
2. the vehicle is in the possession of the secured party pursuant to Uniform Commercial Code Section 9–313 or pursuant to the debtor's agreement; or
3. the debtor has otherwise authorized the security interest statement in a signed record.

C. A security interest statement is not received if the CNTC rejects the statement under subsection (E) of this section. The CNTC may reject a security interest statement only under subsection (E) of this section and only if:

1. the record is not delivered by a means authorized by the CNTC;
2. an amount equal to or greater than the required filing fee is not tendered;
3. the record does not include the name and mailing address of a debtor and a secured party or a representative of a secured party; or
4. the record does not contain the correct vehicle identification number.

D. The CNTC shall maintain a file showing the date of receipt of each security interest statement that is not rejected and make this information available on request.

E. To reject a security interest statement, the CNTC shall notify the person that delivered the statement of the rejection, the reasons for the rejection, and the date the statement would have been

received had the CNTC not rejected it. The CNTC shall send the notice not later than midnight of the second business day after the business day on which the security interest statement was delivered to the CNTC. If the CNTC does not send proper notice of rejection of a security interest statement by midnight of the second business day after the business day on which the statement was delivered to the CNTC, that is sufficient under subsection (B) of this section, the security interest statement is received as of the business day on which the statement was delivered to the CNTC.

§ 1111.25. Perfection of security interest

A. Except as otherwise provided in subsections (E) and (F) of this section, a security interest in a vehicle may be perfected only by receipt of a security interest statement that is effective under 47 CNCA § 1111.24. If a security interest statement is effective under 47 CNCA § 1111.24, the security interest represented by the security interest statement is perfected upon the later to occur of receipt of the security interest statement or attachment of the security interest pursuant to Uniform Commercial Code Section 9–203.

B. The CNTC may create a certificate of title naming as owner a lessor, consignor, bailor, or secured party and may treat the person as the owner for purposes of carrying out the duties of the CNTC under this act. If the interest of a person named as owner is a security interest, the certificate of title naming the person as owner perfects the security interest but is not of itself a factor in determining whether the interest is a security interest.

C. The CNTC may reject a security interest statement sufficient under 47 CNCA § 1111.24(B) only for a reason set forth in 47 CNCA § 1111.24(C) and in the manner set forth in 47 CNCA § 1111.24(E). Rejection for any other reason or in any other manner is ineffective and the security interest statement is received as of the business day on which the statement was delivered to the CNTC. A security interest statement that is sufficient under 47 CNCA § 1111.24(B) and is not rejected under 47 CNCA § 1111.24(C) is received as of the business day on which the statement was delivered to the CNTC, and if effective under 47 CNCA § 1111.24(A) constitutes perfection under subsection (A), unless it is rejected pursuant to 47 CNCA § 1111.24(E). A failure of the CNTC to index a security interest statement correctly or to indicate the security interest on the certificate of title does not affect the receipt or effectiveness of the security interest statement.

D. A secured party may transfer its rights as secured party under this act. An otherwise valid transfer of a security interest is effective between the parties to the transfer whether or not it is reflected in the files of the CNTC or indicated on the certificate of title. A transfer of a security interest vests in the transferee the rights of the secured party under this act and the Uniform Commercial Code. Perfection remains effective even if the transfer and the transferee of the security interest are not indicated in the files of the CNTC or on the certificate of title. However, a purchaser of the vehicle that obtains a release from a secured party indicated in the files of the CNTC or on the certificate of title takes free of that security interest and also free of the rights of a transferee of that security interest if the transfer is not indicated in the files of the CNTC or on the certificate.

E. A security interest created by a person in the business of selling or leasing vehicles is not subject to this section during any period in which the collateral is inventory held for sale or lease or is leased by the person.

F. A secured party may perfect a security interest by taking possession of a vehicle only as provided in Uniform Commercial Code Section 9–313(b) and 9–316(d).

§ 1111.26. Termination statement

A. A secured party indicated in the files of the CNTC as having a security interest in a vehicle shall deliver to the CNTC a signed termination statement if:

1. there is no obligation secured by the vehicle covered by the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vehicle; or
2. the debtor did not authorize the filing of the security interest statement.

B. A secured party indicated in the files of the CNTC shall deliver the signed termination statement to the debtor or the CNTC upon the earlier of:

1. twenty (20) days after there is no obligation secured by the vehicle covered by the security interest statement and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vehicle; or
2. ten (10) days after the secured party receives a signed demand from the debtor and there is no obligation secured by the vehicle and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vehicle.

C. If a written certificate of title has been created and delivered to the secured party and a termination statement is required under subsection (A) of this section, the secured party shall deliver the written certificate of title to the debtor or the CNTC with the termination statement, within the time provided in subsection (B) of this section. If the written certificate is lost, stolen, mutilated, or destroyed or is otherwise unavailable or illegible, the secured party shall deliver with the termination statement, within the time provided in subsection (B) of this section, an application for a replacement certificate of title meeting the requirements of 47 CNCA § 1111.23.

D. Upon the delivery of a termination statement to the CNTC pursuant to this section, the security interest statement and any notation of the security interest on the certificate of title to which the termination statement relates becomes ineffective.

E. Only a secured party whose interest is required to be terminated is required to or may file a termination statement under this act.

F. A secured party is liable for damages in the amount of any loss caused by not complying with this section and for the reasonable cost of an application for a certificate of title under 47 CNCA §§

1111.9 and 1111.22.

G. Upon termination of the effectiveness of a security interest statement under this section, the CNTC shall reflect in its files the termination of the security interest, and that the subsequent secured party reflected in the files of the CNTC, if any, is the secured party of record. If a written certificate of title has been created indicating that the security interest has been terminated, the CNTC shall cancel that certificate of title, create a new certificate of title under 47 CNCA §§ 1111.10 and 1111.11, and deliver the new certificate of title in accordance with 47 CNCA § 1111.15.

§ 1111.27. Uniform security interest statement

Image

§ 1111.28. Duties and operation of filing office

A. The CNTC shall maintain a file of the information provided in a security interest statement received by the CNTC under 47 CNCA § 1111.24 for a least one (1) year after termination of the security interest statement under 47 CNCA § 1111.26. The information must be accessible by the vehicle identification number for the vehicle and any other indexing methods as provided by the CNTC.

B. If a person that files a record with the CNTC, or submits information that is accepted by the CNTC, requests an acknowledgment of the filing or submission, the CNTC shall send to the person an acknowledgment showing the vehicle identification number of the vehicle to which the record or submission relates, the information in the filed record or submission, and the date and time the record was received or the submission accepted. A request under this section must contain the vehicle identification number and be delivered by means authorized by the CNTC.

C. The CNTC shall send or otherwise make available in a record the following information to any person that requests it:

1. whether there is on file on a date and time specified by the CNTC, but not a date earlier than three (3) business days before the CNTC received the request, any certificate of title and security interest statement that:

a. covers a vehicle identified by a vehicle identification number designated in the request; and

b. has not been canceled or terminated;

2. the effective date of the security interest statement; and

3. the name of the owner of record and all security interest statements indicated in the files of the CNTC that are not subject to a termination statement under 47 CNCA § 1111.26.

D. In responding to a request under this section, the CNTC may communicate the requested information in any medium. However, if requested, the CNTC shall send the requested information in a record that is admissible in evidence in the courts of this jurisdiction without extrinsic evidence of its authenticity.

E. The CNTC shall comply with the requirements of this section at the time and in the manner prescribed by the rules of the CNTC but shall comply with requests under this section not later than two (2) business days after the CNTC receives the request. A reasonable fee may be imposed for this service.

§ 1111.29. Title brand

A. A "salvage title" shall be issued to any vehicle ten (10) model years and newer which has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value determined as of its condition immediately prior to the damage.

B. A "rebuilt title" shall be issued on any salvage vehicle, which has been rebuilt and inspected for the purpose of registration and title with Cherokee Nation, or another jurisdiction.

§ 1111.30. Uniformity of application and construction

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among jurisdictions that enact it.

CHAPTER 79

MOTOR VEHICLE CHOP SHOP, STOLEN AND ALTERED PROPERTY ACT

§ 1501. Short title

This act shall be known and may be cited as the "Motor Vehicle Chop Shop, Stolen and Altered Property Act".

§ 1502. Definitions

As used in the Motor Vehicle Chop Shop, Stolen and Altered Property Act:

1. "**Chop shop**" means any building, lot or other premise where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any motor vehicle, or motor vehicle part known to be illegally obtained by theft, fraud or conspiracy to defraud, in order to either:

a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of such motor vehicle or motor vehicle part, in order to

misrepresent the identity of such motor vehicle part, or to prevent the identification of such motor vehicle or motor vehicle part; or

b. Sell or dispose of such motor vehicle or motor vehicle part.

2. **"Motor vehicle"** means and includes every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, which is self-propelled or which may be connected to and towed by a self-propelled device, and also includes any and all other land-based devices which are self-propelled but which are not designed for use upon a highway, including but not limited to, farm machinery and construction equipment.

3. **"Person"** means and includes a natural person, company, corporation, unincorporated association, partnership, professional corporation, and any other legal entity.

4. **"Unidentifiable"** means that the uniqueness of a motor vehicle or motor vehicle part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor vehicle theft investigative procedures and motor vehicle identification examination techniques, or by expert employees of not-for-profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques.

5. **"Vehicle identification number"** means a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof, used by the manufacturer or the Oklahoma Tax Commission for the purpose of uniquely identifying a motor vehicle or motor vehicle part. The term shall include, but not be limited to, a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof.

§ 1503. Ownership and operation of chop shop—Alteration of vehicle identification number—Purchase or sale of parts from altered vehicle—Exceptions—Attempt—Conspiracy—Solicitation—Aiding and abetting—Accessory after fact—Penalties—Sentence—Restitution

A. Any person who knowingly and with intent that a violation of this section be committed:

1. owns, operates, or conducts a chop shop;

2. transports any motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop; or

3. sells, transfers, purchases, or receives any motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop, upon conviction, is guilty of a crime.

B. Any person who knowingly alters, counterfeits defaces, destroys, disguises, falsifies, forges, obliterates, or knowingly removes a vehicle identification number with the intent to misrepresent

the identity or prevent the identification of a motor vehicle or motor vehicle part, upon conviction is guilty of a crime, punishable by imprisonment for not more than one (1) year, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both such imprisonment and fine.

C. 1. Any person who buys, disposes, sells, transfers, or possesses a motor vehicle or motor vehicle part, with knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed, upon conviction is guilty of a crime.

2. The provisions of paragraph 1 of this subsection shall not apply to a motor vehicle scrap processor who, in the normal legal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part prior to or during any such processing.

3. The provisions of paragraph 1 of this subsection shall not apply to any owner or authorized possessor of a motor vehicle or motor vehicle part which has been recovered by law enforcement authorities after having been stolen or where the condition of the vehicle identification number of the motor vehicle or motor vehicle part is known to or has been reported to law enforcement authorities. It shall be presumed that law enforcement authorities have knowledge of all vehicle identification numbers on a motor vehicle or motor vehicle part which are altered, counterfeited, defaced, disguised, falsified, forged, obliterated, or removed, when law enforcement authorities deliver or return the motor vehicle or motor vehicle part to its owner or authorized possessor after it has been recovered by law enforcement authorities after having been reported stolen.

D. A person commits an attempt when, with intent to commit a violation proscribed by subsection (A), (B), or (C) of this section the person does any act which constitutes a substantial step toward the commission of the violation proscribed by subsection (A), (B) or (C) of this section, and upon conviction is guilty of a crime.

E. A person commits conspiracy when, with an intent that a violation proscribed by subsection (A), (B) or (C) of this section be committed, the person agrees with another to the commission of the violation proscribed by subsections (A), (B) or (C) of this section, and upon conviction is guilty of a crime. No person may be convicted of conspiracy under this section unless an act in furtherance of such agreement is alleged and proved to have been committed by that person or a co-conspirator.

F. A person commits solicitation when, with intent that a violation proscribed by subsection (A), (B) or (C) of this section be committed, the person commands, encourages, or requests another to commit the violation proscribed by subsection (A), (B) or (C) of this section, and upon conviction is guilty of a crime.

G. A person commits aiding and abetting when, either before or during the commission of a violation proscribed by subsection (A), (B) or (C) of this section, with the intent to promote or facilitate such commission of the violation proscribed by subsection (A), (B) or (C) of this section,

and upon conviction is guilty of a crime.

H. A person is an accessory after the fact who maintains, assists, or gives any other aid to an offender while knowing or having reasonable grounds to believe the offender to have committed a violation under subsection (A), (B), (C), D, E, F or G of this section, and upon conviction is guilty of a crime.

I. No prosecution shall be brought, and no person shall be convicted, of any violation under this section, where acts of the person, otherwise constituting a violation were done in good faith in order to comply with the laws or regulations of any state or territory of the United States, or of the federal government of the United States.

J. 1. In addition to any other punishment, a person who violates this section, shall be ordered to make restitution to the lawful owner or owners of the stolen motor vehicle or vehicles or the stolen motor vehicle part or parts, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

Financial loss shall include, but not be limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs and claims payments. Lawful owner shall include an innocent bona fide purchaser for value of a stolen motor vehicle or stolen motor vehicle part who does not know that the motor vehicle or part is stolen; or an insurer to the extent that such insurer has compensated a bona fide purchaser for value.

2. The Court shall determine the extent and method of restitution. In an extraordinary case, the Court may determine that the best interests of the victim and justice would not be served by ordering restitution. In any such case, the Court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution.

APPENDIX A

CHEROKEE NATION BOND SCHEDULE

Appendix A.

Cherokee Nation Bond Schedule

OFFENSE

MIN BOND Plus \$60.00 COURT COST

Speeding

One to Ten miles per hour Over Limit	\$210.90	47 CNCA	§ 11-801
Eleven to Fifteen miles per hour Over Limit	\$248.90	47 CNCA	§ 11-801

Sixteen to Twenty miles per hour Over Limit	\$263.90	47 CNCA	§ 11-801
Twenty-one to Twenty-five miles per hour Over Limit	\$303.90	47 CNCA	§ 11-801
Twenty-six to Thirty miles per hour Over Limit	\$363.90	47 CNCA	§ 11-801
Thirty-one to Thirty-five miles per hour Over Limit	\$383.90	47 CNCA	§ 11-801
Thirty-six miles per hour or more Over Limit	\$433.90	47 CNCA	§ 11-801

Speeding in a Construction or Maintenance Zone

One to Ten miles per hour Over Limit	\$248.90	47 CNCA	§ 11-806;
Eleven to Fifteen miles per hour Over Limit	\$268.90	47 CNCA	§ 11-806;
Sixteen to Twenty miles per hour Over Limit	\$298.90	47 CNCA	§ 11-806;
Twenty-one to Twenty-five miles per hour Over Limit	\$378.90	47 CNCA	§ 11-806;
Twenty-six to thirty miles per hour Over Limit	\$498.90	47 CNCA	§ 11-806;
Thirty-one to thirty-five miles per hour Over Limit	\$536.90	47 CNCA	§ 11-806;
Thirty-six miles or more miles per hour Over Limit	\$638.90	47 CNCA	§ 11-806;
Operating a Motor Vehicle in a Manner Not Reasonable and Proper	\$278.90	47 CNCA	§ 11-801
Reckless Driving (First Offense Only.)	\$477.40	47 CNCA	§ 11-901
Reckless Driving (Second or Subsequent Offense)	\$527.40	47 CNCA	§ 11-901
Failure to Obey a Lawful Traffic Control (Sign)(Signal)(Device)	\$233.90	47 CNCA	§ 11-201
Impeding the Normal and Reasonable Flow of Traffic	\$233.90	47 CNCA	§ 11-804.A

Improper Passing

1. Failure to Give Way to Right when being passed	\$233.90	47 CNCA	§ 11-303.a
2. Improper Passing on the Right	\$233.90	47 CNCA	§ 11-304.b
3. Passing Without Sufficient Clearance	\$233.90	47 CNCA	§ 11-305

Driving Left of Center

1. Unauthorized Driving Left of Center on (Grades) (Curves) (View Obstructed)	\$233.90	47 CNCA	§ 11-306.a-1
2. Unauthorized Driving Left of Center within 100 of (Intersection) (Railroad Crossing)	\$233.90	47 CNCA	§ 11-306.a-2
3. Unauthorized Driving Left of Center within 100' of any (Tunnel) (Bridge) (Viaduct) when view is obstructed	\$233.90	47 CNCA	§ 11-306.a-3
4. On Left Side of Road in a Marked Zone	\$233.90	47 CNCA	§ 11-307.b
5. Unauthorized Driving Left of Center on Divided Four-Lane Roadway	\$233.90	47 CNCA	§ 11-301.c
Driving Wrong Way on One-way Road	\$233.90	47 CNCA	§ 11-308.b
Improperly Crossing Center Dividing Section	\$233.90	47 CNCA	§ 11-311

Improperly Driving (Onto) (Off) Controlled-access Roadway	\$233.90	47 CNCA	§ 11-312
Improper Movement from a Direct Course (To enter private drive) (Driveway)	\$233.90	47 CNCA	§ 11-604.a
Failure to Signal Intention to Turn Right or Left	\$233.90	47 CNCA	§ 11-604.b
Failure to Stop for a Stop Sign	\$233.90	47 CNCA	§ 11-403.b
Changing Lanes Unsafely	\$233.90	47 CNCA	§ 11-309
Failure to Stop for a School Bus (Loading) (Unloading) Children	\$328.90	47 CNCA	§ 11-705.a
Failure to Wear Safety Belt	\$80.00	47 CNCA	§ 12-417
Failure to Use Child Passenger Restraint System	\$256.90	47 CNCA	§ 11-1112
Depositing, Dumping or Throwing Destructive or Injurious Material on Public Property	\$418.40	21 CNCA	§ 1761.1
Improper Negotiation of a Railroad-Highway Grade Crossing by a Commercial Motor Vehicle	\$233.90	47 CNCA	§ 11-1115
Failure to Stop/Improper Stop at a Railroad Grade Crossing	\$233.90	47 CNCA	§ 11-701
Throwing, Dropping, Depositing or Placing Litter (Including Lighted Substances) on Highway, Roadway or Public Property	\$228.40	21 CNCA	§ 1753
Allowing a Passenger to Ride Outside the Passenger Compartment of the vehicle	\$85.00	47 CNCA	§ 11-1114
Operating a Motor Vehicle with an Improper Brake System	\$233.90	68 CNCA	§ 11-1114
Operating a Motor Vehicle Without a Valid (Operator's) (Chauffeur's) License	\$278.90	68 CNCA	§ 1263
Violation of License Restriction	\$233.90	68 CNCA	§ 1263
Transporting Open Container in violation of 21 CNCA § 1220	\$338.90	21 CNCA	§ 1220
Unlawfully Transporting Open Container of Alcoholic Beverage in a Vehicle (M)	\$268.90	21 CNCA	§ 1220
Drunk in a Public Place (Name Place)	\$228.40	37 CNCA	§ 8
Failure to Carry Security Verification Form	\$223.90	68 CNCA	§ 1263
Failure to Pay All Taxes Due State or Nation	\$223.90	68 CNCA	§ 1258
Operating a Vehicle Without Current License Plates (Decal)	\$223.90	47 CNCA	§ 1261
Operating a Motorcycle (Without) (Improper) (Windshield) (Goggles) (Face Shields)	\$223.90	47 CNCA	§ 40-105

Overload, Any Axle or Gross Weight

From 700 up to and including 2,000 Pounds	\$268.90	47 O.S.	§ 14-109.A
From 2,001 up to and including 3,000 Pounds	\$318.90	47 O.S.	§ 14-109.A
From 3,001 up to and including 4,000 Pounds	\$368.90	47 O.S.	§ 14-109.A
From 4,001 up to and including 5,000 Pounds	\$418.90	47 O.S.	§ 14-109.A

From 5,001 up to and including 6,000 Pounds	\$468.90	47 O.S.	§ 14-109.A
From 6,001 up to and including 7,000 Pounds	\$518.90	47 O.S.	§ 14-109.A
From 7,001 up to and including 8,000 Pounds	\$568.90	47 O.S.	§ 14-109.A
From 8,001 up to and including 9,000 Pounds	\$618.90	47 O.S.	§ 14-109.A
From 9,001 up to and including 10,000 Pounds	\$668.90	47 O.S.	§ 14-109.A
Over 10,000 Pounds	\$688.90	47 O.S.	§ 14-109.A

Violating Special Permit, Exceeding Authorized Permit Weight in Accordance with the Bond Schedule provided for in this section for Overload. Plus an Additional One Hundred Dollars (\$100.00).

TITLE 48

RESERVED

Reserved for Future Use

TITLE 49

NOTARIES PUBLIC

CHAPTER 1

GENERAL PROVISIONS

§ 1. Appointment

The Principal Chief or his designee shall appoint and commission in Cherokee Nation notaries public, who shall hold their office for four (4) years. An applicant for a notary commission shall be eighteen (18) years of age or older and a citizen of Cherokee Nation. All notary commissions shall run in the name and by the authority of Cherokee Nation, be signed by the Principal Chief and sealed with the Seal of Cherokee Nation. Said commissions shall not be attested.

§ 2. Oath, signature, bond and seal—Fees

A. Before entering upon the duties of his office every notary public so appointed and commissioned shall file in the office of the Court Clerk the commission issued to him, his oath of office, his official signature, an impression of his official seal, and a good and sufficient bond to Cherokee Nation, in the sum of One Thousand Dollars (\$1,000.00), with one or more sureties to be approved by the Court Clerk, conditioned for the faithful performance of the duties of his office.

B. Such commission, bond, and oath shall be recorded in the office of such Court Clerk, as Clerk of the District Court. The commission shall be returned to the notary. The bond and oath shall be retained by the Court Clerk to be filed and recorded in his office. The filing of such commission, bond, official signature, and impression of official seal in the office of the Court Clerk shall be

deemed sufficient evidence to enable the Court Clerk to certify that the person so commissioned is a notary public, duly commissioned and acting as such, during the time such commission is in force. Upon the filing of his commission with the Court Clerk, every notary public shall pay to the Court Clerk the sum of Twenty-five Dollars (\$25.00) to be held and accounted for by the Court Clerk as fees of his office.

C. Applications for renewal shall follow the same procedure except the fee shall be Twenty Dollars (\$20.00).

§ 3. Blanks for bond and oath

Blanks for bonds and oaths of office shall be furnished with the commission by the Principal Chief.

§ 4. Reserved

§ 5. Official seal

Every notary shall provide a metal notarial seal containing his name and county of residence. Each notary shall authenticate all his official acts, attestations and instruments with this seal; and he shall add to his official signature the date of expiration of his commission as such notary public. If any notary public shall neglect or refuse to attach to his official signature the date of expiration of his commission he shall be deemed guilty of a crime, and upon conviction thereof shall be fined in any sum not exceeding Fifty Dollars (\$50.00).

§ 6. Authority of notary

Notaries public shall have authority within Cherokee Nation to make the proof and acknowledgment of deeds and other instruments of writing required to be proved or acknowledged; to administer oaths; to demand acceptance or payment of foreign or inland bills of exchange and promissory notes, and protest the same for nonacceptance of nonpayment, as the same may require, and to exercise such other powers and duties as by law of nations and commercial usage may be performed by notaries public. A notary may not notarize his own signature.

§ 7. Record of protests

In cases of protests for banks, notaries shall keep a register thereof in a book provided for that purpose by the bank, and the notary shall not be required to deliver such register to the court clerk, but shall leave the same in the possession of such bank.

§ 8. Official record

Every notary shall keep a fair record of his official acts, and if required shall give a certified copy of any record in his office, upon the payment of the fees therefor.

§ 9. Vacancy

If any notary die, resign, be disqualified or remove from the Nation, his record and official public papers of his office, shall, within thirty (30) days be delivered to the Court Clerk.

§ 10. Statute of limitations

No suit shall be instituted against any such notary or his securities more than three (3) years after the cause of action accrues.

CHAPTER 2

UNIFORM LAW ON NOTARIAL ACTS

§ 111. Short title

Sections 111 through 120 of this title shall be known and may be cited as the "Uniform Law on Notarial Acts".

§ 112. Definitions

As used in the Uniform Law on Notarial Acts:

1. **"Acknowledgment"** means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.
2. **"In a representative capacity"** means:
 - a. For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;
 - b. As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;
 - c. As an attorney-in-fact for a principal;
 - d. in any other capacity as an authorized representative of another.
3. **"Notarial acts"** means any act that a notary public of this Nation is authorized to perform, and includes taking an acknowledgement, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

4. **"Notarial officer"** means a notary public or any other person authorized to perform notarial acts in the place in which the act is performed.

5. **"Verification upon oath or affirmation"** means a declaration that a statement is true made by a person upon oath or affirmation.

§ 113. Taking acknowledgment or verification—Witnessing or attesting signature—Certifying or attesting copies—Making or noting protest—Evidence of true signature

A. In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

B. In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

C. In witnessing or attesting a signature the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

D. In certifying or attesting a copy of a document or other item the notarial officer must determine that the proffered copy is a full, true and accurate transcription or reproduction of that which was copied. In the case of official records, only the custodian of the official records may issue an official certified copy.

E. In making or noting a protest of a negotiable instrument the notarial officer must determine the matters set forth in 80 CNCA § 3–505.

F. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is personally known to the notarial officer, is identified upon the oath or affirmation of a credible witness personally known to the notarial officer or is identified on the basis of identification documents.

§ 114. Person who may perform notarial acts—Federal acts—Genuineness of signature

A. A notarial act may be performed within this Nation by the following persons:

1. A notary public of this Nation or the State of Oklahoma;

2. A Judge, Clerk, or Deputy Clerk of any Court of this Nation or the State of Oklahoma;

3. All judge advocates, staff judge advocates, assistant judge advocates and all legal officers of the state military forces in performance of their official duties for military personnel and their dependents.

4. Any other person authorized to perform the specific act by the law of this state.

B. Notarial acts performed within this Nation under federal authority have the same effect as if performed by a notarial officer of this Nation.

C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

§ 115. Notarial acts performed in a state, commonwealth, territory, district, or possession of the United States

A. A notarial act has the same effect pursuant to the laws of this Nation as if performed by a notarial officer of this Nation, if performed in a state, commonwealth, territory, district, or possession of the United States by any of the following persons:

1. A notary public of that jurisdiction.

2. A judge, clerk, or deputy clerk of a court of that jurisdiction.

3. All judge advocates, staff judge advocates, assistant judge advocates and all legal officers of the state military forces.

4. Any other person authorized by the law of that jurisdiction to perform notarial acts.

B. Notarial acts performed in other jurisdictions of the United States under federal authority have the same effect as if performed by a notarial officer of this Nation.

C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

D. The signature and indicated title of an officer listed in this section conclusively establish the authority of a holder of that title to perform a notarial act.

§ 116. Notarial acts performed by certain federal officers

A. A notarial act has the same effect pursuant to the laws of this Nation as if performed by a notarial officer of this Nation if performed anywhere by any of the following persons under authority granted by the law of the United States:

1. A judge, clerk, or deputy clerk of a court.

2. A commissioned officer on active duty in the military service of the United States.

3. An officer of the foreign service or consular officer of the United States.

4. Any other person authorized by federal law to perform notarial acts.

B. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

C. The signature and indicated title of an officer listed in this section conclusively establish the authority of a holder of that title to perform a notarial act.

§ 117. Notarial acts performed by officer of foreign nation or multinational or international organization

A. A notarial act has the same effect pursuant to the laws of this Nation as if performed by a notarial officer of this Nation if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

1. A notary public or notary.

2. A judge, clerk, or deputy clerk of a court of record.

3. Any other person authorized by the law of that jurisdiction to perform notarial acts.

B. An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

C. A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

D. An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

E. An official stamp or seal of an officer listed in this section is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

F. If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

§ 118. Certification of notarial act

A. A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The

certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the rank of the officer.

B. A certificate of a notarial act is sufficient if it meets the requirements of subsection (A) of this section and it:

1. Is in the short form set forth in 49 CNCA § 119;
2. Is in a form otherwise prescribed by the law of this Nation;
3. Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed;
4. Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act;

C. By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by 49 CNCA § 113.

§ 119. Short form certificates of notarial acts

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by 49 CNCA § 118(A);

1. For an acknowledgment in an individual capacity:

Cherokee Nation
State of
County of

This instrument was acknowledged before me on (date) by (name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
(My commission expires:)

2. For an acknowledgment in a representative capacity:

Cherokee Nation
State of
County of

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

(Signature of notarial officer)

(Seal, if any)

Title (and rank)
(My commission expires:)

3. For a verification upon oath or affirmation:

Cherokee Nation
State of
County of

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

(Signature of notarial officer)

(Seal, if any)

Title (and rank)
(My commission expires:)

4. For witnessing or attesting a signature:

Cherokee Nation
State of
County of

Signed or attested before me on (date) by (name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Title (and rank)
(My commission expires:)

5. For attestation of a copy of a document:

Cherokee Nation
State of
County of

I certify that this is a true and correct copy of a document in the possession of

Dated

(Signature of notarial officer)

(Seal, if any)

Title (and rank)
(My commission expires:)

§ 120. Interpretation of act

The Uniform Law on Notarial Acts shall be so interpreted as to make uniform the laws of those states which enact it.

TITLE 50

NUISANCES

Reserved for Future Use

TITLE 51

OFFICERS AND EMPLOYEES

CHAPTER 1

GENERAL PROVISIONS

§ 1. Salaries for future terms of elected officials

For all duly elected officials in August 2011, and thereafter the annual salaries for the Principal Chief, Deputy Principal Chief, and Council Members of Cherokee Nation shall be based on the report submitted from a citizen committee:

1. The Citizens Committee shall be comprised of two (2) appointees by the Principal Chief, two (2) appointees by the Council of Cherokee Nation, and a fifth member selected by the four (4) appointees.
2. The Citizens Committee shall convene prior to the filing period for elected offices in the election year of the Principal Chief to make its findings and report and meet every four (4) years thereafter.
3. The Citizens Committee shall consider relevant comparative salary levels such as, but not limited to, salary information from other Tribal Governments, state and local governments, and the private sector. The Citizens Committee may use Cherokee Nation's Human Resources and the Council of Cherokee Nation's financial officer as sources of information.
4. The report of the Citizens Committee shall set the salary for all elected officials of Cherokee Nation unless rejected by Legislative Act within sixty (60) days of the committee's report.

§ 2. Compensation from other sources—Compensation information publicly available—Health insurance and retirement options—Insurance policies—Recalculation of salaries

- A. All elected officials shall not receive compensation from any other source for work directly related to their duties involving Cherokee Nation Boards or instrumentalities unless otherwise prescribed by law.
- B. Information concerning the total amount of compensation of all elected officials of Cherokee Nation including expenses and the value of benefits shall be made available to any citizen of Cherokee Nation upon request at no charge. This information shall be kept and maintained by the Treasurer of Cherokee Nation.
- C. All elected officials shall enjoy the same benefits of health insurance and retirement options as those offered to employees of Cherokee Nation except unemployment benefits and 401k.
- D. The Treasurer or his or her designee shall let for bid insurance policies of Cherokee Nation consistent with this act.
- E. All elected officials shall not be considered employees of Cherokee Nation.
- F. The calculation as to when to set the average for Cherokee Nation officials elected in the 2003 Cherokee Nation General Election shall be the salaries of the officials listed in 19 CNCA § 21 and 51 CNCA §§ 1 and 11 as of January 1, 2003. The average is to be recalculated on January 1, 2007 and every four (4) years thereafter in accordance with the procedure described in 51 CNCA § 1.1.

CHAPTER 2

OFFICE OF THE PRINCIPAL CHIEF

§ 51. Salary of Principal Chief

The salary of the Principal Chief of Cherokee Nation shall be the average of the salaries that are paid to the Chiefs and Governor of the Five Civilized Tribes and the Chief of the Eastern Band of Cherokees based on a survey conducted of available information; provided that this amount shall not exceed One Hundred Twenty-Five Thousand Dollars (\$125,000.00) or fall below Seventy-Five Thousand Dollars (\$75,000.00).

§ 52. Travel expenses—Allowance for local travel

The Principal Chief shall receive Five Hundred Dollars (\$500.00) per month for travel within the fourteen-county area of Cherokee Nation.

§ 53. Reimbursement of expenses for travel outside Cherokee Nation

The Principal Chief, when on official business for Cherokee Nation, shall be reimbursed for all actual and necessary expenses incurred for travel outside the fourteen-county area of Cherokee Nation of Oklahoma. Proper receipts must be documented and submitted to the Accounting Department of Cherokee Nation of Oklahoma.

The nature and amount of all such reimbursable expenses shall be published annually in the *Cherokee Phoenix*.

§ 54. Repealed by LA 34–07, eff. September 13, 2007

§ 55. Control of National Seal

The Principal Chief shall have control of the National Seal, and in all cases, when necessary, may direct the proper application, use, and preservation of the same.

§ 56. Authority to grant pardons

The Principal Chief shall have authority to grant, after conviction, pardons to persons convicted of crimes and sentenced to at least one (1) year in a correctional institution; or he may commute the punishment of persons convicted of crimes and sentenced to at least one (1) year in a correctional institution, to imprisonment for any term, upon such conditions and restrictions as he may think proper.

§ 57. Procedure—Application for pardon

All applications made to the Principal Chief for the pardon or commutation of sentence of any person convicted of a crime, shall be accompanied with a recommendation of credible persons, that the convict is a proper subject for executive clemency; and shall also be accompanied by the evidence in the case, or a certified copy thereof, if accessible, and a full statement of the facts in the case, and the grounds of application. The Principal Chief shall, after notice to the victim, carefully consider the evidence, the circumstances, and the facts in the case, and decide and order

accordingly.

§ 58. Offer of reward for information leading to apprehension of criminals at large

Whenever, in his opinion, the public good requires it, the Principal Chief may offer, and pay from the Treasury of the Nation, a suitable reward, not exceeding One Thousand Dollars (\$1,000.00) in any one case, to any person who shall provide information leading to the apprehension of a person subsequently convicted of a crime or a person who has escaped from a penal institution.

§ 59. State burial ceremony—Stipend

A. Cherokee Nation shall offer to conduct a memorial befitting a former or current Chief or Principal Chief which shall be conducted as a funeral service or as a separate event in accordance with the wishes of the family of the deceased. The cost of the memorial shall be incurred one hundred percent (100%) by Cherokee Nation.

B. A stipend to the family or burial and incidental expenses at a rate no less than our burial assistance program rate, the precise payment to be determined by the Principal Chief.

C. The Principal Chief or his designee shall commence planning for the memorial "immediately" upon the notice of death. If the deceased is the current Principal Chief, the current Deputy Chief shall conduct all duties related to the provisions of this act that direct actions by the Principal Chief.

CHAPTER 3

OFFICE OF THE DEPUTY PRINCIPAL CHIEF

FILLING VACANCY IN OFFICE OF DEPUTY PRINCIPAL CHIEF

§ 71. Salary of Deputy Principal Chief

The salary of the Deputy Principal Chief of Cherokee Nation shall be the average of the salaries that are paid to the Deputy Principal Chief or the comparable office of the Five Civilized Tribes and the Eastern Band of Cherokees, based on a survey conducted of available information; provided that this amount shall not exceed Eighty Thousand Dollars (\$80,000.00) or fall below Forty-Five Thousand Dollars (\$45,000.00).

§ 72. Travel expenses—Allowance for local travel

The Deputy Principal Chief shall receive Five Hundred Dollars (\$500.00) per month for travel within the fourteen-county area of Cherokee Nation.

§ 73. Reimbursement of expenses for travel outside Cherokee Nation

The Deputy Principal Chief, when on official business for Cherokee Nation, shall be reimbursed for all actual and necessary expenses incurred for travel outside the fourteen-county area of Cherokee Nation of Oklahoma. Proper receipts must be documented and submitted to the Accounting Department of Cherokee Nation of Oklahoma.

The nature and amount of all such reimbursable expenses shall be published annually in the Cherokee Phoenix.

§ 74. Repealed by LA 34-07, eff. September 13, 2007

FILLING VACANCY IN OFFICE OF DEPUTY PRINCIPAL CHIEF

§ 81. Purpose

The purpose of 51 CNCA §§ 81 through 89 is to provide procedures for filling vacancies in the Office of Deputy Principal Chief pursuant to Article VI, Section 4 [now Article VII, Section 4] of the Cherokee Nation Constitution.

§ 82. Vacation of office generally

The office of Deputy Principal Chief shall become vacant on the happening of either of the following events before the expiration of the term of such office:

1. The death of the incumbent or his resignation; or
2. His removal from office or failure to qualify as required by law.

§ 83. Manner of resignation by Deputy Principal Chief—Proceedings upon receipt of resignation by Principal Chief

A resignation by the Deputy Principal Chief shall be made in writing to the Principal Chief. The Principal Chief shall, upon receipt of said resignation, immediately notify the Members of the Tribal Council.

§ 84. Filling of vacancies by vote of Tribal Council—Generally

A. Vacancies in the office of Deputy Principal Chief shall be filled by the Tribal Council. The Tribal Council shall elect a Member of the Tribal Council as successor to serve the remainder of the term.

B. Upon receipt of the vacancy notice from the Principal Chief, the Tribal Council shall, at the next regularly scheduled Council session, produce a slate of nominees for the office of Deputy Principal Chief. The slate of nominees shall consist of all current elected Council Members; provided that any Council Member may request that his name not appear on the slate of nominees; and provided, further, that each nominee shall qualify for the office of Deputy Principal Chief as provided for in

26 CNCA § 33.

C. Upon completion of the slate of nominees, the Tribal Council shall proceed to vote for said nominees. Each council Member shall cast one (1) vote for one (1) nominee by secret ballot.

D. The nominee receiving the lowest number of votes shall be removed from the slate until one (1) nominee receives a two-thirds (2/3) majority vote. In the event that more than one nominee receives the lowest number of votes, those having the same number of low votes shall be removed from the slate or until two (2) nominees remain, voting will then continue until one (1) nominee receives a two-thirds (2/3) majority vote of those present.

E. No motion for adjournment shall be made or received until such time as the voting has been completed with one (1) nominee receiving a two-thirds (2/3) majority and the results of the voting announced and recorded.

§ 85. Vacancies occurring within thirty days of scheduled election

If a vacancy occurs within thirty (30) days prior to an election day at which it may be filled, no internal election shall be made unless it be necessary to carry out said election and the canvass of the same according to law; in that case an internal election by the Tribal Council may be made at any time prior to said election with the person elected to hold office until after said election or until his successor is elected and qualified.

§ 86. Term of officer elected by Council

The elected officer shall hold office until the end of the term for which the officer whom he succeeds was elected or appointed, and until his successor is elected and qualified.

§ 87. Compensation of officer elected by Council

Any officer elected as provided for herein shall receive the same rate of pay as the incumbent.

§ 88. Oath of officer elected by Council

Any officer elected as provided for herein shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation:

"I, _____, do solemnly swear, or affirm, that I will faithfully execute the duties, of Deputy Principal Chief of the Cherokee Nation, and will, to the best of my ability, preserve, protect, and defend the Constitutions of Cherokee Nation and the United States of America. I swear or affirm further, that I will do everything within my power to promote the culture, heritage and traditions of Cherokee Nation."

§ 89. Transfer of records, accounts, moneys, etc.

Upon the death, resignation, suspension or removal from office, or upon the expiration of his term, of any officer elected as provided for herein, all public moneys, books, records, accounts, papers, documents and property of other kind in his hands, or held by him by virtue of his office, shall be delivered to his successor.

CHAPTER 4

OFFICE OF ATTORNEY GENERAL

§ 101. Short title

This act shall be known and may be cited as the Attorney General Act.

§ 102. Purpose

The purpose of this act is to assign to the Cherokee Nation's Attorney General those "other duties as the Council may prescribe by law" as provided for in Article VII, Section 13 of the Cherokee Nation Constitution drafted in 1999 and ratified in 2003. The Council recognizes the duties and powers delegated to the Attorney General by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Attorney General by said Constitution.

§ 103. Definitions

For the purposes of this act:

1. "**Administration**" shall mean the Executive Branch of Cherokee Nation as provided for in Article VII of the Cherokee Nation Constitution.
2. "**Agency**" shall mean commissions, departments, government-owned companies, or other instrumentalities of Cherokee Nation.
3. "**Council**" or "**Tribal Council**" shall mean the Council of Cherokee Nation as provided for in Article VI of the Cherokee Nation Constitution.
4. "**Government-owned company**" or "**instrumentalities**" means those entities in which Cherokee Nation is the sole or majority stockholder or owner, including, but not limited to: Cherokee Nation Enterprises, Cherokee Nation Businesses, and Cherokee Nation Industries.
5. "**Nation**" shall mean Cherokee Nation.
6. "**Person**" means an agency, individual, a corporation, an estate, a trust, a general partnership, a limited partnership, a limited liability company, an association, or any other legal, commercial, government-owned company, or governmental entity.

7. **"State"** means a state, territory, or possession of the United States, a federally-recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

§ 104. Seal

The Attorney General shall have a seal for the Office of Attorney General. The design of the seal is subject to the approval of the Principal Chief.

§ 105. Functions and duties of Attorney General

A. Pursuant to Article VII, Section 13 of the Cherokee Nation Constitution, the Attorney General "shall represent the Cherokee Nation in all criminal cases in the courts of the Nation, and in all civil actions wherein the Cherokee Nation is named as a party, and shall have such other duties as the Council may prescribe by law."

B. In addition to the duties prescribed by the Constitution, the duties of the Attorney General as the chief legal officer of the Nation shall be:

1. To supervise Cherokee Nation's representation in all litigation in which Cherokee Nation, an agency, or officer thereof is interested, and shall direct all special attorneys appointed pursuant to this title and all contract attorneys in the discharge of their respective duties; the conduct of litigation in which Cherokee Nation, an agency, department or officer thereof is a party, or is interested, is reserved to the Attorney General, provided that the Attorney General may waive this requirement for specific legal issues which do not implicate governmental interests;

2. To initiate or appear, at his or her discretion, in any action in which the interests of the Nation or the People of the Nation are at issue, and prosecute and defend in any court or before any commission, board or officers or other adjudicatory body, administrative tribunal or body of any nature, in all civil or criminal legal or quasi-legal matters, any cause or proceeding, in which the Nation may be interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the Nation, take and assume control of the prosecution or defense of the Nation's interests therein, provided that this section includes the authority to initiate or appear in any action involving a government-owned company;

3. To prosecute all actions necessary under Title 10 of the Cherokee Nation Code Annotated for the protection and welfare of children and juveniles in the Cherokee Nation Courts, and to intervene, at the discretion of the Attorney General, in any action in any state court wherein intervention is permitted pursuant to the federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.;

4. To give an official opinion upon all questions of law submitted to the Attorney General by any Member of the Tribal Council, the Principal Chief, the Deputy Principal Chief, or by the Group Leader or equivalent of any Cherokee Nation board, commission or executive branch department,

and only upon matters in which the requesting party is officially interested. Said opinions shall have the force of law in Cherokee Nation until a differing opinion or order is entered by a Cherokee Nation Court;

5. To prepare drafts of regulations, and of contracts and other instruments in which the Cherokee Nation government is interested and to render opinions on the legal sufficiency of all contracts and other instruments in which the Cherokee Nation is interested and the best interests of the people of the Cherokee Nation are served;

6. To prepare legislation and resolutions as the Attorney General deems appropriate and to provide review of all legislation in whatever form in order to provide a written opinion thereon as to the possibility of conflicts with other laws and the Constitutionality of said bills;

7. To enforce the proper application of monies appropriated by the Tribal Council and to prosecute breaches of trust in the administration of such funds;

8. To institute actions to recover Nation monies illegally expended, to recover Nation property;

9. To keep and file copies of all opinions of the Office of Attorney General, and to keep an index of all such opinions according to subject and section of the law construed or applied and to cause to be published such of his or her opinions as he or she considers valuable for preservation and to prescribe the manner for the publication of the opinions;

10. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by the Attorney General on behalf of the Nation. Said register or docket shall give the style of the case or investigation, where pending, court number if any, the substance of the matter, result and the names of the assistant(s) who handled the matter;

11. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the Nation;

12. To furnish legal advice to Nation officials and all executive departments, boards, commissions, agencies, instrumentalities and officers of Cherokee Nation concerning any matter arising in connection with the exercise of their official powers and duties, and to supervise and direct the legal business of every executive department, board, commission, agency, instrumentality and officer of Cherokee Nation, provided that this section does not include advice and representation to such officials in their individual capacity, nor does it include advice to tribal citizens who are not officials of the Nation, and provided further that, in order to preserve the independence of the Office of Attorney General and to avoid actual and perceived conflicts of legal advice, the Office of Attorney General shall not provide legal advice on day-to-day operations of the Office of Principal Chief or Deputy Principal Chief;

13. To investigate any report by the Treasurer or the Office of Audit and Compliance filed with the Attorney General and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of

the laws of the Nation;

14. To investigate and prosecute all actions, civil or criminal, relating to civil actions or crimes against or within the jurisdiction of Cherokee Nation, provided that any such criminal actions shall be investigated in coordination with the Marshal Service, and when deemed appropriate by the Attorney General, with any federal or local law enforcement agency and to convene grand juries in such manner and for such purposes as provided by law, provided that such grand juries shall be composed of citizens of Cherokee Nation;

15. To probate, at the request of Cherokee Nation Real Estate Services, restricted estates;

16. To settle any case or controversy on behalf of the Nation, except that a settlement involving injunctive relief which substantially impacts the operation or programs of a Nation agency or would impose obligations requiring the expenditure of funds in excess of unallocated unencumbered monies in the agency's appropriations or beyond the current fiscal year shall be reviewed prior to its finalization by the Principal Chief and the Tribal Council. The purpose of the review is to determine the budgetary, programmatic and operational impact of the proposed settlement;

17. To oversee all Nation activities related to child-support enforcement as designated by law;

18. Coordinate with the Marshal's Service the following duties:

a. bailiff duties;

b. transportation of prisoners;

c. protection of the Courthouse and the court staff;

d. protection of witnesses, parties and prosecutors;

e. service of process;

f. and to obey the lawful orders and directions of the Courts.

19. To direct and supervise all activities of the Attorney General's Office;

20. To prepare the budget for the Attorney General's Office;

21. To promulgate such rules, regulations, policies, and procedures as the Attorney General deems necessary to fulfill the duties of the Office;

22. To promulgate rules, regulations, policies, and procedures for the qualifications and conduct of employees of the Attorney General's Office, which may include rules for conduct and corresponding disciplinary actions for breaches of conduct which are more stringent than those of

the Cherokee Nation Human Resources Policies and Procedures;

23. To carry firearms upon authorization of the Cherokee Nation Marshal;

24. To designate an individual to act as Attorney General in the absence of the Attorney General so long as said designation does not exceed six (6) months; and

25. To engage in other activities as may be prescribed in other sections of the Cherokee Nation Code.

§ 106. Costs of litigation

A. Except as otherwise provided by law or written agreement, the cost of litigation in any case for which representation is provided pursuant to this act shall be paid out of the Attorney General's budget.

B. Costs of litigation shall include, but are not limited to, court fees and costs, deposition expenses, travel and lodging, witness fees and other similar costs; except that this act shall not be construed as authorizing the payment by the Nation or any agency thereof of any judgment making an award of monetary damages.

§ 107. Appearance not waiver of immunity of Nation

The appearance of the Attorney General or his or her designee(s) in any matter, proceeding or action in any court, before any commission, board or officer or other adjudicatory body, shall not be construed to waive the sovereign immunity of Cherokee Nation.

§ 108. Prosecutors and other assistants to the Attorney General—Delegation of authority

A. Pursuant to Article VII, Section 13 of the Cherokee Nation Constitution, the Attorney General is empowered "to designate such prosecutors and other assistants as deemed necessary to carry out the duties of office." The Attorney General may from time to time make such provisions as he or she considers appropriate authorizing the performance of any function of the Attorney General by any other officer or employee of the Office of Attorney General.

B. Investigators designated by the Attorney General shall be certified by an accredited police academy and will be deputized by the Marshal.

C. The Attorney General shall appoint and fix the duties of all prosecutors, assistants, and other employees of the Office of Attorney General as the Attorney General deems necessary to perform the duties imposed upon the Attorney General. The compensation of the Attorney General shall not be decreased during his or her term of office.

D. The Attorney General is further authorized to appoint special assistants or special attorneys, including those from external law firms and entities, to fulfill the functions of the Attorney General

where deemed necessary and appropriate to secure the best interests of the Nation.

§ 108. Interests of Cherokee Nation in pending suits

Any attorney, officer, or employee of the Office of Attorney General may be sent by the Attorney General to any tribe, state or district in the United States to attend to the interests of Cherokee Nation in a suit pending in a court of the United States, a tribe or state, or to attend to any other interest of Cherokee Nation.

§ 109. Disqualification of officers and employees of the Office of Attorney General

The Attorney General shall promulgate rules and regulations which require the disqualification of any attorney, officer or employee of the Office of Attorney General, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

§ 110. Vacancy in position of Attorney General

In case of a vacancy in the position of Attorney General by reason of removal, death, resignation or disability lasting for more than six (6) months, the Attorney General position shall be filled by appointment by the Principal Chief with confirmation by the Council with the replacement to fill out the remainder of the original term.

§ 111. Employment of attorneys, authority of boards or officials—Defense of actions by Attorney General

Except as otherwise provided by this act, no Nation officer, agency, board or commission shall have authority to employ or appoint attorneys to advise or represent said officer, agency, board or commission in any matter without prior written approval of the Attorney General. Nothing herein shall prevent the Tribal Council or the Principal Chief, without approval from the Attorney General, from employing, contracting with, or otherwise seeking counsel with an attorney to provide day-to-day advice and counsel on matters within the purview of their respective powers and authorities.

§ 112. Legal representation of agency or official of Executive Branch—Contracts

A. An agency or official of the Executive Branch may obtain legal representation by one or more attorneys by means of one of the following:

1. Employing an attorney if authorized by the Attorney General;
2. Seeking representation by the Office of Attorney General; or
3. If the Office of Attorney General is unable to represent the agency or official due to a conflict of

interest, or the Office of Attorney General is unable or lacks the personnel or expertise to provide the specific representation required by such agency or official, contracting with a private attorney or attorneys pursuant to this section.

B. When entering into a contract for legal representation by one or more private attorneys, an agency or official of the Executive Branch shall select an attorney or attorneys and gain approval of said attorney or attorneys from the Attorney General. The Attorney General must approve a schedule of fees for services. An agency or official may agree to deviate from the schedule of fees only with the approval of the Attorney General.

C. Before entering into a contract for legal representation, regardless of cost, by one or more private attorneys, an agency or official of the executive branch shall furnish a copy of the proposed contract to the Attorney General and, if not fully described in the contract, notify the Attorney General of the following:

1. The nature and scope of the representation including, but not limited to, a description of any pending or anticipated litigation or of the transaction(s) requiring representation;
2. The reason or reasons for not obtaining the representation from the Office of Attorney General;
3. The anticipated cost of the representation including the following:
 - a. the basis for or method of calculation of the fee, including, when applicable, the hourly rate for each attorney, paralegal, legal assistant, or other person who will perform services under the contract, and
 - b. the basis for and method of calculation of any expenses which will be reimbursed by the agency or official under the contract, and
 - c. an estimate of the anticipated duration of the contract.

D. Before entering into a contract for legal representation by one or more private attorneys, an agency or official of the Executive Branch shall obtain the approval of the Attorney General. Any amendment, modification, or extension of a contract covered by this section shall also require approval by the Attorney General.

E. When an agency or official of the Executive Branch enters into a contract for professional legal services pursuant to this section, the agency shall also comply with all other applicable procurement and finance regulations and procedures. All costs of contract legal representation, including costs of litigation occurring pursuant to the contract, shall be borne by the agency entering the contract.

F. Nothing herein shall prevent the Tribal Council or the Principal Chief, without approval from the Attorney General, from employing, contracting with, or otherwise seeking counsel with an attorney to provide day-to-day advice and counsel on matters within the purview of their respective

powers and authorities.

§ 113. Nation officer or employee—Legal defense services—Defense duties—Evidence

A. The Attorney General shall defend any employee, elected or appointed Nation officer or employee of any Nation office, institution, agency, board or commission of any branch of Nation government in any civil action or special proceeding in the courts of the Nation, a state, or of the United States, by reason of any alleged act done or omitted in the scope of the employee's authority and in the course of his or her employment. The employee named in the action may employ private counsel at his own expense to assist in his defense, however, such employment of private counsel shall not preclude the Attorney General from intervening in the action on the Nation's behalf. Failure of an employee to request representation shall not prohibit the Attorney General from intervening to protect the Nation's interests in any cause of action.

B. The Attorney General shall not represent a Nation employee if that employee acted outside the scope of his or her authority.

C. The Attorney General may intervene in any such action or proceeding and appear on behalf of the Nation, or any of its officers or employees, where the Attorney General deems the Nation to have an interest in the subject matter of the litigation. However, in cases in the Nation's courts where one branch of the Nation's government is an opposing party in a suit brought by another branch of the Nation's government, the Attorney General shall not represent either party but may intervene to provide an opinion concerning the Nation's interests in the matter.

D. 1. When an original action seeking either a writ of mandamus or prohibition against a District Judge, Associate District Judge, or Special Judge of the District Court is commenced or when a cause of action challenging the authority of any Nation Court is commenced in state or federal court, the Attorney General shall represent such judicial officer(s) if, and only if, directed to do so, in writing, by the Chief Justice of the Cherokee Nation Supreme Court, upon the Chief Justice's finding that such representation is necessary to protect either the function or integrity of the judiciary. Such finding by the Chief Justice shall be final and binding.

2. In the event that the Attorney General is or shall be disqualified from representing such judicial officer, the Attorney General shall immediately notify, in writing, the Chief Justice. The Chief Justice then may appoint counsel to represent the judicial officer. The appointed counsel shall determine the method of preparation and presentation of such defense. The appointed counsel shall not be held civilly liable for the exercise of such discretion. The appointed counsel shall, upon approval by the Chief Justice, be entitled to be compensated by the Court for services rendered.

CHAPTER 5

OFFICE OF THE SECRETARY OF STATE

§ 201. Books of the Secretary of State's office open to inspection

The books, papers and transactions of the Secretary of State's office shall at all times be open to the inspection of the Executive, Legislative and Judicial officers of the Nation.

§ 202. Secretary of State not to hold other position which would conflict with duties

The Secretary of State shall not, during his term of office, accept, or be elected or appointed to any other office or position of trust or profit, whereby he may be prevented from exercising a uniform and uninterrupted supervision of the office.

CHAPTER 6

OFFICE OF THE TREASURER [RESERVED]

CHAPTER 7

MARSHAL SERVICE

§ 401. Short title

This act shall be known and may be cited as the Cherokee Nation Marshal Act.

§ 402. Purpose

The purpose of this act is to prescribe by law the duties and authority of the Cherokee Nation Office of Marshal as required by the Cherokee Nation Constitution drafted in 1999 and ratified in 2003. The Council recognizes the duties and powers delegated to the Office of the Marshal by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Office of the Marshal by said Constitution.

§ 403. Definitions

A. "**Administration**" means the Executive Branch of Cherokee Nation as provided for in Article VII of the Cherokee Nation Constitution.

B. "**Agency**" means commissions, departments, government-owned companies, or other instrumentalities of Cherokee Nation.

C. "**Council**" or "**Tribal Council**" means the Council of Cherokee Nation as provided for in Article VI of the Cherokee Nation Constitution.

D. "**Deputy Marshal**" means a police officer, regardless of rank, employed by the Marshal Service and/or deputized by the Marshal.

E. "**Government-owned company**" means an entity wholly-owned by Cherokee Nation or any agency, instrumentality, or subdivision thereof.

F. **"Marshal"** or **"the Marshal"** means the "Office of Marshal" as created by the 1999 Cherokee Nation Constitution, Article VII, § 14.

G. **"Marshal Service"** means the Executive Branch agency developed, managed, directed, and overseen by the Marshal.

H. **"Nation"** means Cherokee Nation.

I. **"Person"** means an agency, individual, corporation, estate, trust, general partnership, limited partnership, limited liability company, association, or any other legal, commercial, government-owned company, or governmental entity.

J. **"State"** means a state, territory, or possession of the United States, a federally-recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

§ 404. Appointment of Marshal

The Marshal shall be appointed by the Principal Chief and confirmed by the Council for a term of five (5) years. The Marshal shall be authorized to deputize law enforcement officers, as needed, for the effective enforcement of tribal laws within the jurisdiction of Cherokee Nation. The Marshal shall be a Cherokee citizen possessing at a minimum a degree from a four-year college or university and an additional five years of experience in a supervisory capacity in law enforcement or a related field.

§ 405. Duties and authority of the Office of the Marshal

A. Pursuant to Article VII, Section 14 of the Cherokee Nation Constitution, the "duties and authority of the Marshal shall be prescribed by law." That section also empowers the Marshal to "deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation."

B. In addition to the duties prescribed by the Constitution, the duties and authority of the Office of the Marshal shall be to:

1. Plan, develop, implement and manage an overall law enforcement strategy for the effective enforcement of tribal law to include but not be exclusive to budgetary fiscal management, job duties, job requirements, and training requirements of employees as well as the hiring, firing and disciplining of employees to effectively preserve the peace, protect the people within the Nation's jurisdiction, protect the property of Cherokee Nation and its citizens properly living within the Nation's jurisdiction; and

2. Deputize officers as needed to carry out the law enforcement activities of Cherokee Nation and authorize those deputies to carry firearms, wear prescribed uniform, badge and credentials, execute

or serve warrants, summons and other orders relating to a crime committed, investigate criminal offenses using all applicable laws and regulations, make an arrest with a warrant or without a warrant if the offense is committed in the deputy's presence or the offense is a felony and the deputy has reasonable grounds to believe the person being arrested has committed the felony and perform any other law enforcement-related duty;

3. Attend upon the courts, obey the court's orders, to serve all summons and other processes which may be placed in his hands according to the tenor of the mandates therein contained, and to take all necessary and lawful measures in the execution of the judgment of the courts committed to him to execute and to arrest and cause to be tried, all persons who may be charged with criminal offenses and to provide for bailiff services and protection of the court;

4. Promulgate such rules, regulations, policies and procedures as the Marshal deems necessary to fulfill the duties of the Office and the rules of conduct of employees of the Marshal Service, which may include rules for conduct and corresponding disciplinary actions for breaches of conduct which are to be reviewed annually and kept compliant with new enforcement codes and case laws;

5. Provide a law enforcement strategy, requirements, standards, qualifications and budget that is compliant to Cherokee Nation laws and regulations and equal to or better than the codes and rules of 25 Code of Federal Regulations and 25 United States Code dealing with wages, firearms and, authority of tribal law enforcement officers;

When an arrest shall be made of a person charged with a crime, the Marshal or Deputy shall notify the Judge having jurisdiction of the case of such arrest without delay; provided, that any accused person shall be allowed to give bail for his appearance at court at the time set for his trial by giving bond to the Court, the amount to be fixed by the Judge presiding in that case.

6. Recommend to the Principal Chief that the Nation enter written agreements, renegotiate agreements, or withdraw from agreements with other law enforcement agencies and jurisdictions as the Marshal deems necessary to extend police protection for Nation property and citizens across jurisdictional lines and shall perform all functions and duties as needed;

7. Board and care for prisoners of Cherokee Nation and negotiate and enter contracts therefor;

8. Coordinate investigations with the Cherokee Nation Office of Attorney General and other applicable federal and state prosecuting attorney's office to provide for effective enforcement of applicable laws;

9. Preserve the peace, protect the property of Cherokee Nation and the property of those living within the Nation's jurisdiction and protect the people within the Nation's jurisdiction;

10. Maintain responsibility for and have charge over all Nation police functions within the jurisdiction of Cherokee Nation to prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to the knowledge of the Marshal;

11. Designate an individual to act as Marshal in the absence of the Marshal so long as said designation does not exceed six (6) months;
12. Keep a complete office file of all cases and investigations handled by the Marshal Service on behalf of the Nation;
13. Oversee the Security Department of the Executive Branch of the Nation, not to include those security departments operated by the Nation's government-owned companies;
14. Establish, oversee, regulate and license registered security officers and promulgate such rules, regulations and policies as necessary;
15. Perform all other duties and functions which may be prescribed in other sections and titles of the Cherokee Nation Code.

§ 406. Vacancy in office of Marshal

In case of vacancy in the position of Marshal by reason of removal, death, resignation or disability lasting for more than six (6) months, the Office of the Marshal shall be filled by appointment by the Principal Chief with confirmation by the Council. Such appointment shall be to serve out the term of the prior appointment.

§ 407. Compensation of Marshal

The compensation of the Marshal shall not be decreased during his or her term.

§ 408. Deputy Marshals—Delegation of authority

A. Pursuant to Article VII, Section 14, of the Cherokee Nation Constitution, the Marshal is empowered "to deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation." The Marshal may from time to time make such provisions as he or she considers appropriate authorizing the performance of any function of the Marshal by any other officer or employee of the Marshal Service.

B. The Marshal is authorized to develop the organizational structure of the Marshal Service, including any special teams, squads or units as the Marshal deems necessary to perform the duties imposed upon the Marshal.

§ 409. References in Cherokee Nation Code to peace officers, etc.

All references in current statutes to peace officers, sheriffs, deputy sheriffs, marshals, policemen, or constables are hereby deemed references to the Marshal and those individuals deputized by the Marshal, and all references to the Director of the Marshal Service shall be deemed references to the Marshal.

§ 410. Reserve force Deputy Marshals

A. The Marshal may appoint as many reserve force Deputy Marshals as are necessary to preserve the peace and dignity of the Nation. A current list of each person holding such appointment shall be maintained by the Marshal and shall be available to the public.

B. Reserve force Deputy Marshals may perform duties which encompass a particular act or a series of acts at the Marshal's discretion.

C. The Marshal or a Deputy Marshal shall accompany a reserve force Deputy Marshal in the performance of all duties assigned to such reserve force Deputy Marshal unless such reserve force Deputy Marshal has completed the required one-hundred-sixty (160) hour basic police course. Such reserve force Deputy Marshals shall complete a one-hundred-sixty (160) hour basic police course within twelve (12) months after they have been commissioned as an individual reserve force Deputy Marshal.

D. Reserve force Deputies may receive compensation for their services. The Marshal may pay reserve force Deputies for travel expenses. The Marshal Service may pay for additional training courses attended by reserve force Deputies.

E. A reserve force Deputy Marshal shall be authorized to serve civil process.

CHAPTER 8

DELEGATE TO CONGRESS

§ 501. Short title

This act shall be known and may be cited as the Delegate To Congress Act.

§ 502. Purpose

The purpose of this act is to prescribe by law the duties and authority of the Delegate to the United States House of Representatives (Congress) as required by the Cherokee Nation Constitution drafted in 1999 and ratified in 2003. The Council recognizes the duties and powers delegated to the Office of the Delegate to Congress by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Office of the Delegate by said Constitution.

§ 503. Definitions

For purposes of this act:

1. "**Administration**" shall mean the Executive Branch of Cherokee Nation as provided for in Article VII of the Cherokee Nation Constitution.

2. **"Council"** or **"Tribal Council"** shall mean the Council of Cherokee Nation as provided for in Article VI of the Cherokee Nation Constitution.

3. **"Delegate"** shall mean a person appointed by the Principal Chief and confirmed by the Council as provided for in Article VI of the Cherokee Nation Constitution.

4. **"Nation"** shall mean Cherokee Nation.

§ 504. Qualifications for the Delegate to Congress

The Delegate shall be:

1. a citizen of Cherokee Nation;
2. a citizen of the United States of America;
3. twenty-five (25) years of age as of the date of the selection;
4. on the date of confirmation, a candidate for no other office.

§ 505. Selection

The Constitution, Article VI, Section 12, provides that the Cherokee Delegate shall be "appointed by the Principal Chief and confirmed by the Council."

§ 506. Term of office

The term for the Cherokee Delegate shall coincide with the term of the Office of the Principal Chief.

§ 507. Duties and authority of the office of the Delegate to Congress

The duties and authority pursuant to Article VI, Section 12 of the Cherokee Nation Constitution and applicable federal law or House Rule respectively, of the Delegate shall be as follows:

1. Endeavor to participate in Congressional activities;
2. Advocate the best interests of the Cherokee People at all times;
3. Make regular reports to the Council and Principal Chief on Congressional activities and administrative matters relating to federal law and policy; and
4. Produce an annual report to the Cherokee People.

§ 508. Vacancies in office

The Principal Chief may, in case of a vacancy by reason of removal, death, resignation or permanent disability of the Delegate, appoint a successor with confirmation by the Council to fill the vacancy to serve the remainder of the term or until the disability be removed.

§ 509. Funding

The Principal Chief shall submit an annual budget to the Council to fund the office of the Delegate to Congress to include the Delegate's salary, benefits, and expenses, including an office and staff until such time as the position is funded by the United States House of Representatives.

§ 510. Removal from office

The Delegate to Congress shall be subject to removal from office for cause in accordance with Article VI, Section 9 and Article XI of the Constitution of the Cherokee Nation.

CHAPTER 9

IMPEACHMENT PROCEDURES FOR ELECTED AND APPOINTED OFFICIALS

§ 601. Short title

This act shall be known and may be cited as the Impeachment Procedures for Elected and Appointed Officials Act of 2011.

§ 602. Purpose

The purpose of this act is to establish procedures for impeachment of the Principal Chief, the Deputy Principal Chief, Tribal Council Members, Attorney General or Marshal, hereinafter "Officials."

§ 603. Definitions

A. **"Articles of Impeachment"** means the written accusations of one or more of the grounds for impeachment, prepared and sworn to by the Special Prosecutor, after his or her investigation and determination that probable cause exists that an impeachable offense has occurred.

B. **"Corruption in office"** means the act of an official or fiduciary person who unlawfully and wrongfully uses his or her station or character to procure some benefit for himself or herself or for another person, contrary to duty and the rights of others.

C. **"Habitual drunkenness"** means one who frequently and repeatedly becomes intoxicated by excessive indulgence in intoxicating liquor so as to acquire a fixed habit and an involuntary tendency to become intoxicated as often as the temptation is presented even though he remains

sober for days or even weeks at a time.

D. "**Impeachment**" means the prosecution through the Special Prosecutor of an elected official, under the Constitution, for willful neglect of duty, corruption in office, drunkenness, incompetency, or any conviction involving moral turpitude committed while in office.

E. "**Incompetency**" means lack of ability, legal qualification or fitness to discharge a required duty.

F. "**Moral turpitude**" means an act of business, vileness or depravity in private and social duties which man owes to his fellow man.

G. "**Office of honor, profit or trust**" means, for the purposes of this act, an elected position or a position appointed by the highest governing body of a tribe; such an office does not include employment, contract services or consulting agreements.

H. "**Official**" means the Principal Chief, Deputy Principal Chief and all Members of the Tribal Council, Attorney General and Marshal, including those individuals who have been appointed to serve the remainder of a term of office that has been vacated for any reason.

I. "**Presiding Judge**" means the Chief Justice of the Supreme Court of Cherokee Nation, or if he or she cannot serve, another Justice of the Supreme Court of Cherokee Nation, who will preside over the impeachment proceedings.

J. "**Special Prosecutor**" means an attorney admitted to practice law before the highest Court of the State of which he or she is a resident, and shall not be an employee, contractor or official of Cherokee Nation.

§ 604. Grounds for impeachment

A. Officials shall be liable and subject to impeachment for willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any conviction of a felony, or a crime under the laws of Cherokee Nation that if committed in some other jurisdiction would be a felony, or a misdemeanor involving moral turpitude or offenses against Cherokee Nation committed while in office.

B. "**Willful neglect**" within the meaning of this act shall include the filing of frivolous allegations of impeachment under 51 CNCA § 605. The filing of allegations of impeachment that fails to achieve approval of at least a simple majority of the Council or to any committee or subcommittee to which the impeachment allegations are assigned, pursuant to 51 CNCA § 605, shall create the rebuttable presumption that such allegations were frivolous.

§ 605. Initiation of impeachment

A. Initiation by Council. The Council, upon allegations of an impeachable offense or offenses

committed by any official may, by a vote of two-thirds (2/3) of the body, appoint a Special Prosecutor and give the Prosecutor the charges which have been alleged. The Special Prosecutor shall investigate those charges and any other transactions which are grounds for impeachment. If such investigation gives the Prosecutor probable cause to believe that activities constituting grounds for impeachment have been committed, he or she shall draft Articles of Impeachment for presentment to the Supreme Court of Cherokee Nation. In conducting this investigation the Special Prosecutor shall have the power of subpoena, the power to compel evidence and witnesses and shall have the cooperation of all entities of Cherokee Nation.

B. Recommendation by Principal Chief. The Principal Chief, upon allegations of an impeachable offense or offenses committed by any official, may appoint a Special Prosecutor and give the Prosecutor the charges which have been alleged. The Special Prosecutor shall investigate those charges and any other transactions which are grounds for impeachment. If such investigation gives the Prosecutor probable cause to believe that activities constituting grounds for impeachment have been committed, he or she shall draft allegations of impeachment for recommended action by the Council of Cherokee Nation pursuant to subsection (A) of this section by filing said allegations with the Speaker of the Council. In conducting this investigation the Special Prosecutor shall have the power of subpoena, the power to compel evidence and witnesses and shall have the cooperation of all entities of Cherokee Nation.

C. Filing of impeachment allegations. The filing of impeachment allegations pursuant to subsection (A) or (B) shall be done in writing to the Speaker of the Council with a copy sent to the official accused of the impeachable offense(s). Said allegations shall be set forth in a statement reciting the basis for the allegation and signed by the official making the allegation under penalty of perjury. The impeachment allegations shall be assigned by the Speaker of the Council to the Rules Committee, and then to such subcommittee that the Rules Committee shall deem warranted.

D. Council to control impeachment proceedings, alternative disposition of allegations. The Council shall at all times control the impeachment proceedings, including but not limited to during the investigation stage, by reserving the right to direct the Special Prosecutor to suspend or terminate his or her investigation by majority vote of the Council. Termination of the investigation may be done for any reason, including, but not limited to, resignation of the official subject of the impeachment allegations or based on a determination by the Council that some other disposition of the allegation, such as censure, is warranted.

§ 606. Presentation of impeachment

The Special Prosecutor shall present the Articles of Impeachment to the Supreme Court of Cherokee Nation by filing the same in the office of the Clerk.

§ 607. Presiding Officer of the Court of Impeachment

When sitting as a Court of Impeachment, the Tribal Council shall be presided over by the Chief Justice of the Supreme Court of Cherokee Nation, or if he is absent or disqualified, then by one (1) of the Associate Justices of the Supreme Court of Cherokee Nation.

§ 608. Oath—Concurrence of Councilors

When the Tribal Council is sitting as a Court of Impeachment the Councilors shall be on oath or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds (2/3) of the members of the Tribal Council and unless it is found, by clear and convincing evidence, that one or more of the grounds for impeachment exist.

§ 609. Judgment—Criminal liability

An officer who is convicted of impeachment shall be removed from office, but this shall not prevent punishment of any such officer on either civil or criminal charges growing out of the same matter.

§ 610. Designation of offense

The Articles of Impeachment shall state with reasonable certainty the offense in office for which the officer is impeached and if there be more than one, they shall be stated separately and distinctly.

§ 611. Court of Impeachment

When Articles of Impeachment shall be presented, the Cherokee Nation Council shall, within ten (10) days thereafter, organize as a Court of Impeachment and may for the purpose of conducting the business of such Court, appoint a Clerk. The Clerk shall issue all process and keep a record of the proceedings of such Court. It may employ such stenographic, clerical and other help as may be required.

§ 612. Hearing and summons

The Tribal Council, when sitting as a Court of Impeachment shall appoint a day for hearing the impeachment and the accused shall be required by summons by the Clerk to appear on that day. The summons shall be served by delivering a copy of the same and of the Articles of Impeachment to the accused, in person if found, or by leaving the copies at his residence with some member of his family over sixteen (16) years of age.

At said hearing the accused shall have the right to have an attorney present, at his or her own expense, present evidence, object to evidence presented, call witnesses on his or her behalf, confront and cross-examine witnesses and do any other action deemed necessary by the Presiding Judge to ensure due process.

§ 613. Powers of Court of Impeachment—Orders and judgments—Power to enforce

The Tribal Council, sitting as a Court of Impeachment shall, through the Presiding Justice, have the power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs,

precepts and judgments to preserve order, grant continuances that are for good cause and not for the purposes of delay and to punish in a summary way contempts of, and disobedience to, its authority and to make all orders, rules and regulations which it may deem essential or necessary for the orderly transaction of its business.

§ 614. Costs—How paid—Costs of accused if acquitted

A. If the accused is acquitted, he or she shall be entitled to costs, including attorney fees, to be taxed by the Clerk and paid by Cherokee Nation out of any funds available, and if convicted, he or she shall pay the costs, unless the Supreme Court of Cherokee Nation otherwise directs.

B. Personal liability, treble damages. If an official is convicted of impeachment based on the earlier filing of frivolous allegations of impeachment under 51 CNCA § 604(B), such convicted official shall be liable for up to triple the amount of any cost, including attorney fees, borne by the accused official subject to said earlier allegations of impeachment, as determined by the Court of Impeachment, unless the Supreme Court of Cherokee Nation otherwise directs.

§ 615. Expenses—How paid

This act shall be used as authorization to expend funds for the purposes of implementing the procedures and requirements mandated herein.

CHAPTER 10

EMPLOYEE ADMINISTRATIVE PROCEDURES

§ 1001. Short title

This act shall be known and may be cited as the Employee Administrative Procedures Act.

§ 1002. Purpose

The purpose of this act is to establish a timely and fair procedure for appeals of employment terminations by employees of Cherokee Nation, which provides to the employees due process and other protections guaranteed by the federal Indian Civil Rights Act of 1968 and the Cherokee Nation Constitution, Article II [now Article III], including notice and an opportunity for a hearing.

§ 1003. Definition

As used in the Employee Administrative Procedures Act:

1. "**Act**" shall mean the Employee Administrative Procedures Act.
2. "**Administrative proceeding**" means the formal process employed by the Employee Appeals Board for consideration of an employee termination appeal resulting in a final administrative

decision.

3. **"Board"** shall mean the Employee Appeals Board.
4. **"Cause to terminate employment"** shall have the meaning as defined in 51 CNCA § 1011.
5. **"District Court"** shall mean the trial court of Cherokee Nation.
6. **"Employee Appeals Clerk"** shall mean a designated person in the Executive Offices of Cherokee Nation.
7. **"Employee of Cherokee Nation" or "employee"** shall mean a person who has been directly employed by Cherokee Nation on a regular permanent full-time basis for at least one (1) continuous year immediately prior to termination of employment, including such employees who have renewable contracts with the Cherokee Nation. For purposes of employee termination appeals under this act this term shall not include employees of any corporation for profit or other business entity owned and operated by Cherokee Nation, such as, but not limited to, Bingo Outpost, Cherokee Nation Enterprises and Cherokee Nation Industries; nor to specialized authorities and entities created by the Legislature, such as, but not limited to, the Arkansas Riverbed Trust Authority.
8. **"Final administrative decision"** means a final decision made by an Employee Appeals Hearing Officer pursuant to this act and which is subject to judicial review.
9. **"Former employee"** shall mean an employee as defined in paragraph 4 of this section who was terminated from employment.
10. **"Human Resources Director"** shall mean the Human Resources Director of Cherokee Nation.
11. **"Order"** means all or part of a formal or official decision made by the Employee Appeals Board or Supreme Court.
12. **"Parties to an appeal"** shall mean an employee who has been terminated from employment with Cherokee Nation and the Human Resources Director or his or her designee acting as the client representative of the employer.
13. **"Supreme Court"** shall mean the three (3) Justices of the Supreme Court acting en banc as an appellate court.
14. **"Termination of employment"** shall mean the involuntary severance of an employee from Cherokee Nation employment, including a decision to not renew a contract with an employee, provided that such term shall not include a temporary or permanent layoff for lack of funds or work.

§ 1004. Cherokee Nation Employee Appeals Board

The Cherokee Nation Employee Appeals Board is hereby established to serve in the capacity of an administrative body to hear appeals by former employees of decisions to terminate said persons.

§ 1005. Board qualification

The Employee Appeals Board shall be composed of three (3) Hearing Officers appointed by the Principal Chief and confirmed by Cherokee Nation Council. Qualifications of the Board members shall be as follows:

1. The person must be currently licensed to practice law by the Oklahoma Supreme Court and be a member of the Cherokee Nation bar;
2. The person must have a working knowledge of this act;
3. The person must not be an owner, stockholder, employee or officer of, nor have any other business relationship with, any corporation, partnership, or other business or entity that is subject to regulation by Cherokee Nation;
4. The person must be separate and apart from the Legal Division or Office of General Counsel of Cherokee Nation;
5. The person must not be responsible to or subject to the supervision or direction of a Cherokee Nation employee or agent engaged in the performance of investigative or prosecuting functions for Cherokee Nation; and
6. The person must not have been engaged in the performance of investigative or prosecuting functions for Cherokee Nation regarding the terminated employee.

§ 1006. Employee Appeals Board term

The first term of office for each Board member shall commence on October 1, 1996 and expire on September 30, 1999. Thereafter, commencing on October 1, 1999, the terms shall run every four years.

§ 1007. Employee Appeals Board officers

The Employee Appeals Board shall select a Chairman and a Vice-Chairman from its membership. Term of office shall be for one (1) year from October 1 until the following September 30. Any officer selected after October 1 of any given year shall serve the remainder of the one-year term expiring on the following September 30.

§ 1008. Appeals heard by Employee Appeal Board en banc

Any party to an appeal shall have a matter decided by Employee Appeal Board members en banc.

§ 1009. Employee Appeals Board Clerk

A person designated by the Principal Chief shall act as the Employee Appeals Board Clerk. The responsibilities of the Employee Appeals Board Clerk shall include maintenance of the appeal casefile, issuance of notices, and such other duties as required by the Employee Appeals Board.

§ 1010. Termination for cause

A. An employee of Cherokee Nation may be terminated for cause without prior warning, counseling, or reprimand, based on one (1) of the following grounds:

1. Any reason involving moral turpitude affecting or potentially affecting conduct while on duty, including without limitation any violation of the Cherokee Nation Code of Ethics; falsification of time cards, time sheets, tribal records or other documents; theft, embezzlement or misappropriation or destruction of property or funds; or use of official position for personal profit or advantage; provided that a criminal conviction shall not be a prerequisite for termination based on any conduct which could subject the employee to criminal prosecution;
2. Engaging in conduct while on duty which affects or could affect the safety of the work environment and co-workers or which could affect public safety, including possession of weapons, explosives or dangerous materials on the job without written authorization; drinking alcoholic beverage or using controlled drugs without a legal prescription during work while on duty or reporting to work under the influence of alcohol or drugs without a legal prescription; and any other conduct which poses a threat to the public safety;
3. Sexual harassment in the workplace;
4. Harassment of an employee because of political affiliations, religion, race, gender, age, disability, or national origin;
5. Conviction of a felony;
6. Mental or physical abuse to a child; and
7. Engaging in criminal sexual activity or sexual misconduct that has impeded the effectiveness of the individual's performance of duties.

B. An employee of Cherokee Nation may be terminated for cause, provided that the employee has received prior warning, counseling, and reprimand on one or more previous occasions, based on any one or any combination of the following grounds:

1. Repeated negligence in performance of duty;

2. Willful neglect of duty;

3. Other willful misconduct related to a violation of standards of conduct for employees of Cherokee Nation as defined in the Cherokee Nation Human Resources Manual.

§ 1011. Initiation of termination—Employee status

A termination action may be initiated by the employee's supervisor; but policy concurrence for the action shall be obtained in advance of the action by the Human Resources Director. The written notice of dismissal must be given to the employee, and must describe the reasons involved and a statement apprising the employee of his or her right to appeal the termination. The termination action shall take effect according to the written notice of such actions given to the employee, and shall remain in effect according to the notice even though review proceedings or appeal hearings concerning such matter have been instituted and are pending and not completed.

§ 1012. Human Resources Director review

A. A former employee may request review and reconsideration of the termination by the Human Resources Director in writing delivered to the Human Resources Director within ten (10) working days after receipt of the termination decision. The request should include a statement of reasons why the employee believes the termination was without cause, and should include any documents not already contained in the former employee's personnel file which the former employee believes to be relevant.

B. The Human Resources Director shall thereafter review the former employee's request, documents included with the request, and relevant documents in the employee's personnel file, and issue a written decision within ten (10) working days of receipt of the request for review.

C. If the Human Resources Director revokes the termination, the former employee shall be immediately restored to Cherokee Nation employment in the same or similar job position, with pay no less than the pay received at the time of termination and benefits retroactive to the date of the termination; his personnel records adjusted as may be consistent with the revocation action.

D. If the Human Resources Director revokes the termination, the decision shall be a final unappealable decision. If the Human Resources Director upholds the termination based on cause, the decision of the Human Resources Director shall be final unless the former employee appeals the decision to the Employee Appeals Board pursuant to procedures set forth in 51 CNCA § 1013.

§ 1013. Manner of filing appeal

A former employee must deliver to the Cherokee Nation Human Resources Office and to the Employee Appeals Board Clerk a written Notice of Appeal of Termination Decision no later than ten (10) working days from the date the Human Resources Director's decision upholding the termination was received by the former employee. The Notice of Appeal shall state the date of the termination and the reasons why the former employee believes the termination was without cause.

§ 1014. Administrative record and casefiles

A. Human Resources Summary Statement. If the former employee appeals the decision to the Employee Appeals Board, the Human Resources Director or his designee shall prepare a Human Resources Summary Statement for placement in the administrative record on a form containing the following information: case number, name of appealing party; position of employee; date decision made; date appeal received by the Human Resources Office; statement that the former employee filed appeal within time required or that the former employee did not file his appeal within the time required; and list of any specific Cherokee Nation laws and Cherokee Nation and/or federal regulations, policies and/or standards applicable to the former employee's conduct or termination of employment.

B. Administrative record. The administrative record shall be prepared by the Human Resources Director or his designee, who shall place the following documents in the record: Human Resources Summary Statement; Disciplinary Action Form containing notice of the termination which is the subject of the appeal; the former employee's written appeal; any documents submitted by the Human Resources Director, including designated documents from the former employee's personnel files; and any other relevant documents allowed into the record by the Board. The Employee Appeals Board Clerk shall add to the record all documents submitted by the former employee, including designated documents from his/her personnel files.

C. Establishment of casefile. The Employee Appeals Board Clerk shall maintain an Employee Appeals Board casefile for each appeal filed, which shall contain the administrative record; all notices issued by the Employee Appeals Board Clerk and all return receipts; any other documents accepted by the Appeals Board; and decision of the Appeals Board. The Human Resources Director shall initially prepare the casefile, by placing those portions of the administrative record in his or her possession in a file and delivering it to the Employee Appeals Board Clerk. The Employee Appeals Board Clerk shall assign each casefile a number beginning with the words "Emp. Ad. Appeal No.", followed by the last two digits of the year in which the appeal was filed, followed by a dash, followed by an individual number for each appeal.

D. Access to casefiles. Public inspection of the Human Resources Summary Statement and the Employee Appeals Board decision shall be allowed. Other materials contained in the casefile may be released for public inspection only if authorized by written consent of the former employee or authorized by the Employee Appeals Board Chairman pursuant to rules established by the Board.

§ 1015. Scheduling of hearing

The Hearing Officer designated to hear the case shall promptly notify the Employee Appeals Board Clerk of the scheduling of a hearing. The hearing shall be no later than thirty (30) days from date of the Appeals Board Clerk's receipt of the appeal notice, provided that for good cause the Board may grant either party an extension of time for the hearing date.

§ 1016. Employee administrative appeal proceedings—Notice of hearing

A. In an appeal proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice. The Employee Appeals Board Clerk shall send notices to the Human Resources Director by inter-office mail and to the former employee, by certified mail, return receipt requested. The notice must be served on the parties at least ten days (10) before the hearing, unless the appealing party states that he waives any objection he might have to receiving the notice. If the certified letter is returned undelivered, then a second notice shall be sent by regular mail. Service of notices will be considered to have been made on: the date of delivery indicated on the return receipt when the notice has been sent by certified mail, return receipt requested; or the date the second notice sent by regular mail is returned by the post office as undelivered, or ten (10) days after the date the second notice is sent by regular mail when the letter has not been returned by the post office, whichever occurs first.

B. The notice shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;
4. A copy of the Employee Appeals Board casefile; and
5. A short and plain statement of the matters asserted. If the Human Resources Department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

D. Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

§ 1017. Employee Appeals Board record

A. The Employee Appeals Board record in an appeal proceeding shall include:

1. The Employee Appeals casefile, including all pleadings, motions and intermediate rulings;
2. Evidence received or considered at the appeal proceeding;
3. A statement of matters officially noticed;
4. Questions and offers of proof, objections, and rulings thereon;

5. Proposed findings and exceptions;

6. Any decision, opinion, or report by the Hearing Officer presiding at the hearing; and

7. All other evidence or data submitted to the Hearing Officer in connection with consideration of the case, provided all parties have had access to such evidence.

B. Oral proceedings shall be electronically recorded. Such recordings shall be maintained for such time so as to protect the record through judicial review. Copies of the recordings shall be provided by the Employee Appeals Board at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting the transcription. For judicial review, electronic recordings of an individual proceeding, as certified by the Employee Appeals Board, may be submitted to the reviewing court by the Board as part of the record of the proceedings under review without transcription unless otherwise required to be transcribed by the reviewing Court. In such case, the expense of transcriptions shall be taxed and assessed against the nonprevailing party. Parties to any proceeding may have the proceedings transcribed by a Court Reporter at their own expense.

§ 1018. Hearing procedures before Employee Appeals Board

A. In employee appeals hearings, the Cherokee Nation shall present its evidence to show that the termination was for cause, the former employee may then present evidence, and the Cherokee Nation shall have an opportunity to present rebuttal evidence. The burden of proof shall be on the employee to prove that the termination was not for cause, including proof that the decision to terminate was not made in good faith; or that the facts which constituted the grounds for the termination were not supported by substantial evidence; or that such facts were not reasonably believed by the employer to be true.

B. In employee appeal proceedings the Hearing Officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Hearing Officer shall give effect to the rules of privilege recognized by law in respect to: self-incrimination; confidential communications between husband and wife during the existence of the marriage relation; communication between attorney and client, made in that relation; confessions made to a clergyman or priest in his professional capacity in the course of discipline enjoined by the church to which he belongs; communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by such practitioner through a physical examination of a patient made in a professional capacity; records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States are made confidential and privileged. No greater exclusionary effect shall be given any such rule or privilege than would obtain in an action in court. The Hearing Officer may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objections to evidential offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written

form.

C. Documentary evidence may be received during the appeal hearing, in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

D. Witnesses must be sworn to tell to the truth prior to the taking of testimony. A party may conduct cross-examinations required for a full and true disclosure of the facts during the appeal hearing.

E. Notice may be taken of judicially cognizable facts. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.

F. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma and shall be a member of the Cherokee Nation bar, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents.

G. The hearing will be a public hearing. The public, the Human Resources Director and the former employee have the right to be present during the hearing at all times, except when the Board retires to make its decision. The Board will not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Hearing Officer.

H. The hearing may be adjourned, postponed and continued if requested by either party, at the discretion of the Employee Appeals Board.

§ 1019. Final Employee Appeals Board decisions—Contents—Notification

A. A final Employee Appeals Board decision shall:

1. Be in writing; and

2. Include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with Employee Appeals Board rules, a party submitted proposed findings of fact, the final Appeals Board order shall include a ruling upon each proposed finding. Findings of fact shall be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record.

B. Parties shall be notified either personally or by certified mail, return receipt requested, of any

final Appeals Board order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.

§ 1020. Employee Appeals Board members not to communicate

Unless required for the disposition of ex parte matters authorized by law, Employee Appeals Board members shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An Employee Appeals Board member (1) may communicate with other members of the Board, and (2) may have the aid and advice of one or more personal assistants.

§ 1021. Furnishing of information, attendance of witnesses and production of books and records—Subpoenas

A. 1. The Employee Appeals Board shall have power to require the furnishing of such Information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding.

2. Cherokee Nation and the former employee may take the depositions of witnesses, within or without the state, in the same manner as is provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by this act; provided, however, all or any part of the deposition may be objected to at the time of hearing, and may be received in evidence or excluded from the evidence by the Hearing Officer in accordance with the law with reference to evidence in this act or with reference to evidence in courts of record under the law of Cherokee Nation.

B. In furtherance of the powers granted by subsection (A) of this section, any Hearing Officer, upon his or her own motion may, and upon the request of any party appearing in an individual proceeding shall:

1. Issue subpoenas for witnesses, provided that the Employee Appeals Board Clerk shall also have such authority;

2. Issue subpoenas duces tecum to compel the production of books, records, papers or other objects, which may be served by the Cherokee Nation Marshal Service or by any person in any manner prescribed for the service of a subpoena in a civil action, provided that the Employee Appeals Board Clerk shall also have such authority; or

3. Quash a subpoena or subpoenas duces tecum so issued; provided, prior to quashing a subpoena or subpoenas duces tecum the Hearing Officer shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

C. 1. In case of disobedience to any subpoena issued and served under this section or to any lawful Hearing Officer requirement for information, or of the refusal of any person to testify to any matter

regarding which he may be interrogated lawfully in a proceeding before a Hearing Officer, the Hearing Officer may apply to the Cherokee Nation District or Supreme Court or to any Judge or Justice thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith the Court or the Judge shall cite the respondent to appear and shall hear the matter as expeditiously as possible.

2. If the disobedience or refusal is found to be unlawful, the Judge or Justice shall enter an order requiring compliance. Disobedience of such an order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.

§ 1022. Disqualification of Hearing Officer

A Hearing Officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a Hearing Officer, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. If the Hearing Officer does not remove himself or herself from hearing the case, the issue shall be determined promptly by the remaining two members of the Employee Appeals Board. Upon the entry of an order of disqualification affecting a Hearing Officer, the Employee Appeals Board shall assign another in his or her stead. Upon the disqualification of all three (3) Employee Appeals Board members, the Principal Chief shall immediately appoint a Special Hearing Officer to sit in place of the disqualified members in the proceeding.

§ 1023. Rehearing, reopening or reconsideration of decision

A. A final Employee Appeals Board decision shall be subject to rehearing, reopening or reconsideration. Any application or request for such rehearing, reopening or reconsideration shall be made by any party aggrieved by the final Appeals Board order within ten (10) days from the date of the entry of such final order. The grounds for such action shall be either:

1. Newly discovered or newly available evidence, relevant to the issues;
2. Need for additional evidence adequately to develop the facts essential to proper decision;
3. Probable error committed by the Employee Appeals Board in the proceeding or in its decision such as would be ground for reversal on judicial review of the final order;
4. Need for further consideration of the issues and the evidence in the public interest; or
5. A showing that issues not previously considered ought to be examined in order properly to dispose of the matter.

B. The order of the Appeals Board Hearing Officer granting rehearing, reconsideration or review,

or the petition of a party therefor, shall set forth the grounds which justify such action.

C. Nothing in this section shall prevent rehearing, reopening or reconsideration of a matter by the Employee Appeals Board on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

D. On reconsideration, reopening, or rehearing, the matter may be heard by the Employee Appeals Board Hearing Officer who heard the case. The hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered.

E. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

§ 1024. Review by Supreme Court

A. 1. Any party aggrieved by a final order in an individual proceeding is entitled to certain, speedy, adequate and complete judicial review thereof pursuant to the provisions of this section and 51 CNCA §§ 1025, 1026 and 1027.

2. This section shall not prevent resort to other means of review, redress, relief or trial de novo, available because of constitutional provisions.

3. Neither a motion for new trial nor an application for rehearing shall be prerequisite to secure judicial review.

B. Proceedings for review shall be instituted by filing a petition with the Court Clerk of the Supreme Court, within thirty (30) days after the appellant is notified of the final Employee Appeals Board order as provided in 51 CNCA § 1027.

C. Copies of the petition shall be served upon the Cherokee Nation Human Resources Director and all other parties of record, and proof of such service shall be filed with the Court Clerk of the Supreme Court within ten (10) days after the filing of the petition. The Court, in its discretion, may permit other interested persons to intervene.

D. In any proceedings for review brought by a party aggrieved by a final Employee Appeals Board order the responding party may be entitled to recover against such appealing party any court costs and reasonable attorney fees, unless the Court determines that the appeal brought by the other party is frivolous.

§ 1025. Transmission of record to reviewing Court—Stipulations

Within thirty (30) days after service of the petition for review or equivalent process upon it, or within such further time as the reviewing Court, upon application for good cause shown, may allow, the Employee Appeals Board Clerk shall transmit to the reviewing Court the original or a

certified copy of the entire record of the proceeding under review. For purposes of this section, "record" shall include such information as specified by 51 CNCA § 1017. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the Court for the additional costs resulting therefrom. The Court may require or permit subsequent corrections or additions to the record when deemed desirable.

§ 1026. Review without jury—Additional testimony

The review shall be conducted by the Supreme Court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Employee Appeals Board, not shown in the record, testimony thereon may be taken by the Supreme Court. The Supreme Court, upon request, shall hear oral argument and receive written briefs.

§ 1027. Setting aside, modifying or reversing of orders—Remand—Affirmance

A. In any proceeding for the review of a final termination decision, the Supreme Court, in the exercise of proper judicial discretion or authority, may set aside or modify the order, or reverse it and remand it to the Administrative Appeals Board for further proceedings, if it determines that the substantial rights of the appellant or petitioner for review have been prejudiced because the Employee Appeals Board's findings, inferences, conclusions or decisions, are:

1. in violation of constitutional provisions; or
2. in excess of the statutory authority or jurisdiction of the Employee Appeals Board; or
3. made upon unlawful procedure; or
4. affected by other error of law; or
5. clearly erroneous in view of the reliable, material, probative and substantial competent evidence, as defined in 51 CNCA § 1019, including matters properly noticed by the Hearing Officer upon examination and consideration of the entire record as submitted; but without otherwise substituting its judgment as to the weight of the evidence for that of the Employee Appeals Board on question of fact; or
6. arbitrary or capricious; or
7. because findings of fact, upon issues essential to the decision, were not made although requested.

B. The Supreme Court, also in the exercise of proper judicial discretion or authority, may remand the case to the Employee Appeals Board for the taking and consideration of further evidence, if it is deemed essential to a proper disposition of the issue.

C. The Supreme Court shall affirm the order and decision of the Employee Appeals Board, if it is found to be valid and the proceedings are free from prejudicial error to the appellant.

D. The decision of the Supreme Court shall be final and shall not be subject to further review by any other state, tribal or federal government body or court.

§ 1028. Remedies for termination without cause

A. If the termination is overturned based on a finding that the termination was without cause by unappealed decision of the Cherokee Nation Employee Appeals Board or by a final decision of the Supreme Court, the former employee shall be immediately restored to Cherokee Nation employment in the same or similar job position, with pay no less than the pay received at the time of termination, and with benefits retroactive to the date of the termination; and the employee's personnel records adjusted as may be consistent with the action of the Cherokee Nation Employee Appeals Board or Supreme Court. The remedies provided herein shall be exclusive, and Cherokee Nation expressly declines to waive sovereign immunity as to suit for recovery of any form of damages or other type or relief other than the relief set forth herein. All remedies listed herein shall be available to employees of corporations wholly-owned by Cherokee Nation, if said employee is successful in overturning a termination as provided through the applicable termination appeals process for that corporation.

B. Prevailing parties may be awarded costs and reasonable attorney fees as determined by the appropriate Board or Court.

§ 1029. Time computations

In computing any period of time prescribed or allowed by this act, the day of the act, or event, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, or any other day when the receiving office does not remain open for public business until 4:00 p.m.

TITLE 52

OIL AND GAS

Reserved for Future Use

TITLE 53

RESERVED

TITLE 54

PARTNERSHIP

Reserved for Future Use

TITLE 55

PLEDGES

Reserved for Future Use

TITLE 56

PORT AUTHORITIES

CHAPTER 1

GENERAL PROVISIONS

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Port Authority Amendment Act of 2004.

§ 2. Purpose

The purpose of this act is to establish a Port Authority of Cherokee Nation in order to transact business for the economic benefit of Cherokee Nation.

§ 3. Definitions

As used in 56 CNCA §§ 2 to 16:

1. "**Council**" means the Council of Cherokee Nation as established by the Cherokee Nation Constitution, Article V, Section 1 [now Article VI, Section 1].
2. "**Created,**" as related to port authorities, means the activation of said authorities by ordinance or resolution as provided herein.
3. "**Notice of public hearing**" means submitting notice to the Office of the Principal Chief and the Secretary of State of Cherokee Nation.
4. "**Port Authority**" means a port authority created pursuant to authority of 56 CNCA § 4.
5. "**Submerged lands**" means the lands presently underlying the navigable streams within the

jurisdictional boundaries of Cherokee Nation, and lands underlying the waters of lakes, harbors, and navigation channels that have already been or which the impoundment of the waters will create commercial navigation facilities in the said navigable streams.

6. **"Uplands"** means lands contiguous to or fronting upon any submerged lands in Cherokee Nation.

§ 4. Cherokee Nation Port Authority

A. This act establishes an agency of Cherokee Nation that shall be known as the "Port Authority of Cherokee Nation." The Port Authority created in this act may combine to form joint port authorities by cooperative agreement executed by the governing bodies of any city or county or cities or counties or tribe or tribes or tribal agency. Such joint authorities formed by such cooperative agreement shall have all the powers and jurisdiction enumerated in this act. The joint port authority shall not transact any business or exercise its powers hereunder until or unless the respective governing bodies of the respective governmental entities pass appropriate legislation acknowledging the said creation. Acknowledgment by the city or town shall be by ordinance. County approval must be expressed by appropriate resolution. The tribe or Cherokee Nation approval must be expressed by the appropriate resolution. Each of these legislative actions must declare a need exists for an authority to function in the city, town, or county or tribal jurisdiction and acknowledge the merger with Cherokee Nation. No member of said authority shall serve who owns land in an area within five (5) miles of lands surveyed or examined for port locations. Any member of said authority that has any interests that will conflict with the interests of the authority shall be subject to removal. Any member of the authority owning lands or having lands under his control as agent or in a fiduciary capacity in an area surveyed or examined for port location shall be deemed to have a conflict of interest and subjected to removal. This limitation or membership and conflict of interest shall not apply where the site of a port has been presently engineered and designated by a port authority already organized under this act. A port authority created hereunder shall be a body corporate and politic, which may sue and be sued, and shall have the powers and jurisdiction enumerated in 56 CNCA §§ 1 to 16, inclusive.

The exercise of the powers conferred under this act by the Port Authority of Cherokee Nation shall be deemed to be an essential governmental function of Cherokee Nation. However, the Port Authority shall not be immune from liability due to it. The laws of Cherokee Nation shall govern all actions of the Port Authority formed under this act. All disputes that arise shall be heard in Cherokee District Court, unless by agreement of all parties another court of competent jurisdiction is so designated for venue.

The merger of the appropriate laws shall govern those port authorities created by joint resolution of multiple governmental entities. Joint port authorities shall not be immune from liability due to their performance of essential governmental functions. All agreements shall state the court of competent jurisdiction that shall hear disputes arising within the jurisdiction of the created port authority.

B. A port authority established in accordance with this act may expend funds not otherwise appropriated to defray the expense of surveys and examinations incidental to the purposes of the

port authority. The Council may appropriate to the Authority any available funds not otherwise appropriated for expenditure by the authority for any purpose authorized by this act.

C. Subject to making due provisions for payment and performance of its obligations, the Port Authority of Cherokee Nation may be dissolved by the Council of Cherokee Nation. In such event the properties of the port authority shall be transferred to Cherokee Nation. Obligations of the authority shall not be obligations of Cherokee Nation, unless said obligations are specifically accepted by a majority vote of the Council of Cherokee Nation.

§ 5. Board of Directors

A. A Board of Directors shall govern a port authority created by this act. Members of a Board of Directors of a port authority hereby created shall consist of not more than five (5) members. The Principal Chief with the approval of the Council shall appoint Board members. The Port Authority created under this act may, with the approval of the Principal Chief and Council, form a partnership with a port authority created by Act of the State of Oklahoma. When a port authority is created by this combination, the number of Directors composing the Board shall be determined by agreement between Cherokee Nation and the political subdivision(s) of the State of Oklahoma. The appointing body may anytime remove a Director appointed by it for misfeasance, nonfeasance or malfeasance in office.

B. Each Director shall have been a qualified elector in Cherokee Nation, and, for joint authorities, of the political subdivision in which they reside, for a period of at least three (3) years next preceding his appointment.

C. The Directors of any port authority first appointed shall serve staggered terms. After that each successor shall serve for a term of four (4) years, except that any person appointed to fill a vacancy shall be appointed to only the unexpired term and any Director shall be eligible for reappointment. No Director shall be removed except for cause, and if removed shall have the right of appeal to the District Court of Cherokee Nation.

D. The Directors shall elect one of their membership as Chairman and another as Vice-Chairman, and shall designate their terms of office, and shall appoint a Secretary who need not be a Director. A majority of the Board of Directors shall constitute a quorum, the affirmative vote of which shall be necessary for any action taken by the port authority. No vacancy in the membership of the Board shall impair the rights of a quorum to exercise all the rights and perform all the duties of the port authority.

E. Each member of the Board of Directors of the port authority shall be entitled to receive such sum of money as the Board of Directors may determine as compensation for his service as Director and reimbursement for his reasonable expenses in the performance of his duties.

§ 6. Employees

A port authority created in accordance with 56 CNCA § 4 shall establish the qualifications, duties,

and compensation of such employees and professional help as it may require to conduct the business of the port. The Board may appoint an advisory board that shall serve without compensation. Any employee and/or professional help may be suspended or dismissed at anytime by the port authority. Said employees and/or professional help serves at the pleasure of the port authority.

§ 7. Area of jurisdiction

The area of jurisdiction of the Cherokee Nation Port Authority created in accordance with 56 CNCA § 4 shall include all of the territory of Cherokee Nation, together with any other property outside said boundaries conveyed to it or over which it exercises control pursuant to 56 CNCA § 9(1). A port authority created by multiple governmental entities shall exercise different powers. The right of eminent domain is set forth in 56 CNCA § 9(8). Never shall the same area be included in more than one port authority, but the jurisdiction of the Port Authority of Cherokee Nation or the first attaching shall be exclusive unless the first attaching shall cede or convey to the other.

§ 8. Regulation of vehicles within area of jurisdiction—Rules—Enforcement

A. The Board of Directors shall have the authority to establish rules to regulate vehicles within the real property under its direct control. The rules shall be consistent with the laws of Cherokee Nation governing the operation of vehicles on public streets and highways. Penalties for violation of these rules shall be no greater than the penalties for the same or similar violations in other areas of Cherokee jurisdiction.

The rules may include, but need not be limited to, the following:

1. The operation of vehicles within the jurisdiction of the port authority including, but not limited to speeds, stopping, and parking.
2. The type, sizes, and weight of vehicles that may be operated within the jurisdiction of the port authority.

B. The rules of the Board of Directors promulgated pursuant to this subsection including any amendments shall be filed with the Secretary of State of Cherokee Nation and Director of the Cherokee Nation Marshal at least thirty (30) days before becoming effective. Copies of the regulations shall be furnished to any person desiring to travel within the jurisdiction of the port authority upon request without charge.

C. The port authority shall post appropriate permanent signs at every entrance to the jurisdiction of the port authority showing that the use of vehicles within the jurisdiction is subject to the rules of the port authority. The port authority shall also post appropriate permanent traffic control signs or devices including, but not limited to, stop signs and speed limit signs. Such signs shall be the same as or similar to signs used by the Cherokee Nation Department of Transportation for the same or similar purposes.

D. Rules adopted by the port authority pursuant to this section shall be enforced by Cherokee Nation and law enforcement officials cross-deputized with Cherokee Nation.

E. The District Court of Cherokee Nation shall have jurisdiction to hear and determine violations as the same or similar violations of other Cherokee law. Appeals from decisions of the District Court in cases involving violations of the rules of the port authority promulgated pursuant to this section shall be to the Supreme Court in the same manner as the same or similar violations of law.

F. Nothing in this section shall be construed to alter or prevent any concurrent or overlapping jurisdiction by other law enforcement agencies where agreements are in place.

§ 9. Powers—Plan for future development

Subject to the laws of Cherokee Nation and the regulations governing land held in trust status by the United States of America for the benefit of Cherokee Nation, a port authority established by 56 CNCA § 4 shall have full power and authority to:

1. Purchase, construct, reconstruct, sell, lease, operate and otherwise contract concerning docks, wharves, warehouses, piers, and other port, terminal, industrial or transportation facilities within its jurisdiction consistent with the purposes of the port authority, and to make charges for the use thereof;

2. Borrow money from either public or private financial institutions, sources or any agency of Cherokee Nation or of the United States of America, and to issue therefor such notes or other evidence of indebtedness as may be required and to mortgage, pledge, or otherwise encumber the assets, other than property held in trust status, of the authority as security therefor;

3. Apply for, receive, and participate in any grants from private sources, the State of Oklahoma or from the United States of America;

4. Straighten, deepen, improve, construct, reconstruct or extend any canal, channel, river, stream, basin or other watercourse or way which may be necessary or proper in the development of the facilities of such port;

5. Acquire, own, hold, sell, lease, operate or otherwise contract concerning real or personal property for the authorized purposes of the port authority:

a. Leases, subleases, assignments and contracts concerning real property held in trust status by the United States for the benefit of Cherokee Nation are subject to federal regulations and approval from the Secretary of the Interior;

b. Amendments and assignments of leases and subleases concerning real property held in trust status by the United States for the benefit of Cherokee Nation are subject to federal regulations and approval from the Secretary of the Interior;

c. The duration of leases concerning real property held in trust status is subject to federal regulations and the laws of Cherokee Nation.

6. Acquire, own, maintain, sell, or lease such land within its jurisdiction as it may deem desirable for the development, planning, construction, operation, or leasing of land or completed industrial facilities for industrial use which exercise of such authorization is hereby consistent with federal regulations and the laws of Cherokee Nation and declared to be for the benefit of Cherokee Nation;

7. Apply to the proper authorities of the United States pursuant to appropriate law for the right to establish, operate, and maintain foreign trade zones within the limits of the port authority and to establish, operate, and maintain such foreign trade zones;

8. Exercise the right of eminent domain to appropriate any land, rights, rights-of-way, franchises, easements, or other property, necessary or proper for the construction or the efficient operations of any facility of the port authority and included in its official plan, if funds equal to the appraised value of the property to be acquired as the result of such proceedings shall be on hand and available for such purposes, except that:

a. Nothing contained in 56 CNCA §§ 1 to 16, inclusive, shall authorize a port authority to take or disturb property or facilities belonging to any public corporations, tribal corporations, public utility, tribal utility, or common carrier, which property or facilities are necessary and convenient in the operation of such public corporation, public utility, or common carrier, unless provision is made for the restoration, relocating, or duplication of such property or facilities, or upon the election of such public corporation, tribal corporation, public utility, tribal utility or common carrier for the payment of compensation, if any, at the sole cost of the port authority, provided that:

i. If any restoration or duplication proposed to be made hereunder shall involve a relocation of such property or facilities, the new facilities and location shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or tribal utility or common carrier to compete in its original area of operation;

ii. If any restoration or duplication made hereunder shall involve a relocation of such property or facilities, the port authority shall acquire no interest or right in or to the appropriated property or facilities, except as provided in subsection (C) of this section, until the relocated property or facilities are available for use and until marketable title thereto has been transferred to the public utility, tribal utility, or common carrier;

iii. Provisions for restoration or duplication shall be described in detail in the resolution for appropriation passed by the port authority;

b. Nothing contained in 56 CNCA §§ 1 to 16, inclusive, shall authorize a port authority to take or disturb property held in trust status by the United States for the benefit of Cherokee Nation;

9. Maintain such funds, as it deems necessary;

10. Direct its agents or employees, when properly identified in writing, and after at least five (5) days' written notice, to enter upon lands within the confines of its jurisdiction to make surveys and examinations preliminary to location and construction of works for the purposes of the port authority, without liability of the port authority or its agents or employees except for actual damage done;

11. Subject to the laws of Cherokee Nation and federal regulations, sell or lease real and personal property not needed for the operation of the port authority and grant easements or rights-of-way over property of the port authority;

12. Promote, advertise, and publicize the port and its facilities; provide traffic information and rate information to shippers and shipping interests; appear before rate-making authorities to represent and promote the interests of the port;

13. Repay grants or loans made before the effective date of this act where the funds have been expended for a proper purpose of the authority as originally authorized.

The Board of Directors of the port authority shall prepare or otherwise make provision for the preparation of a plan for the future development, construction, and improvement of the port and its facilities. The plan shall include maps, profiles, and other data and descriptions as may be necessary to set forth the location and character of the work to be undertaken by the port authority. The Board of Directors shall file five (5) copies of the plan with the Office of the Principal Chief, the Secretary of State and Secretary of Commerce and Industry of Cherokee Nation. The plan shall be available for inspection at their office by all persons interested. The plan shall fix a time and place for a public hearing of all objections to said plan, which shall be not less than thirty (30) nor more than sixty (60) days after the last submission of said notice. Any interested person may file written objections to such plan, provided such objections are filed with the Secretary of the Board of Directors at his office not less than five (5) days before the date fixed for said hearing. After said hearing the Board of Directors may adopt such plan with any modifications or amendments thereto as the official plan of the port authority.

§ 10. Modification, amendment or extension of plan

The Board of Directors shall, from time to time after the adoption of said official plan, have the power to modify, amend or extend the same, provided that upon the making of any such modification, amendment or extension of it, the Board of Directors shall cause notice to be given and shall conduct a hearing, all as provided in 56 CNCA § 9. The Board shall not adopt any modification, amendment, or extension until the notice has been given and hearing held as herein provided.

§ 11. Conclusiveness and validity of plan

The plan and any modification, amendment or extension of it, when adopted by the Board of Directors after notice and hearing, shall be final and conclusive and its validity shall be conclusively presumed.

§ 12. Participation of private enterprise

The port authority shall foster and encourage the participation of private enterprise in the development of the port facilities. Private sector activity, to the fullest extent the Board deems practicable, limits the necessity of construction and operation of such facilities by the port authority. For this purpose the port authority may upon a written request by any person, partnership, or corporation, filed with the Secretary of the Board of Directors within thirty (30) days following the notice of the adoption of an official plan as provided in 56 CNCA §§ 9 and 10, submit a proposal to provide, operate, and maintain any facility included in such plan, by publication of and invitation for bids therefor based upon specifications prepared by the Board of Directors.

The Board of Directors may accept the bid of the person, partnership, or corporation it deems best qualified by financial responsibility and business experience to construct and operate such facility or facilities in accordance with its official plan.

§ 13. Prohibitions

Nothing contained in 56 CNCA §§ 1 to 16, inclusive, of this act shall:

1. Impair the provisions of law or ordinance directing the payment of revenues derived from public property into sinking funds or dedicating such revenues to specific purposes;
2. Enlarge, alter, diminish, or affect in any way, any lease or conveyance made, or action taken before the creation of a port authority by any action of the Council of Cherokee Nation;
3. Impair or interfere with the exercise of any permit for the removal of sand or gravel, or other similar lease permits approved by the Council of Cherokee Nation and executed by the Arkansas Riverbed Authority or the United States.

§ 14. Bids

A. No contract for the creation, construction, alteration, or repair of any building, structure, or other improvement undertaken by a port authority created in accordance with 56 CNCA § 4 and involving an expenditure exceeding Seven Thousand Five Hundred Dollars (\$7,500.00) shall be let. Except as otherwise provided by subsection (C) of this section, no sale of any real property or property having a fair market value exceeding Seven Thousand Five Hundred Dollars (\$7,500.00) shall be made by the port authority unless notice calling for bids for the same shall have been given by notice as provided by 56 CNCA § 3. No such contract shall be let except to the lowest and best bidder. No such sale shall be made except to the highest and best bidder. For any sale of land by the port authority requiring competitive bids, specifications for the bids for such sale shall be in such form and detail as shall be determined by the port authority.

B. Competitive bids shall not be required for the sale of real property or property by a port

authority if:

1. Such real property or property is to be sold for industrial development purposes;
2. The real property or property was acquired by the port authority for industrial development purposes; and
3. The contract for the sale of such real property or property has been approved by the Board of Directors of such port authority.

Every contract let shall be in writing, and if the same involves work or construction, it shall be accompanied by or shall refer to plans and specifications for the work to be done, prepared for and approved by the port authority, signed by the Chairman of the port authority and by the contractor, and shall be executed in triplicate.

§ 15. Budget—Disposition of rents and charges

A. The Board of Directors of a port authority created in accordance with 56 CNCA § 4 shall annually prepare a budget for the port authority.

B. Rents and charges received by the port authority shall be used for the general expenses of the port authority and to pay interest, amortization, and retirement charges on money borrowed.

At the end of any calendar year, any surplus of funds remains after providing for the above uses; the Board of Directors may pay such surplus into the general funds of Cherokee Nation in proportion to the taxable value of all property within the port authority.

§ 16. Bond of Secretary—Deposit of funds—Disbursements

Before receiving any monies, the Secretary of a port authority created in accordance with 56 CNCA § 4 shall furnish a bond in such amounts as shall be determined by the port authority, with sureties satisfactory to it. All funds coming into the hands of the Secretary shall be deposited by him to the account of the port authority in one or more such depositories as shall be qualified to receive deposits, which deposits shall be secured in the same manner as Cherokee Nation funds are required to be secured. No disbursements shall be made from such funds except in accordance with rules and regulations adopted by the port authority.

CHAPTER 2

BONDS

§ 21. Authorization for port authority to borrow money and issue bonds

For the purpose of paying all or any part of the cost of acquiring land or interests therein, and the cost of constructing, acquiring, equipping, and furnishing buildings, structures, plants, docks,

wharves, warehouses, piers and other port, terminal and transportation facilities, or any part thereof; including additions, improvements, relocations, renovations, extensions and modifications thereof; (all of which are included in a single project are hereafter referred to in this act as "facility or facilities"), a port authority is authorized to borrow money upon credit of the income and revenues to be derived from the operation of such facilities, together with any other available income and revenues from other revenue-producing facilities of the port authority, and to issue negotiable bonds in such amounts as the Board of Directors of the port authority shall deem necessary for the purpose; and to provide for payment of such bonds and rights of holders thereof as herein provided.

§ 22. Terms, maturities, form, etc. of bonds

Bonds authorized by this act may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their date, may be in such denominations and in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such terms of redemption with or without premium, and may bear such rate of interest, not exceeding five percent (5%) per annum, as may be provided by official resolution of the Board of Directors of such port authority.

Such bonds may be sold in such manner and at such price or prices, not less than par plus accrued interest to date of delivery, as provided in 56 CNCA § 29, but interest cost to maturity for bonds issued hereunder shall not exceed five percent (5%) per annum, computed on the basis of average maturities according to standard tables of bond values.

§ 23. Bonds issued pursuant to loan or purchase agreement with United States government

In the event any issue or series of bonds is issued under authority of this act pursuant to a loan agreement or bond purchase agreement with any agency of the United States government, then and in that event, notwithstanding any other provision of law, the Board of Directors of the port authority may in any resolution authorizing bonds hereunder provide for the initial issuance of one or more bonds (in this section called "bond") aggregating the amount of the entire issue; and may arrange for installment payments of the principal amount of any such bond as it may consider desirable; and may provide for the making of any such bond payable to the bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond. The Board of Directors of the port authority may further make provision in any such resolution for the manner and circumstances under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest

§ 24. Exemption from taxation—One bond issue for more than one project or facility— Payment from combined revenues

Bonds issued hereunder shall not be subject to taxation by the State of Oklahoma, or by any county, municipality or political subdivision thereof. The Board of Directors of a port authority may in its discretion authorize one (1) issue of bonds hereunder for the acquisition, construction, relocation, improvement, extension, addition, furnishing or equipping of more than one building, structure, project or facility, as herein defined, and may make said bonds payable from the combined revenues of all such buildings and facilities so constructed, acquired, improved, extended, furnished or equipped, in whole or in part, with the proceeds of such bonds; together with revenues from the operation of any existing revenue-producing buildings or facilities. If more than one series of bonds shall be issued hereunder, payable from the revenues of such buildings and facilities, priority of a lien thereof as to such revenues shall be as prescribed by proceedings authorizing the issuance of such respective bond issues. It shall be within the discretion of the Board of Directors of the port authority at the time the first series of bonds is authorized, to provide that subsequent series of bonds payable from the same revenues, in whole or in part, shall not be issued; or that subsequent series of bonds shall be subordinate as to a lien; or that subsequent series of bonds shall enjoy parity of a lien upon such conditions and restrictions as are specified therein.

§ 25. Refunding bonds

The Board of Directors of a port authority may issue bonds hereunder for the purpose of refunding any bonds or other obligations of the port authority theretofore issued pursuant to this act; or it may authorize a single issue of bonds hereunder for the purpose in part of refunding such previous obligations and in part for the making of additions, improvements and extensions to such buildings and facilities, or the construction and acquisition of additional buildings and facilities, and furnishing and equipping thereof.

Where bonds are issued under this paragraph solely for refunding purposes, such bonds either may be sold as provided in 56 CNCA § 33 or may be exchanged for outstanding obligations. If sold, the proceeds either may be applied to payment of obligations refunded or may be deposited in escrow for the retirement thereof. All refunding bonds issued under this section shall in all respects be authorized, issued and secured in the manner provided for other bonds issued under this act and shall have all attributes of such bonds. The Board of Directors may provide that any such refunding bonds shall have the same priority of a lien on the revenues pledged for their payment as was provided for obligations refunded thereby.

§ 26. Bonds as special obligation of port authority concerned

No provision of this act shall be construed to authorize the pledge or use of any appropriated funds of Cherokee Nation, or any other tax revenues, for the payment or security of any bonds issued pursuant to this act. No bonds issued under provisions of this act shall become a debt or obligation of Cherokee Nation, nor shall the faith and credit of Cherokee Nation be pledged in whole or in part, directly or indirectly, for the payment of such bonds, or interest thereon.

Bonds issued under this act shall not be an indebtedness of any county or counties, or any municipal corporation or municipal corporations, which shall have created or joined in the formation of the port authority issuing the same. All bonds issued pursuant to this act shall be

special obligations of the port authority concerned, payable solely from the revenues of the buildings and facilities referred to therein. Such bonds shall contain on the face thereof a statement to the effect that neither Cherokee Nation, nor, in the instance of a joint authority, shall any county or a municipal corporation concerned be obligated to pay the same, or the interest thereon, except from revenues of such facilities; and that neither the faith and credit nor the taxing power of Cherokee Nation or any political subdivision of the state is pledged or may hereafter be pledged to the payment of principal of or interest on such bonds.

§ 27. Powers of Board of Directors in connection with payment of principal and interest

The Board of Directors of a port authority issuing bonds pursuant to the provisions of this act is authorized to pledge for the payment of principal of or interest on such bonds, all or any part of the revenues to be derived from the management and operation of the buildings and facilities for the construction, acquisition or improvement of which the bonds are issued; together with any other available income and revenues from revenue-producing facilities of such port authority. In order to secure prompt payment of the principal and interest, and the proper application of revenues pledged thereto, the Board of Directors of such port authority is authorized by appropriate resolution:

1. To covenant as to the use and disposition of the proceeds of the sale of such bonds;
2. To covenant as to the operation of facilities and buildings and the collection and disposition of the revenues derived from such operation;
3. To covenant as to the rights, liabilities, powers and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds;
4. To covenant and agree to carry such insurance on the buildings and facilities, and the use and occupancy thereof as may be considered desirable and, in its discretion, to provide that the cost of such insurance shall be considered a part of the expense of operating the buildings and facilities;
5. To vest in a trustee or trustees the right to receive all or any part of the income and revenues pledged and assigned to or for the benefit of the holder or holders of bonds issued hereunder and to hold, apply and dispose of the same, and the right to enforce any covenant made to secure the bonds; and to execute and deliver a trust agreement or agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and may limit the liabilities thereof and prescribe the terms and conditions upon which such trustee or trustees or the holder or holders of the bonds in any specified amount or percentage may exercise such rights and enforce any or all such covenants and resort to such remedies as may be appropriate;
6. To fix rents, charges and fees to be imposed in connection with and for the use of the buildings, services and facilities of such port authority, which rents, charges and fees shall be considered to be income and revenues derived from the operation of the buildings and facilities, and are hereby expressly required to be fully sufficient to assure the prompt payment of principal and interest on the bonds as each becomes due, and to make and enforce such rules and regulations with reference

to the use of the buildings and facilities, as it may deem desirable for the accomplishment of the purposes of this act;

7. To covenant to maintain a maximum percentage of use and occupancy of the buildings and facilities for revenue producing purposes;

8. To covenant against the issuance of any other obligations payable from the revenues to be derived from the buildings and facilities; and to covenant as to priority of resort to such revenues between obligations of such port authority.

All such agreements and covenants entered into by the Board of Directors of such port authority shall be binding upon the Board and the authority, its agents and employees, and upon its successors in interest; and all such agreements and covenants shall be enforceable by appropriate action or suit at law or in equity, which may be brought by any holder or holders of bonds issued hereunder or in their behalf.

§ 28. Agreements or contracts with United States

The Board of Directors of a port authority may enter into any agreement or contract with the United States of America or any agency or instrumentality thereof which it may consider advisable or necessary in order to obtain a grant of funds, a contract for purchase of its bonds, or any other aid or assistance in connection with the construction, addition, furnishing and equipping of any building or facility as herein defined.

§ 29. Segregation and use of proceeds from bond sales—Construction contracts

The proceeds to be derived from the sale of bonds herein authorized shall be segregated and used solely for the purpose for which the bonds are authorized. The Board of Directors of a port authority is authorized to make any contracts and execute all instruments which in its discretion may be deemed necessary or advisable to provide for the construction, furnishing and equipping of any building or facility as herein defined.

§ 30. Approval of bonds by Treasurer—Incontestability

All bonds issued hereunder shall contain the required certificates under the laws of Cherokee Nation. Such bonds shall be submitted to the Treasurer for examination, and when such bonds have been examined and certified as legal obligations of the issuing Authority by the Treasurer in accordance with such requirements as he may make, the same shall be incontestable in any court in Cherokee Nation unless suit thereon shall be brought in a court having jurisdiction thereof within thirty (30) days from the date of such approval.

§ 31. Lawful securities for investments

Bonds issued under the provisions of this act are hereby made securities in which all banks, trust companies, trust and loan associations, investment companies, and others carrying on a banking

business; all insurance companies and insurance agencies and others carrying on an insurance business, may lawfully invest funds, including capital funds, under their control or belonging to them, providing such bonds shall not be used by any depository as security for any Cherokee Nation funds.

§ 32. Interim notes and conditions of issue

Whenever the Board of Directors of a port authority shall have adopted a resolution authorizing the issuance of any series of bonds hereunder and said bonds have been sold but prior to the time as of which the bonds can be delivered, the Board of Directors of a port authority finds it necessary to borrow money for the purpose for which the bonds were authorized, such Board of Directors may, by appropriate resolution, authorize the borrowing of money in anticipation of the issuance of the bonds, and the issuance of the note or notes of the Board of Directors to evidence such borrowing. The amount so borrowed shall not exceed the principal amount of the bonds and shall not bear interest at a rate exceeding the average interest rate of the bonds. Such note or notes shall be signed in the manner prescribed by the Board of Directors and shall be made payable at such time or times as the Board of Directors may prescribe, not later than one (1) year from their respective dates and may be renewed from time to time by the issuance of new notes hereunder. The proceeds of any loan made under this section shall be devoted exclusively to the purpose for which the bonds shall have been authorized and the note or notes and the interest thereon shall be paid with the proceeds of the bonds simultaneously with the delivery of the bonds. If for any reason the bonds shall not be issued, the holder or holders of the notes shall be entitled to all rights which would have been enjoyed by the holders of the bonds had they been issued; and the notes shall be paid from the revenues provided for the payment of the bonds, and shall be entitled to the benefit of all covenants, agreements and rights appearing in the resolution authorizing the bonds for the benefit of the bonds.

§ 33. Public bids for bonds sold

All bonds sold hereunder shall be awarded to the best bidder, based upon an open competitive public offering. Notice of sale of such bonds shall be advertised at least fourteen (14) days in advance of the time of receiving bids and said notice shall appear at least once a week for two (2) successive weeks in a newspaper of general circulation in Cherokee Nation where the principal office of the port authority is located. No bonds shall be sold for less than par value.

Contracts for construction, labor, equipment, material, or repairs in excess of Five Hundred Dollars (\$500.00) shall be awarded by the port authority to the lowest and best competitive bidder, pursuant to public invitations to bid, which shall be published in the manner provided in the preceding section hereof. Such advertisements shall appear in the county where the principal office of the port authority is located. Provided, however, should the port authority find that an immediate emergency exists, which findings shall be entered in the minutes of said port authority, by reason of which an expenditure in an amount exceeding Five Hundred Dollars (\$500.00) is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace or safety, then such contracts may be made and entered into without public notice or competitive bids.

§ 34. Trustees—Oath of office—Fidelity bond

Any trustee, as provided herein, first shall take the oath of office required of an elected public officer and shall be under a good and sufficient fidelity bond, to be approved by the Treasurer, in a surety company authorized to transact surety business in Cherokee Nation. The cost of said bond shall be paid from funds of the revenue bonds. Any person authorized to administer oaths in Cherokee Nation shall administer the oaths of office.

§ 35. Meetings and records of authority open to public

After the effective date of this act meetings of an organized port authority shall be open to the public to the same extent as is required by law of other public boards and commissions. All records of said authority shall be public records and shall be kept in a place, the location of which shall be listed in the Office of the Principal Chief.

§ 36. Limitation on liability of trustee or beneficiary

No trustee or beneficiary shall be charged with any liability whatsoever by reason of any act or omission committed or suffered in the performance of such trust or in the operation of the trust property, except for willful or grossly negligent breach of trust; provided, however, any act, liability for any omission, or obligation of a trustee or trustees, in the execution of such trust or in the operation of the trust property, shall extend to the whole of the trust estate or so much thereof as may be necessary to discharge such liability or obligation and not otherwise.

TITLE 57

PRISONS AND REFORMATORIES

CHAPTER 1

SEX OFFENDER REGISTRATION AND NOTIFICATION

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Sex Offender Registration and Notification Act.

§ 2. Purpose—Findings—Legislative intent

A. The Council finds that repeat sex offenders, sexual offenders who use physical violence or duress, and sex offenders who prey on children, the elderly, and the mentally impaired are sex offenders who present an extreme threat to the public safety and pose a high risk of re-offending after release from custody. The Council further finds that the privacy interest of persons adjudicated guilty of these crimes is less important than the Nation's compelling interest in public safety. Sex offenders are extremely likely to use physical violence and to repeat their offenses, and

most sex offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society at large, while incalculable, extremely high. The Council also finds that federal crime statistics show that one out of every three Native American women is raped in her lifetime. Moreover, Native American women experience 7 sexual assaults per 1,000, compared with 4 per 1,000 among Blacks, 3 per 1,000 among Caucasians, 2 per 1,000 among Hispanics, and 1 per 1,000 among Asian–American women.

B. The high level of threat that a sex offender presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the Nation with sufficient justification to implement a strategy that includes:

1. Requiring the registration of sex offenders, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.
2. Providing for community and public notification concerning the presence of sex offenders.
3. Prohibiting sex offenders from working with children or the elderly, either for compensation or as a volunteer.

C. The Nation has a compelling interest in protecting the public from sex offenders and in protecting children and the elderly from predatory sexual activity, and there is sufficient justification for requiring sex offenders to register and for requiring community and public notification of the presence of sex offenders. Further, the Nation's control over internal relations is effected by the presence of sex offenders within the community and the regulation of such individuals is necessary to protect the health and welfare of the Nation's citizens.

D. It is the purpose of the Council that, upon the court's written finding in a civil proceeding that an individual is a sex offender with a relationship to the community, in order to protect the public, it is necessary that the sex offender be registered with the Marshal Service and that members of the community and the public be notified of the sex offender's presence in the community. The designation of a person as a sex offender is neither a sentence nor a punishment but simply a status designation.

E. By adopting the simple remedy of providing information regarding convictions for sex offenses to the public, the Nation assists communities in being better able to protect themselves through their increased awareness.

F. It is the intent of the Council to address the problem of sex offenders by;

1. Requiring sex offenders to register with the Marshal, as provided in this Act; and
2. Requiring community and public notification of the presence of a sex offender, as provided in this Act.

G. The Council further declares that it is the policy of the Nation to require the exchange, in accordance with this Act, of relevant information about sex offenders among public agencies and officials and to authorize the release in accordance with this Act of necessary and relevant information about sex offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

H. It is also the intent of the legislature to address the mandate of the United States that Indian tribes comply with federal law requiring tribal registration of sex offenders living, working, or attending school within their jurisdictions or to lose tribal jurisdiction over such registration to the state should the tribe fail to comply, as provided in Section 127 of the Adam Walsh Act (PL 109–248, July 27, 2006). The regulation of sex offenders thereby directly effects the political integrity of the Nation and regulation of such individuals directly effects tribal self-government.

I. The Cherokee Nation Marshal Service is authorized hereby to contract or enter any memorandum of understanding or agreement with any other agency of any government or with private contractors to complete any of the duties assigned by this Act to the Marshal Service, or as necessary to comply with the federal Adam Walsh Act (PL–109–248, July 27, 2006). In any case where such a contract or agreement requires a waiver of sovereign immunity by the Cherokee Nation, the Principal Chief is hereby authorized to sign such waiver without seeking a resolution from the Cherokee Nation Council.

§ 3. Definitions

As used in this act, the term:

1. "**Adam Walsh Act**" means the federal legislation embodied in PL 109–248 (July 27, 2006) and any subsequent amendments thereto.
2. "**Aggravated sex offender**" means any person who has received a conviction for a crime, including a deferred sentence imposed in violation of 22 CNCA § 991C, for a crime provided for in 21 CNCA § 843 if the offense involved sexual abuse or sexual exploitation as these terms are defined in that section, or any of 21 CNCA § 885, 1111, 1123, or 1123.1.
3. "**Change in enrollment or employment status**" means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.
4. "**Cherokee Nation Indian Country**" means any trust or restricted lands within the Indian Territory that were ceded by the United States to the Cherokee Nation pursuant to the Treaties of May 6, 1828, February 14, 1833, and December 29, 1835, 7 Stat. 478, the Indian Removal Act of 1830, 4 Stat. 411, and the fee patent executed by President Martin Van Buren on December 31, 1838, diminished only by sales under the Acts of February 28, 1877, 19 Stat. 265, June 2, 1886, 24 Stat. 121, March 3, 1893, ch. 209, 27 Stat. 612, 645, and Proclamation No. 5, 20 Stat. 1222 (1893), or as otherwise determined by federal law or courts of competent jurisdiction including those lands later acquired or acknowledged through federal action or court decision.

5. **"Conviction"** means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction includes receipt of a suspended sentence or any probationary term, and includes those for which an individual is currently serving a sentence or any form of probation or parole including receipt of a deferred sentence imposed in violation of 22 CNCA § 991c. A conviction includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction by a state, the United States, or an acceptable foreign jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. A conviction shall also include court-ordered civil commitment. A sanction is by an acceptable foreign jurisdiction if it is by Canada, Great Britain, Australia, New Zealand, or any foreign jurisdiction for which the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally enforced the right to a fair trial in that country during the year in which the conviction occurred. For purposes of this act with respect to juvenile offenders, a conviction shall include only: (1) a conviction of a juvenile who has been certified as an adult, or (2) an adjudication of delinquency of a juvenile aged fourteen (14) years or over when the adjudication was for (a) a crime involving a sexual act with another by force or the threat of serious violence, or (b) a crime involving a sexual act with another by rendering the victim unconscious or by involuntarily drugging the victim, provided that no other conviction of a juvenile or adjudication of a juvenile as delinquent shall be considered a conviction for purposes of this Act. To the extent that such information is considered confidential by any other law, such information shall be made public pursuant to this act.

6. **"Electronic mail address"** means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

7. **"Entering the Nation"** includes but is not limited to being discharged from a correctional facility or jail or secure treatment facility after imprisonment by order of Cherokee Nation Courts or being under supervision within the Nation for the commission of a violation enumerated in 57 CNCA § 4.

8. **"Habitual sex offender"** means any person who has received a conviction for any crime or an attempt to commit a crime listed in 57 CNCA § 4(A)(1) or (A)(3) and who subsequently receives another conviction of a crime or an attempt to commit a crime listed in 57 CNCA § 4(A)(1) or (A)(3) or who has received a third conviction for any crime or an attempt to commit a crime listed in 57 CNCA § 4(A)(2).

9. **"Instant message name"** means an identifier that allows a person to communicate in real time with another person using the Internet.

10. **"Institution of higher education"** means a career center, community college, college, state university, or independent postsecondary institution.

11. **"Marshal"** or **"the Marshal"** means the "office of Marshal" as created by the 1999 Cherokee Nation Constitution, Article VII, § 14.

12. **"Marshal Service"** means the executive branch agency developed, managed, directed, and overseen by the Marshal.

13. **"Nation"** means the Cherokee Nation.

14. **"Other jurisdiction"** means a state, the United States, Canada, Great Britain, Australia, New Zealand, or any foreign jurisdiction for which the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally enforced the right to a fair trial in that country during the year in which the conviction occurred.

15. **"Residence"** or **"resides"** means any place where the person has a home, or any place where a person lives for five (5) or more consecutive days, or seven (7) cumulative days in any sixty-day (60-day) period, or an aggregate period of thirty (30) days or more in a calendar year.

16. **"State"** means a state, territory, or possession of the United States, a federally-recognized Indian tribe, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the United States Virgin Islands.

17. **"Student"** shall mean an individual who enrolls in or attends an educational institution, including a public or private secondary school, trade or professional school, or an institution of higher education.

18. **"Work"** shall include self-employment or any employment for an entity whether compensated or not.

§ 4. Persons and crimes to which act applies

A. The provisions of the Cherokee Nation Sex Offender Registration and Notification Act shall apply to any individual designated as a sex offender. The designation of sex offender shall be given to any person residing, working or attending school within Cherokee Nation who:

1. Has, regardless of the date on which the offense or conviction occurred, received a conviction for a first offense for a crime or an attempt to commit a crime or conspiracy to commit a crime provided for in:

a. 21 CNCA § 535 if the offense involved the detention of a minor;

b. 21 CNCA § 681 if the offense involved sexual assault;

c. 21 CNCA § 741 if the offense involved sexual abuse or sexual exploitation and the offender is not the parent;

d. 21 CNCA § 843 if the offense involved sexual abuse or sexual exploitation as those terms are defined in that section;

e. 21 CNCA § 843.1 or 843.3 if the offense involved sexual abuse or sexual exploitation;

f. 21 CNCA § 1021(A)(3), 1021(A)(4), 1021(B), 1021.2, 1021.3, 1024.2, 1040.8, or 1040.13 if the offense involved child pornography;

g. 21 CNCA § 866, 885, 886, or 891 if the offense involved sexual abuse or sexual exploitation; or

h. 21 CNCA § 1040.13a, 1087, 1088, 1111, 1123, 1123.1 or 1171; or

2. Has, regardless of the date on which the offense or conviction occurred, received a conviction for a second offense for a crime or for an attempt to commit a crime or for conspiracy to commit a crime provided for in 21 CNCA § 1021(A)(1) or 1021(A)(2); or

3. Has, regardless of the date on which the offense or conviction occurred, received a conviction for a federal offense committed on Cherokee Nation Indian Country for a crime or for an attempt to commit a crime or for conspiracy to commit a crime provided for in 18 U.S.C. § 1591, 1801, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2252, 2252A, 2252B, 2252C, 2260, 2421, 2422, 2423, 2424, 2425, or any other federal crime for which the United States Attorney General or the Adam Walsh Act require registration as a sex offender.

B. The provisions of the Cherokee Nation Sex Offender Registration and Notification Act shall apply:

1. To any person who is convicted of a crime, an attempt to commit a crime, or a conspiracy to commit a crime enumerated in subsection (A) of this section in the Courts of Cherokee Nation; and

2. To any person who is convicted of a crime, an attempt to commit a crime, or a conspiracy to commit a crime enumerated in subsection (A) of this section in a federal court for a crime committed in Cherokee Nation Indian Country; and

3. To any person who resides, works or attends school within Cherokee Nation and who has received a conviction for a crime, an attempt to commit a crime, or a conspiracy to commit a crime which if committed or attempted in Cherokee Nation, would be one of those crimes enumerated in subsection (A) of this section or an attempt of one of those as enumerated in subsection (A) of this section. For military offenses, the crimes for which an individual must register pursuant to this act shall be those specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105–119.

C. The provisions of the Cherokee Nation Sex Offender Registration and Notification Act shall not apply to any such person while the person is incarcerated or civilly committed.

§ 5. Tiering

A person subject to sex offender registration in Cherokee Nation shall be assigned a tier based on the considerations enumerated in 57 CNCA §§ 5.1 through 5.3, inclusive.

§ 5.1. Tier I offenses

A. Sex offenses. A "Tier I" offense includes any sex offense, for which a person has been convicted, or an attempt or conspiracy to commit such an offense that is not a "Tier II" or "Tier III" offense.

B. Offenses involving minors. A "Tier I" offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 2.02(C) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.

C. Tribal offenses. Any sex offense covered by this act where punishment was limited to one (1) year in jail shall be considered a "Tier I" sex offense.

D. Certain federal offenses. Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a "Tier I" offense:

1. 18 U.S.C. § 1801 (video voyeurism of a minor);
2. 18 U.S.C. § 2252 (receipt or possession of child pornography);
3. 18 U.S.C. § 2252A (receipt or possession of child pornography);
4. 18 U.S.C. § 2252B (misleading domain names on the internet);
5. 18 U.S.C. § 2252C (misleading words or digital images on the internet);
6. 18 U.S.C. § 2422(a) (coercion to engage in prostitution);
7. 18 U.S.C. § 2423(b) (travel with the intent to engage in illicit conduct);
8. 18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places);
9. 18 U.S.C. § 2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain);
10. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual); or
11. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

Certain military offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105–119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 3.01 (A), (B), or (C) shall be considered a "Tier I" offense.

§ 5.2. Tier II offenses

A. Recidivism and felonies. Unless otherwise covered by 57 CNCA § 5.3, any sex offense that is not the first sex offense for which a person has been convicted or an attempt or conspiracy to commit such an offense and that is punishable by more than one (1) year in jail is considered a "Tier II" offense.

B. Offenses involving minors. A "Tier II" offense includes any sex offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense that involves:

1. The use of minors in prostitution, including solicitations;
2. Enticing a minor to engage in criminal sexual activity;
3. A non-forcible sexual act with a minor sixteen (16) or seventeen (17) years old;
4. Sexual contact with a minor thirteen (13) years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body;
5. The use of a minor in a sexual performance; or
6. The production or distribution of child pornography.

C. Certain federal offenses. Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a "Tier II" offense:

1. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);
2. 18 U.S.C. § 2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain);
3. 18 U.S.C. § 2244 (Abusive sexual contact, where the victim is 13 years of age or older);
4. 18 U.S.C. § 2251 (sexual exploitation of children);
5. 18 U.S.C. § 2251A (selling or buying of children);
6. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
7. 18 U.S.C. § 2252A (production or distribution of material containing child pornography);

8. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);

9. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);

10. 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution);

11. 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).

D. Certain military offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105–119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 3.02(A), (B), or (C) shall be considered a "Tier II" offense.

§ 5.3. Tier II Offenses

A. Recidivism and felonies. Any sex offense that is punishable by more than one year in jail where the offender has at least one (1) prior conviction or an attempt or conspiracy to commit such an offense for a Tier II sex offense, or has previously become a Tier II sex offender, is a "Tier III" offense.

B. General offenses. A "Tier III" offense includes any sex offense, for which a person has been convicted, or an attempt or conspiracy to commit such an offense that involves:

1. Non-parental kidnapping of a minor;

2. A sexual act with another by force or threat;

3. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; or

4. Sexual contact with a minor twelve (12) years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

C. Certain federal offenses. Conviction for any of the following federal offenses shall be considered conviction for a "Tier III" offense:

1. 18 U.S.C. § 2241 (aggravated sexual abuse);

2. 18 U.S.C. § 2242 (sexual abuse);

3. 18 U.S.C. § 2243 (sexual abuse of a minor or ward);

4. Where the victim is twelve (12) years of age or younger, 18 U.S.C. § 2244 (abusive sexual

contact).

Certain military offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105–119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 3.03(A), (B), or (C) shall be considered a "Tier III" offense.

§ 6. Designation as sex offender—Determination of offender's tier level

A. When an offender who meets the sex offender criteria described in 57 CNCA § 4 is before the Court for sentencing for a current offense, regardless of whether or not the individual is sentenced to a term of incarceration, receives a suspended sentence or any probationary term, including a deferred sentence imposed in violation of 22 CNCA § 991c, the Court must, as near as possible to the time of pronouncing the judgment and sentence, hold a separate civil hearing to designate the individual as a sex offender to whom this act applies. At the designation hearing, the Court shall:

1. Designate the person as a sex offender;
2. Make a determination of the tier level pursuant to 57 CNCA § 5 and assign to the person a tier level of I, II, or III;
3. Notify the person of the obligation to register as a sex offender as provided for in 57 CNCA § 7;
4. Notify the Marshal Service of the order of designation within twenty-four (24) hours. The Marshal Service shall ensure that the sex offender's fingerprints and palm prints are taken and registration information is collected within seventy-two (72) hours after receipt of the Court's written sex offender designation and findings; and
5. Notify the individual of the requirements of registration and community and public notification requirements under this act.

B. If the offender is sentenced to a term of imprisonment or supervision, a copy of the Court's written sex offender finding must be submitted to the facility where the offender will be incarcerated.

C. The Clerk of the Court that convicts and sentences a sex offender for the offense or offenses requiring registration under this act shall forward to the Marshal Service a certified copy of any order entered by the Court imposing any special condition or restriction on the sex offender which restricts or prohibits access to the victim or to minors.

D. If any person or agency obtains information which indicates that an individual who lives, works, or attends school in Cherokee Nation Indian Country, or who has received a conviction for a crime in Cherokee Nation Indian Country enumerated in 57 CNCA § 4 prior to the passage of this act, meets the sex offender criteria but that no jurisdiction, including Cherokee Nation, has made a written finding that the offender is a sex offender, such person or agency shall notify the Attorney General's Office. The Attorney General's Office shall file a civil petition with the District Court of

Cherokee Nation requesting that the individual be designated as a sex offender. The Court shall hold a hearing to determine if the offender's criminal record meets the sex offender criteria of this act. If the Court finds that the offender meets the sex offender criteria because the offender has received a conviction for a violation of a law or laws enumerated in or similar to those listed in 57 CNCA § 4, the Court shall:

1. Designate the person as a sex offender;
2. Make a determination of the tier level of the person pursuant to 57 CNCA § 5 and assign to the person a tier level of I, II, or III;
3. Make a determination as to the remaining duration of registration for any Tier I or Tier II offender calculating the beginning of registration from the date of the individual's conviction for those who were not subject to incarceration for the offense or based on the release from custody for those subject to incarceration for the offense and providing;
4. Notify the person of the obligation to register as a sex offender as provided for in 57 CNCA § 7;
5. Notify the Marshal Service of the order of designation within twenty-four (24) hours. The Marshal Service shall ensure that the sex offender's fingerprints and palm prints are taken and registration information is collected within seventy-two (72) hours after receipt of the Court's written sex offender designation and findings; and
6. Notify the individual of the requirements of registration and community and public notification requirements under this act.

If the Attorney General's Office fails to establish that an offender meets the sex offender criteria under this section, and the Court does not make a written finding that an offender is a sex offender, the offender is not required to register with the Marshal Service as a sex offender. The Marshal Service, the Attorney General's Office, or any other law enforcement agency shall not administratively designate an offender as a sex offender without a written finding from the Court that the offender is a sex offender. The Cherokee Nation Marshal Service and Attorney General's Office shall make every effort to register all such offenders as soon as practicable; for such offenders who are currently incarcerated, under supervision or otherwise remaining in the criminal justice system within Cherokee Nation as quickly as possible and shall attempt to register such Tier III offenders within ninety (90) days of, such Tier II offenders within six (6) months of, and such Tier I offenders within one (1) year of the passage of this Act.

E. A person who resides, works, or attends school in Cherokee Nation Indian Country and who has not been designated as a sex offender by Cherokee Nation District Court but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in any federal, state, military, tribal or other jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sex offender, shall register in the manner provided in this act and

shall be subject to community and public notification as provided in this act. A person who meets the criteria of this subsection is subject to the requirements and penalty provisions of this act until the person provides the Marshal Service with an order issued by the court or government entity that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the federal, military, tribal, state, or other jurisdiction in which the order was issued, which states that such designation has been removed or demonstrates to the Marshal Service that such designation, if not imposed by a court, has been removed by operation of law or court order in the federal, military, state, tribal or other jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sex offender under the laws of Cherokee Nation.

§ 7. Registration—Time limits—Duration—Petition for release from registration requirement—Information to be provided to offender

A. Any person who meets the definition of sex offender as set forth in this act shall register, in person, as follows:

1. With the Cherokee Nation Marshal Service:

a. if the person is not incarcerated, within one (1) business day of receiving a conviction including a deferred sentence imposed in violation of 22 CNCA § 991c, or

b. not less than ten (10) business days prior to the release of the person from incarceration, except as provided in subsection (B) of this section; and

2. With the local law enforcement authority having jurisdiction in the area where the person resides or intends to reside either temporarily or permanently. The registration is required within three (3) business days after entering the jurisdiction of the local law enforcement authority;

3. With the local law enforcement authority having jurisdiction in the area where the person works or intends to work. The registration is required within three (3) business days after entering the jurisdiction of the local law enforcement authority; and

4. With the security office of the educational institution and the local law enforcement authority having jurisdiction in the area where the person is enrolled as a student either full-time or part-time. The registration is required within three (3) business days after entering the jurisdiction of the local law enforcement authority;

5. With the Cherokee Nation Marshal Service and the local law enforcement authority no less than three (3) business days prior to abandoning or moving from the address of the previous registration or any change to employment or change to student status. For purposes of this section, "local law enforcement authority" means:

a. i. the Cherokee Nation Marshal Service if the person resides or intends to reside or stay on Cherokee Nation Indian Country, or

ii. the municipal police department, if the person resides or intends to reside or stay at any place outside of Cherokee Nation Indian Country but within the jurisdiction of any municipality, or

iii. the county sheriff, if the person resides or intends to reside or stay at any place outside of Cherokee Nation Indian Country and outside the jurisdiction of any municipality, and

b. i. the Cherokee Nation Marshal Service if the person works or intends to work at any place on Cherokee Nation Indian Country, or

ii. the municipal police department, if the person works or intends to work at any place outside of Cherokee Nation Indian Country but within the jurisdiction of any municipality, or

iii. the county sheriff, if the person works or intends to work at any place outside of Cherokee Nation Indian Country and outside the jurisdiction of any municipality, and

c. the police or security department of any educational institution if the person:

i. enrolls as a full-time or part-time student,

ii. is a full-time or part-time employee at an institution of higher learning, or

iii. resides or intends to reside or stay on any property owned or controlled by the institution of higher learning.

B. Any person who:

1. Has received a conviction for an offense in another jurisdiction, which offense if committed or attempted in Cherokee Nation, would have been punishable as one or more of the offenses listed in 57 CNCA § 4, and

2. Who enters Cherokee Nation and who has not been designated as a sex offender by a Court of the Cherokee Nation but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sex offender shall register, in person, as follows:

a. With the Cherokee Nation Marshal Service when:

i. the person enters and intends to be in the Nation for any purpose for five (5) consecutive days or longer, calculated beginning with the first day,

ii. has any type of full-time or part-time employment, with or without compensation for more than

five (5) cumulative days in any sixty (60) day period, or

iii. is enrolled as a full-time or part-time student within Cherokee Nation. Such registration is required within three (3) business days after entering the Nation;

b. With the Cherokee Nation Marshal Service no less than three (3) business days prior to abandoning or moving from the address of the previous registration; and

C. When a person has been designated as a sex offender by Cherokee Nation District Court, the person shall be required to register as follows:

1. For a period of fifteen (15) years, if the person is a Tier I registrant;

2. For a period of twenty-five (25) years, if the person is Tier II registrant; and

3. For life, if the person is a Tier III registrant.

The registration period shall begin, (1) if the person is sentenced to incarceration for the registration offense, from the date the person is released from custody, or (2) if the person receives a non-incarcerative sentence for the registration offense, from the date the offender is sentenced. The information received pursuant to the registration with the Cherokee Nation Marshal Service required by this section shall be maintained by the Cherokee Nation Marshal Service for at least ten (10) years from the date of the last registration. Any person required to register by another jurisdiction shall be required to maintain such registration pursuant to 57 CNCA § 6(E).

D. Any person who:

1. has been assigned to the Tier I designation and who has been registered for a period of ten (10) years; or

2. has been assigned to the Tier III designation and was required to register on the basis of a juvenile delinquency adjudication and who has been registered for a period of twenty-five (25) years;

may petition the District Court for the purpose of removing the tier level and sex offender designation and allowing the person to no longer be subject to the registration requirements of the Sex Offender Registration and Notification Act, thereby reducing the registration period. The District Court may reduce the registration duration and lift the registration requirements for such an offender only if the offender can show by clear and convincing evidence the following:

a. The registrant has not been convicted of any offense, regardless of its designation as a misdemeanor or felony during the registration period, and

b. The registrant has successfully completed any periods of supervised release, probation, and parole without any revocation or acceleration, and

c. The registrant has successfully completed an appropriate sex offender treatment program certified by either the Attorney General of the United States or the Attorney General of Cherokee Nation.

E. When registering an individual as provided in this section the Cherokee Nation Marshal Service shall:

1. Inform the registrant of the duty to register and obtain the information required for registration as described in this section;

2. Inform the registrant that if the registrant changes address within Cherokee Nation Indian Country, the registrant shall give notice of the move and the new address to the Cherokee Nation Marshal Service in writing no later than three (3) business days before the offender establishes residence or is temporarily domiciled at the new address;

3. Inform the registrant that if the registrant changes address outside of Cherokee Nation Indian Country, the registrant shall give notice of the move and shall register the new address with the Cherokee Nation Marshal Service and with a designated law enforcement agency in the new jurisdiction not later than ten (10) calendar days before the offender establishes residency or is temporarily domiciled in the new jurisdiction, if such jurisdiction has a registration requirement;

4. Inform the registrant that if the registrant participates in any full-time or part-time employment, outside of Cherokee Nation Indian Country, with or without compensation for more than fourteen (14) cumulative days in any sixty (60) day period or an aggregate period of thirty (30) days or more in a calendar year, then the registrant has a duty to register as a sex offender in the jurisdiction where the offender is so employed;

5. Inform the registrant that if the registrant enrolls in any type of school outside of Cherokee Nation Indian Country as a full-time or part-time student then the registrant has a duty to register as a sex offender in the jurisdiction where the school is found;

6. Inform the registrant that if the registrant enrolls in any school within the Cherokee Nation as a full-time or part-time student, then the registrant has a duty to register as a sex offender with both the Cherokee Nation Marshal Service and the security office of the school, if any; and

7. Inform the registrant that if the registrant participates in any full-time or part-time employment at any school, with or without compensation, or participates in any vocational course or occupation at any school in Cherokee Nation, then the registrant has a duty to notify the Cherokee Nation Marshal Service and the security office of the school in writing of such employment or participation at least three (3) days before commencing or upon terminating such employment or participation; and

8. Inform the registrant that if the registrant graduates, transfers, drops, terminates or otherwise changes enrollment or employment at any school in Cherokee Nation, then the registrant shall

notify the Cherokee Nation Marshal Service and the school security department in writing of such change in enrollment or employment within three (3) business days of the change;

9. Inform the registrant that if the registrant changes his or her name or alias, telephone or pager information, vehicle, color of vehicle or vehicle registration, or any e-mail or instant message address or other internet address or identifier, or makes plans to travel outside of the United States, the registrant must notify the Cherokee Nation Marshal Service within three (3) business days of the change;

10. Require the registrant to read and sign a form stating that the duty of the person to register under the Sex Offender Registration and Notification Act has been explained.

F. Any person who resides outside Cherokee Nation Indian Country and who has been convicted of an offense or received a deferred judgment for an offense in Cherokee Nation, or in another jurisdiction, which offense if committed or attempted in Cherokee Nation would have been punishable as one or more of the offenses listed in 57 CNCA § 4, and who is the spouse of a person living in Cherokee Nation shall be registered with the Cherokee Nation Marshal Service when the person enters and intends to be in Cherokee Nation Indian Country for any purpose for five (5) consecutive days or longer, calculated beginning with the first day or an aggregate period of five (5) days or longer in a calendar year. Such registration is required at least three (3) business days prior to entering Cherokee Nation Indian Country.

G. The duty to register as a sex offender in Cherokee Nation shall not be prevented if, at the time of registration, it is determined that the person owns or leases a residence in violation of 57 CNCA § 17.

**§ 8. Required registration information—Conviction data, fingerprints and palm prints—
Notice of certain changes to registration information**

A. Any registration with the Cherokee Nation Marshal Service required by the Sex Offender Registration and Notification Act shall be in a form approved by the Marshal Service and shall include, at a minimum, the following information, in digitized form, about the person registering:

1. The name of the person and all aliases, pseudonyms and nicknames used or under which the person has been known, including ethnic or tribal names;

2. A complete description of the person, including, social security number (both actual and purported numbers), age, race, sex, date of birth (both actual and purported dates), height, weight, hair and eye color, identifying marks and tattoos, a photograph and fingerprints and palm prints;

3. When requested by the Cherokee Nation Marshal Service, such registrant shall submit to a blood, saliva or other scientifically accepted test for purposes of a deoxyribonucleic acid (DNA) profile to be submitted to the Combined DNA Index System Database (CODIS). Submission to testing for individuals registering shall be within thirty (30) days of registration. Registrants who already have valid samples on file in CODIS shall not be required to submit duplicate samples for

testing;

4. The offenses listed in 57 CNCA § 4 for which the person has received a conviction, where the offense was committed, where the person received the conviction, the date of the conviction, a brief description of the crime or crimes committed by the offender, and the name under which the person received the conviction;

5. All telephone numbers for fixed locations and cellular numbers, including pager numbers;

6. The name and location of each hospital or penal institution to which the person was committed for each offense listed in 57 CNCA § 4;

7. Where the person previously resided, where the person currently resides either permanently or temporarily, how long the person has resided there, how long the person expects to reside there, and how long the person expects to remain in the Cherokee Nation:

a. Addresses shall include a rural route address and a post office box.

b. A post office box shall not be provided in lieu of a physical residential address. In instances where there is no physical address, the registrant shall give a specific description to the location.

c. If the sex offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, the sex offender shall also provide to the Marshal Service written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home.

d. If a sex offender's place of residence is a vessel, live-aboard vessel, or houseboat, the sex offender shall also provide to the Marshal Service written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

8. A description of all occupants residing with the person registering, including, but not limited to, name, date of birth, gender, relation to the person registering, and how long the occupant has resided there;

9. If the sex offender is enrolled, employed, or carrying on a vocation at an institution of higher education, the sex offender shall also provide to the Marshal Service the name, address, and county of each institution, including each campus attended, and the sex offender's enrollment or employment status;

10. The name of any entity for whom the sex offender works whether for remuneration or voluntarily or as an unpaid intern or whether the person is self-employed, the position held by the sex offender, and the address where the sex offender will work or, if not a fixed location, as definite a description of the work location as is possible;

11. All professional licenses held by the person;
12. The license plate number, vehicle identification number, and description of all vehicles owned, operated, or regularly driven by the sex offender, including watercraft and airplanes, and a description of where these vehicles are habitually parked, docked, or otherwise kept;
13. A copy of the person's passport, and if the person is an alien, a copy of the person's immigration documentation;
14. A copy of the person's driver's license and/or any other identification cards;
15. The tier level of the person;
16. Any and all electronic mail addresses, instant message names, or other designations or monikers used for self-identification or routing in Internet communications or postings prior to using such electronic mail address or instant message name and any such electronic mail address or instant message name existing or otherwise in use at the time of registration;
17. The name of the federally-recognized Indian tribe in which the person is enrolled, and a copy of the person's tribal enrollment card or Certificate Degree of Indian Blood;
18. The text of the registration offense;
19. Criminal history of the person, including dates of all arrests and convictions, status of parole, probation or supervised release, registration status, and outstanding arrest warrants;
20. The age, gender, and race of the offender's victims; and
21. Any other information determined necessary by the department, including non-privileged personnel and treatment records and evidentiary genetic markers when available.

B. 1. Any person subject to the provisions of the Sex Offender Registration and Notification Act who:

a. changes their name or alias, a permanent or temporary address, telephone or pager information, employment or termination thereof, school attendance, vehicle, color of vehicle or vehicle registration, or any e-mail or instant message address or other internet address or identifier, shall report in person to the Cherokee Nation Marshal Service and give a written notice of the change and the new address, name, employment, school, e-mail or instant message address, vehicle information, no later than three (3) business days prior to the change taking. Within three (3) business days of receipt of the updated information, the Marshal Service shall notify the jurisdictions listed in 57 CNCA § 10(A).

shall report in person to the Cherokee Nation Marshal Service and give a written notice of the

change and the new address, name, employment, school, e-mail or instant message address, vehicle information, no later than three (3) business days prior to the change taking. Within three (3) business days of receipt of the updated information, the Marshal Service shall notify the jurisdictions listed in 57 CNCA § 10(A), and shall update the information in the registration database, or

b. makes plans to travel outside of the United States shall report in person to the Cherokee Nation Marshal Service and give a written notice no later than twenty-one (21) business days prior to the beginning of the travel. Within three (3) business days of receipt of the updated information, the Marshal Service shall notify the jurisdictions listed in 57 CNCA § 10(A), and shall update the information in the registration database. The Marshal Service shall notify the United States Marshals Service within twenty-four (24) hours of receipt of information that an individual will be traveling outside of the United States.

2. If a new address of a residence, school or workplace is outside of Cherokee Nation Indian Country:

a. the Cherokee Nation Marshal Service shall, within three (3) business days, notify the new local law enforcement authority by teletype, electronic transmission, or letter of the change of address;

b. the offender shall notify the new local law enforcement authority of any previous registration; and

c. the new local law enforcement authority shall notify the most recent registering agency by electronic transmission, teletype or letter of the offender's registration of the new address in the new jurisdiction.

3. A sex offender who remains at an address after reporting his or her intent to vacate such address shall, within three (3) days after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the Marshal Service for the purpose of reporting his or her address at such residence. An offender who makes a report as required under paragraph 1 but fails to make a report as required under this paragraph commits a crime.

§ 9. Notice of and access to registries—Biological samples—Habitual or aggravated sex offender designation—Immunity

A. Conviction data, digital DNA results, and fingerprints and palm prints shall be promptly transmitted at the time of registration to the Federal Bureau of Investigation (FBI) if the information was not previously sent at the time of conviction, and to the Oklahoma State Bureau of Investigation (OSBI) or other law enforcement agency if required pursuant to a Memorandum of Agreement or Understanding.

B. The Marshal Service shall maintain a file of all sex offender registrations. A copy of the information contained in the registration shall promptly be available to all tribal, federal, state, and local law enforcement agencies, the Group Leader of Education, the Group Leader of Health, and

the National Sex Offender Registry maintained by the Federal Bureau of Investigation. The file shall promptly be made available for public inspection or copying pursuant to rules promulgated by the Cherokee Nation Marshal Service. The Cherokee Nation Marshal Service shall promptly provide all municipal police departments and all county sheriff departments a list of those sex offenders registered and living on Cherokee Nation Indian Country within such agency's respective municipality or county.

C. The Group Leader of Education is authorized to copy and shall distribute information from the sex offender registry to individual public and private educational facilities within Cherokee Nation Indian Country with a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer or criminal prosecution pursuant to 57 CNCA § 15."

D. The Group Leader of Health is authorized to distribute information from the sex offender registry to any nursing home or long-term care facility. Nothing in this subsection shall be deemed to impose any liability upon or give rise to a cause of action against any person, agency, organization, or company for failing to release information in accordance with the Sex Offender Registration and Notification Act.

E. The Marshal Service's sex offender registration list is a public record and shall be available upon request, without restriction, at a cost that is no more than what is charged for other records provided by the Marshal Service pursuant to the Cherokee Nation Freedom of Information Act, 67 CNCA § 101 et seq.

1. The Department is authorized to disseminate this public information by any means deemed appropriate.

2. When the Marshal Service provides information regarding a registered sex offender to the public, Marshal Service personnel must advise the person making the inquiry that positive identification of a person believed to be a sex offender cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a registered sex offender to facilitate the commission of a crime.

3. Except in cases when the release is to law enforcement, to a prosecuting attorney, to a court, or pursuant to a valid court order, the release of the sex offender registration list under this section shall not include the following information:

a. social security number of the sex offender,

b. victim identification,

c. arrests not resulting in conviction,

d. travel and immigration document numbers.

4. E-mail addresses and instant mail addresses shall not be released to the public generally, however, the Marshal Service shall allow the public to inquire as to whether a specified address belongs to a registered sex offender, and when such an address is registered to a sex offender, the Marshal Service is permitted to confirm such registration.

F. When the Marshal Service sends a copy of or otherwise makes the sex offender registry available to any public or private school offering any combination of prekindergarten through twelfth grade classes or child care facility licensed by the State of Oklahoma or the Nation, the agency shall provide a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer or criminal prosecution pursuant to 57 CNCA § 15 or under the statutes of the State of Oklahoma."

G.1. Samples of blood, saliva, or other biological material for DNA testing required by subsection (A) of this section shall be taken by employees of the Marshal Service. Said individuals shall be properly trained to collect blood, saliva, or such biological samples as are required for testing. Persons collecting samples for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity.

2. If the Marshal Service collects DNA, it shall ensure the collected samples are mailed or hand-delivered to the contracted lab within ten (10) days of the time the subject appears for testing or such period as is required by the laboratory, whichever is shorter. The Marshal Service shall use sample kits provided by the contracted lab and procedures promulgated by the contracted lab.

3. Persons subject to DNA testing pursuant to this section shall be required to pay to the Marshal Service a fee to be established by the Marshal Service.

H. If the probation and parole officer supervising a person subject to registration receives information to the effect that the status of the registered sex offender has changed in any manner that affects proper supervision of the person including, but not limited to, a change in the physical health of the person, address, employment, or educational status, higher educational status, incarceration, or terms of release, the supervising officer or administrator shall notify the Marshal Service of that change.

§ 10. Forwarding of registration information and tier level—Community notification—Absconders

A. Within three (3) business days from the date on which a person registers as a sex offender or updates information under this act, the Marshal Service shall forward the registration information, as provided in 57 CNCA § 9, and tier level to:

1. the Federal Bureau of Investigation;
2. the United States Marshals Service;

3. the Bureau of Indian Affairs;
4. the city or county law enforcement authority and district attorney's office in the county in which the person expects to reside, work, or attend school, if the person expects to reside, work, or attend school outside of Cherokee Nation Indian Country;
5. the Oklahoma Department of Corrections;
6. Cherokee Nation Human Resources and any other agency responsible for conducting employment-related background checks;
7. Cherokee Nation Indian Child Welfare and the Oklahoma Department of Human Services;
8. the probation office of the registrant, if any, and
9. any other organization or agency as required by the Adam Walsh Act.

B. The Marshal Service is responsible for the online maintenance of current information regarding each registered sex offender and such information shall be accessible to the public. The registry shall include the information listed in paragraph 2 of subsection (D) of this section. The site shall enable searches by name, county, city and/or town, or zip code or geographic radius.

1. The information required to be included on the sex offender website shall be posted on the website within three (3) business days;
2. The sex offender website shall include a function under which organizations and members of the public who provide an e-mail address to which notices can be sent can request notification when a sex offender commences residence, employment, or school attendance within the zip code or a geographic area specified by the requestor;
3. Upon posting on the website of new residence, employment, or school attendance information, for a sex offender within an area specified by the requestor, the system will automatically send an e-mail notice to the requestor that identifies the sex offender;
4. The website shall include links to sex offender safety and education resources;
5. The website shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address and that any such action could result in civil or criminal penalties;
6. The website shall include instructions on how to seek correction of information that an individual contends is erroneous.

C. The Marshal Service must maintain access for state, local, and federal law enforcement agencies

to obtain instantaneous locator file and offender characteristics information on all released registered sex offenders for purposes of monitoring, tracking, and prosecution.

D. 1. Upon registration of any person designated as a sex offender, or upon updating of registration information of any person designated as a sex offender, the Marshal Service shall post on the website and may notify, by any method of communication it deems appropriate, anyone that the Marshal Service deems appropriate, including, but not limited to:

- a. the family of the sex offender,
- b. any prior victim of the sex offender if the whereabouts of such victim(s) is known,
- c. residential neighbors and churches, community parks, schools, convenience stores, businesses and other places within a one-mile radius of the offender's registered permanent or temporary address that children or other potential victims may frequent,
- d. any nursing facility, specialized facility, residential care home, continuum-of-care facility, assisted living center, and adult day care facility, or similar facility within a one-mile radius of the offender's registered permanent or temporary address, and
- e. any individual or organization who specifically requests that they be notified of such registration.

2. The posting on the website and any notification shall, at a minimum, include the following information:

- a. the name of the sex offender,
- b. the physical address of each residence of the sex offender, the address of each place where the sex offender is an employee, and the address of any place where the sex offender is or will be a student,
- c. a physical description of the sex offender, including, but not limited to, age, height, weight, eye color and hair color,
- d. a current photograph of the sex offender,
- e. the tier level of the person and whether or not the person is an absconder,
- f. a description of the vehicle that the sex offender is known to drive including license plate number, and
- g. a description of the offense for which the sex offender is registered and any other sex offenses for which the sex offender has been convicted.

3. The notification may also, but is not required to, include the following information:
 - a. any conditions or restrictions upon the probation, parole or conditional release of the sex offender,
 - b. a description of the primary targets of the sex offender, and
 - c. the name and telephone number of the probation or parole officer of the sex offender, if any.
4. The Marshal Service shall make the notification provided for in this subsection regarding a sex offender available to any person upon request.
5. The Marshal Service shall not display on the website or otherwise provide to the public any arrest for which the offender did not receive a conviction, the offender's social security number, travel and immigration document numbers, or the identity of any victim(s).

§ 11. Verification of offender's address

A. The Marshal Service shall conduct verification of the registration information of each registered sex offender by requiring the registrant to verify their registration information in-person at the Marshal Service Office as follows:

1. on an annual basis, if the tier level of the person is I, or
2. every six (6) months, if the tier level of the person is II, or
3. every ninety (90) days, if the tier level of the person is III.

The Marshal Service may determine the appropriate times and days for reporting by the sex offender which shall be consistent with the reporting requirements of this subsection.

B. Each verification shall include the following:

1. Verification by the registrant of existing information for accuracy where the registrant shall inform the Marshal Service if any of the information required to be submitted pursuant to 57 CNCA § 8 has changed;
2. Taking a current photograph; and
3. Production of proof by the registrant of the identity of the person and current address.

C. The Marshal Service shall, within two (2) business days, electronically submit and update all information provided by the sex offender to those law enforcement departments listed in 57 CNCA § 10(B).

D. In addition to the in-person verification required by this section, the Marshal Service may develop a system by which Marshal Service personnel go to the sex offender's registered physical addresses in Cherokee Nation Indian Country and verify the residence of the sex offender at such temporary or permanent address.

E. In any case where the Marshal Service receives notice from any other jurisdiction that a registered offender is transferring his or her place of residence, employment, or school to a location within Cherokee Nation Indian Country and the offender fails to register with the Marshal Service within the required time, the Marshal Service shall provide notice of this failure to register to the other jurisdiction from which the Marshal Service received notice that the offender would be transferring a residence, employment, or school into Cherokee Nation Indian Country.

F. The Cherokee Nation Marshal Service shall notify the applicable offices of the Federal Bureau of Investigation and the United States Marshals Service and local law enforcement authority of the appropriate county or city, if the Marshal Service is unable to verify the address of a sex offender within thirty (30) days of an initial attempt to verify the registrant's address. The Marshal Service may notify the Office of the Attorney General whenever it comes to the attention of the Marshal Service that a sex offender is not in compliance with any provisions of this act. If the Marshal Service receives information that a sex offender may have absconded, the Marshal Service shall:

1. seek an arrest warrant for the offender's arrest if the legal requirements for doing so are satisfied; and
2. notify the United States Marshals Service and any relevant local law enforcement authority; and
3. update the registration database to reflect the offender's status as an absconder and seek to enter the sex offender into the National Crime Information Center Wanted Person File.

§ 12. Notifying offenders of obligation to register

A. The Marshal Service, prior to release from incarceration of a person subject to the provisions of the Sex Offender Registration and Notification Act, and each Judge who suspends the sentence of a person subject to the provisions of the Sex Offender Registration and Notification Act or orders any probationary term, including a deferred sentence imposed in violation of 22 CNCA § 991c, for a person subject to the provisions of the Sex Offender Registration and Notification Act, shall prior to discharge or release of said person:

1. explain to the person the duty to register pursuant to the Sex Offender Registration and Notification Act;
2. require the person to sign a written statement that the duty to register has been explained and the person understands the duty to register; and
3. obtain the address at which the person is to reside upon discharge or release.

B. The Marshal Service shall coordinate with federal law enforcement, and surrounding states and Indian tribes to establish necessary procedures for notifying offenders that reside in other state or tribal jurisdictions but work or attend school within Cherokee Nation of the obligation to register pursuant to this act and the procedure for registration of those offenders.

§ 13. False or misleading registration information

No person subject to the provisions of the Sex Offender Registration and Notification Act, shall furnish any false or misleading information in the registration required by this act.

§ 14. Immunity

All public agencies and employees and officials of Cherokee Nation, and all individuals or entities acting at the request or upon the direction of any law enforcement agency, are immune from civil liability for damages for good faith compliance with the requirements of this act or for the release of information under this act, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made, including but not limited to errors made because information is incomplete or incorrect because a sex offender fails to report or falsely reports his or her current place of permanent or temporary residence.

Nothing in this act shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for releasing information to the public or for failing to release information in accordance with the Sex Offender Registration and Notification Act. Nothing in this act shall be construed to prevent law enforcement officers from notifying members of the public of any persons that pose a danger under circumstances that are not enumerated in the Sex Offender Registration and Notification Act.

§ 15. Penalties

A. Except as otherwise specifically provided, any person required to register pursuant to the provisions of the Sex Offender Registration and Notification Act who violates any provision of said act shall, upon conviction, be guilty of a crime. Any person convicted of a violation of this section shall be punished pursuant to 21 CNCA § 10. Any non-Indian shall be subject to civil exclusion from the Cherokee Nation. Any non-Indian individual found to be in violation of this section shall be subject to a civil action for exclusion from Cherokee Nation Indian Country. Such action shall be commenced by the Office of the Attorney General by filing a petition for exclusion in the District Court. The individual shall be excluded upon a written finding, by the District Court, after notice and an opportunity to be heard being provided to the defendant, by clear and convincing evidence, that: (1) the individual is non-Indian; (2) the individual is required to register pursuant to the Sex Offender Registration and Notification Act; and (3) the individual is residing on Cherokee Nation Indian Country in violation of this subsection. The individual shall remove himself or herself from Cherokee Nation Indian Country no less than thirty (30) days from the entry of the District Court's order that he or she is in violation of this subsection or be in contempt of court. Any individual found to be in contempt of court under this section may be removed from

Cherokee Nation Indian Country by the Marshal Service. Any individual ordered to be excluded from Cherokee Nation Indian Country under this subsection shall be required to notify the Marshal Service of the other jurisdiction in which the individual intends to reside upon leaving Cherokee Nation Indian Country, and the Marshal Service shall notify such other jurisdiction of the intended relocation.

B. A sex offender who works, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commits a crime punishable pursuant to 21 CNCA § 10.

C. Any person who misuses public records information relating to a sex offender to secure a payment from such an offender, who knowingly distributes or publishes false information relating to such an offender which the person misrepresents as being public records information, or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a crime punishable by up to six (6) months of imprisonment or a One Thousand Dollars (\$1,000.00) fine or both.

D. An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the sex offender has been provided and advised of his or her statutory obligation to register under 57 CNCA § 12. A sex offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sex offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sex offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register. Registration following such arrest, service, or arraignment is not a defense and does not relieve the sex offender of criminal liability for the failure to register.

E. Any person who has reason to believe that a sex offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, his or her noncompliance with the requirements of this section:

1. withholds information from, or does not notify, the law enforcement agency about the sex offender's noncompliance with the requirements of this section, and, if known, the whereabouts of the sex offender;
2. harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sex offender;
3. conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sex offender; or

4. provides information to the law enforcement agency regarding the sex offender which the person knows to be false information,

commits a crime punishable pursuant to 21 CNCA § 10. This subsection does not apply if the sex offender is incarcerated in or is in the custody of a state or tribal correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

§ 16. Registered offenders prohibited from certain employment; penalties; civil damages

A. It is unlawful for any person required to register pursuant to the Cherokee Nation Sex Offender Registration and Notification Act to work with or provide services to children or to work on school premises. Violation of this section shall be a crime punishable by imprisonment up to one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.

B. It is unlawful for any person or business which contracts for work to be performed on school premises to knowingly and willfully allow any employee who is required to be registered pursuant to the Cherokee Nation Sex Offender Registration and Notification Act to work with children or to work on school premises. Upon conviction for any violation of the provisions of this subsection, the violator shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00). In addition, the violator may be liable for civil damages.

C. A person or business who offers or provides services shall ensure compliance with subsection (B) of this section,

D. It is unlawful for any law enforcement agency to employ any person as a peace officer or criminal investigator who has received a conviction for any offense requiring the individual to register as a sex offender pursuant to this act. The Marshal Service shall notify the Council on Law Enforcement Education and Training (CLEET) if any peace officer, private investigator, or security guard, is CLEET-certified and receives a conviction for a crime enumerated in 57 CNCA § 4 occurring within Cherokee Nation Indian Country. Any violator of this section shall be subject to a civil fine of no more than Five Thousand Dollars (\$5,000.00).

§ 17. Residency restriction; penalty

A. It is unlawful for any person registered pursuant to the Sex Offender Registration and Notification Act to reside, either temporarily or permanently, within a two-thousand-foot (2,000') radius of any public or private school site, educational institution, a playground or park that is zoned by city, county, state, federal or tribal government, or a licensed child care center. Establishment of a day care center or park in the vicinity of the residence of a registered sex offender will not require the relocation of the sex offender or the sale of the property. On the effective date of this act, the distance indicated in this section shall be measured from the nearest property line of the residence of the person to the nearest property line of the public or private school site, educational institution, playground, park, or licensed child care facility; provided, any nonprofit organization established and housing sex offenders prior to the effective date of this

provision shall be allowed to continue its operation.

B. Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.

C. The provisions of this section shall not apply to any registered sex offender residing in a hospital or other facility certified or licensed to provide medical services.

D. It is prohibited for any non-Indian person required to register pursuant to the Sex Offender Registration and Notification Act to reside on Cherokee Nation Indian Country, either temporarily or permanently. Any non-Indian individual found to be in violation of this section shall be subject to a civil action for exclusion from Cherokee Nation Indian Country. Such action shall be commenced by the Office of the Attorney General by filing a petition for exclusion in District Court. The individual shall be excluded upon a written finding, by District Court, after notice and an opportunity to be heard being provided to the defendant, by clear and convincing evidence, that: (1) the individual is non-Indian; (2) the individual is required to register pursuant to the Sex Offender Registration and Notification Act; and (3) the individual is residing on Cherokee Nation Indian Country in violation of this subsection. The individual shall remove himself or herself from Cherokee Nation Indian Country no less than thirty (30) days from the entry of District Court's order that he or she is in violation of this subsection or be in contempt of court. Any individual found to be in contempt of court under this section may be removed from the Cherokee Nation Indian Country by the Marshal Service. Any individual ordered to be excluded from the Cherokee Nation Indian Country under this subsection shall be required to notify the Marshal Service of the other jurisdiction in which the individual intends to reside upon leaving the Cherokee Nation Indian Country, and the Marshal Service shall notify such other jurisdiction of the intended relocation.

E. Any person willfully violating the provisions of this section by intentionally moving into any neighborhood or to any real estate or home within the prohibited distance shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10.

TITLE 58

PROBATE PROCEDURES

Reserved for Future Use

TITLE 59

PROFESSIONS AND OCCUPATIONS

Reserved for Future Use

TITLE 60

PROPERTY

CHAPTER 1

GENERAL PROVISIONS

§ 1. Prior right of possession

Any person having peaceable possession of private property obtained through lawful means, and claiming a limited or absolute right in the same, shall be held, in law, to have a prior right of possession thereto against all persons obtaining possession thereafter, until the right of such person shall expire, or be by him transferred to another for good or valuable consideration, or until his right shall be disputed and invalidated by due course of law. And any person, having a prior right of possession of any property to any other person, and the property being detained by the latter from the former without his voluntary consent, may recover such property upon suit for possession merely, without regard to, or investigation had by the court of, other or higher title, either in plaintiff or defendant of such suit. But such person as plaintiff may submit to the court the general question of right, involving the right of possession of the property, or be awarded possession of such property merely, as provided above, with the right accruing of answering as defendant in all suits involving the right, title and interest of the parties to such property.

§ 2. Suits for recovery of property

Suits for the recovery of property shall be instituted against the person having the property in legal possession and control; but in any suit by a third party against the lessee or agent of another, holding property of another in his possession, in which suit the right of the principal in such property is mainly involved, such fact being brought to the notice of the Court, at the calling of the case, by disclaimer of ownership on part of defendant, the Court shall order the name of the principal to be placed upon the record as party defendant in that suit, and judgment shall be rendered accordingly.

§ 3. Legal possession

Property shall be held to be in the legal possession and control of any person when in his actual possession, or in the actual possession of any person in the service or employment of such defendant temporarily to use or take charge thereof. When property consists of stock, the possession thereof shall be determined as provided by law.

§ 4. Conveyance of property to minor

Any contract whereby the title to, or possession of, property is conveyed or transferred, to which contract a minor shall be a party, shall not be lawful and is hereby forbidden, except the consent of the guardian of such minor, should there be one appointed, and if not, of the parent of such minor, be obtained previous to the making of such contract. And any adult person who shall enter into any contract, forbidden in this section, shall, for such offense, forfeit, for the benefit of the minor with

whom such contract is made, twice the full value of the consideration of such contract on part of the minor, upon suit hereby authorized to be instituted by the parent or guardian.

TITLE 61

PUBLIC BUILDINGS AND PUBLIC WORKS

CHAPTER 1

BUILDING AND FACILITY NAMING ACT

§ 1. Short title

This act shall be known as the Building and Facility Naming Act of 2011.

§ 2. Purpose

The purpose of this act is to set forth and establish the procedures and requirements for the process of naming buildings and/or facilities owned by Cherokee Nation and its entities.

§ 3. Definitions

A. "**Cherokee Nation**" means the government of the Cherokee Nation located at Tahlequah, Oklahoma and all divisions thereof.

B. "**Cherokee Nation building or facility**" means structures and areas owned and/or constructed or developed by Cherokee Nation or its entities, wherever they may be located, except for such structures owned or controlled by Cherokee Nation Enterprises or its subsidiaries.

C. "**Cherokee Nation entity**" means any corporation, organization or group in which the Cherokee Nation is a majority owner or contributor a majority of its funds to the entity's annual budget, or in which the Cherokee Nation exercises control.

§ 4. Building or facility naming

A. Naming of Cherokee Nation buildings or facilities. The names of Cherokee Nation buildings or facilities may only be designated, or redesignated, by Act of the Council of Cherokee Nation.

B. Prohibition on public depiction of building names prior to Council name designation. No Cherokee Nation building or facility may be depicted in any way, including but not limited to in documents or signage, by Cherokee Nation or any Cherokee Nation entity as bearing a particular name prior to the designation of that name by Act of Council pursuant to this act, except:

1. Temporary generic names. Where the Executive Branch, for ease of reference, designates a particular Cherokee Nation building or facility by the name of the community in which it is located

and the basic function that it serves, for a period not to exceed one (1) year from the date the facility commences operation, after which time such name, or such other name designated by the Council, must be designated pursuant to this act;

2. Communication of proposals to Council. Where the Executive Branch designates a name solely for the purpose of communicating a proposal directly and solely to members of the Council for designation of a name pursuant to this act;

3. Cherokee Nation buildings or facilities already in operation. Where the Executive Branch, or the Council by previous resolution, has designated the name of a particular Cherokee Nation building or facility prior to the enactment of this act, but only where the Cherokee Nation building or facility was constructed and in operation prior to the enactment of this act.

TITLE 62

PUBLIC FINANCE

CHAPTER 1

GENERAL PROVISIONS

§ 1. Fiscal year

The fiscal year for Cherokee Nation shall commence on October 1 of each year and end on September 30 of the following year.

CHAPTER 2

OFFICE OF THE CONTROLLER

§ 11. Establishment—Purpose

A. There is established the Office of the Controller within the Executive Branch of Cherokee Nation.

B. The principal purpose of the Office of the Controller shall be to manage the accounting and finance functions of Cherokee Nation and to assure that all funds are properly accounted for in accordance with generally accepted or legally required accounting principles and methods.

§ 12. Powers and duties generally

Specifically, the Controller shall be responsible for:

1. Providing an accounting and reporting system that will accumulate and report appropriate revenues, expenses, assets, liabilities, and related quantitative information;

2. Assuring the integrity of financial information concerning Cherokee Nation's activities and resources;
3. Preparing financial reports based on generally accepted accounting principles, or other appropriate bases;
4. Quantifying and interpreting the effects on Cherokee Nation of planned transactions and other economic transactions;
5. Assuring protection of the assets of Cherokee Nation through internal control, internal auditing, and proper insurance coverage;
6. Supervising and coordinating the preparation and issuance of required reports for government agencies;
7. Maintaining banking arrangements, under the direction of or by delegation from the Treasurer, to receive and disburse the funds of Cherokee Nation and its programs;
8. Recommending the appointment of independent public accountants and the extent and scope of their audit work;
9. Establishing and supervising a sound program of cash management involving both receipts and disbursement of funds;
10. Forecasting fund and cash positions at future dates as a guide to their availability and need;
11. Overseeing the budgeting functions of Cherokee Nation and providing assistance as necessary with various program budgets;
12. Informing program managers and department heads of the status of program funds and budgets;
13. Acting as advisor to the Executive and Finance Committee of the Council;
14. Supervising the preparation and issuance of employee payrolls;
15. Establishing and implementing a sound plan of organization for assigned functions;
16. Determining the necessary manpower for performing assigned functions;
17. Selecting and maintaining qualified personnel in subordinate positions and recommending compensation for the same;
18. Establishing and issuing plans, policies and procedures governing the performance of assigned

activities;

19. Performing all functions at the lowest cost, consistent with effective performance;

20. Performing any additional functions as delegated by the Treasurer and the Principal Chief.

CHAPTER 3

DEPOSIT OF FUNDS

§ 21. Requirement for deposit of funds generally

Any funds in the custody of Cherokee Nation shall be deposited in an approved depository. There shall be one (1) principal depository, provided for by law, and as many subsidiary depositories as may be necessary for the efficient regulation and management of tribal business. Said subsidiary depositories shall be approved in accordance with 62 CNCA § 23.

§ 22. Principal depository

The principal depository for funds under the control of Cherokee Nation shall be the First National Bank of Tahlequah.

§ 23. Subsidiary depositories

A. Subsidiary depositories used for investment of Nation funds shall be determined by competitive bidding. The bidding and selection process on investment depositories shall be conducted by the Controller, under review of the Treasurer, on a regular basis.

B. Other subsidiary depositories may be designated for the purpose of efficient regulation and management of Nation business in a particular locale. Subsidiary depositories provided for under this subsection shall maintain a checking/general banking relationship with Cherokee Nation and shall be approved, upon recommendation of the Controller, by resolution from the Council. Said resolution shall contain the name of the financial institution, the purpose of the depository, and the names of those persons authorized to conduct transactions with the depository.

§ 24. Control of deposited funds

A. No funds under the control of Cherokee Nation shall be deposited in any financial institution unless the institution is insured by either the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC).

B. No funds in excess of One Hundred Thousand Dollars (\$100,000.00) shall be deposited in a single financial institution unless such funds are collateralized either by bonds with a minimum of an AA rating, or local, state, U.S. Government and Cherokee Nation securities.

CHAPTER 4

APPROPRIATIONS

§ 31. Requirements for appropriations of funds generally

A. All appropriations of funds shall be provided for by law. The appropriation bill shall include the source of funds, the amount of funds, and the purpose for which the funds are being appropriated.

B. Any appropriations law containing Nation trust funds shall, upon the enactment of the law, be transmitted to the Secretary of the Interior or his delegatee for approval.

C. Any funds received by Cherokee Nation, the use of which is determined by the granting or contracting agency, shall be used only for those purposes and under those conditions for which the funds are made available. The funds shall not be appropriated by the Council, but shall be subject to review by the Council.

§ 32. Annual appropriations

A. In July of each year the Executive and Finance Committee of the Council, upon direction of the Treasurer and with advisement from the Controller, shall formulate an annual appropriations bill. The bill shall contain the budgeted annual revenue and expenditures from the general fund, enterprise fund, and trust fund for the Executive, Legislative, and Judicial Branches of Government. Said bill shall identify the individual sources of revenue for each Branch of Government. The sources of revenue may be based upon estimates. The budgeted expenditures formulated as provided for in this subsection shall not exceed total estimated revenues.

B. Upon completion of the annual appropriations bill, the Treasurer, or his delegatee, shall present the bill to the full Council for consideration and passage.

C. The Executive and Finance Committee, upon direction of the Treasurer and with advisement from the Controller, shall be responsible for proposing amendments to the annual appropriations law based upon material changes in real or estimated revenues and expenditures that affect the total amounts budgeted. Any amendments provided for in this subsection shall be presented to the full Council for consideration and passage.

CHAPTER 5

INVESTMENTS

§ 41. Investment of judgment funds—Generally

Any investment of judgment funds shall be pursuant to 25 U.S.C. § 162a. The use or distribution of funds shall be in accordance with 25 C.F.R. § 87.1 et seq.

§ 42. Investment of judgment funds—Reservation of rights

The Council of Cherokee Nation reserves the right, within statutory authority and limitations, to recommend to the Secretary of the Interior preferred financial institutions for the investment of judgment funds.

§ 43. Investment of surplus funds—Generally

Surplus funds from Nation operations may be invested by the Controller, upon direction and with the consent of the Executive and Finance Committee of the Council, in accordance with 62 CNCA §§ 23, 45, and 46.

§ 44. Investment of surplus funds—Term of investments

Nation funds invested pursuant to 62 CNCA § 43 shall be for a period not to exceed one hundred twenty (120) days; provided that funds may be invested for a longer term upon approval of the Executive and Finance Committee of the Council.

§ 45. Investment of surplus funds—Selection of investment institution

A. The Controller shall, upon determination of the amount of surplus funds, solicit bids from financial institutions for the purpose of investing said funds.

B. The Controller shall use the following criteria in the determination of the successful bidding institution:

1. The institution offering the highest interest rate on the funds; and
2. In the event that one or more institutions offer the same highest rate of interest, the funds shall be equally distributed among those institutions; provided that if the amount of funds are not sufficient to distribute among several institutions, those institutions offering the highest rate of interest shall be selected by the earlier postmark.

§ 46. Investment of surplus funds—Protection of invested funds

In the event that the invested funds in a single institution amount to more than One Hundred Thousand Dollars (\$100,000.00), the funds shall be collateralized as provided for in 62 CNCA § 24(B), and provided further that the institution where the funds are invested shall secure and pledge to Cherokee Nation joint custody receipts for the full amount of the funds.

CHAPTER 6

BONDS

§ 51. Officers required to furnish surety bonds—Conditions of and payment for bonds

All officers, elected or appointed, who are authorized to a position of trust over any land, property, accounts or monies, shall execute an official surety bond. Said bonds shall inure to the benefit of and be paid for by Cherokee Nation.

§ 52. Amount of bonds

The following officers of Cherokee Nation shall be bonded in the following amounts:

A. Council Members	\$ 10,000.00
B. Principal Chief	100,000.00
C. Deputy Principal Chief	100,000.00
D. Secretary of State	100,000.00
E. Treasurer	100,000.00
F. Controller	100,000.00
G. Registrar	50,000.00
H. Executive Directors	50,000.00

§ 53. Bonding company

The bonding of officers as required in 62 CNCA § 51 shall be by a licensed insurance company, authorized to do business in the State of Oklahoma.

CHAPTER 7

PLEDGES OF CREDIT

§ 61. Requirements for pledges of credit of Cherokee Nation generally

The credit of Cherokee Nation may be extended to any individual, company, corporation, or association by resolution of the Council. Said resolution shall contain the name of the entity Nation credit is being pledged to, the purpose of the credit, the amount of credit being pledged, and the length of time the pledge of credit is to be in effect.

§ 62. Pledges of credit requiring waiver of sovereign immunity

Any pledge of credit that requires the waiving of sovereignty of Cherokee Nation shall be effected by resolution of the Council and approved by the Principal Chief. Said resolution shall state the time the waiver is to be in effect, and such effective time shall rule past any change in the elected Council. Said resolution must contain the information required in 62 CNCA § 61.

CHAPTER 8

FINANCIAL RECORDS AND REPORTS

§ 71. Governing accounting standards

Generally accepted accounting principles (GAAP), established by the National Council on Governmental Accounting, The American Institute of CPA's, and the Financial Accounting Standards Board, shall be used in accounting and reporting for the financial activities of the various entities of Cherokee Nation, unless they conflict with applicable legal requirements.

§ 72. Combined financial statement reports

At each regular session of the Council, the Controller shall submit a combined financial statement. Said statement shall contain a combined balance sheet showing all fund and account groups, their assets, liabilities, and equity; a general fund statement of revenues and expenditures; a Nation enterprise statement of revenues and expenditures; a non-Nation grant expenditure statement; a statement of the Nation loan fund, showing changes in the fund balance; and a statement of the Nation judgment fund, showing changes in the fund balance.

§ 73. Annual audit statements and reports

Within one hundred twenty (120) days after the end of the Nation's fiscal year, the Controller shall submit to the Council audited financial statements and related reports developed in accordance with generally accepted auditing standards and applicable legal requirements.

§ 74. Retention of records

The Controller, under the direction of the Treasurer, shall develop and maintain a fiscal records retention program. Said records retention program shall identify the records to be retained, the length of time the records are to be retained, and the method of record destruction for those records not retained.

CHAPTER 9

CLAIMS AGAINST CHEROKEE NATION

§ 81. Verification and approval of claims

All appropriate claims against Cherokee Nation and against its funds shall be verified by the claimant and shall be approved by a Cherokee Nation representative who has personal knowledge of receipt of the goods or services before the same are paid.

§ 82. Development and maintenance of policies and procedures governing processing of claims

The policies and procedures covering the processing of claims against Cherokee Nation shall be developed and maintained by the Controller and the Director of Administrative Services.

CHAPTER 10

EMERGENCY ASSISTANCE

§ 101. Short title

This Act shall be known and may be cited as the Emergency Assistance and Community Support Projects Authorization Act of 2003.

§ 102. Purpose and findings

The purpose of this act is to establish a program for the distribution of funds to Cherokee citizens in the time of imminent need or emergency and to authorize the Council of Cherokee Nation to consider and authorize funding of community projects as provided in 62 CNCA §§ 104 to 111, inclusive.

The Council finds that legislation is necessary to establish a program for Emergency Assistance, formerly called the General Assistance Program. The Supreme Court of Cherokee Nation held in JAT-03-15, dated November 14, 2003, that the current General Assistance Program is unconstitutional in its present form because there is no legislation establishing a program. Further, the Supreme Court advises that in crafting legislation, the subject areas of health, education and welfare, commerce and communications, which constitute cabinet positions, are not infringed upon and legislation be narrowly crafted to avoid duplication. Finally, the Supreme Court advises that attention be given to the constitutional requirement for Council approval of "any donations by gift, or otherwise, to any individual, firm, company, corporation or association." (Article X, § 7 of the Cherokee Constitution).

§ 103. Definitions

For the purposes of this chapter:

1. "**Basic utilities**" means water, sewer, heating or cooling sources.
2. "**Cherokee citizen**" means any registered citizen of Cherokee Nation.
3. "**Council Member**" means any duly elected or appointed Member of the Cherokee Nation Council;
4. "**Emergency housing repair**" means necessary repair to a Cherokee citizen's home that would be required to keep the home safely habitable.
5. "**Major house damage**" means substantial damage to any part of a house that renders the house unsafe or uninhabitable.

6. **"Medical emergency"** means any medical condition that places an extreme emotional or financial burden on the Cherokee citizen.

7. Repealed by LA 25–09.

§ 104. Authorized disbursements

A. Authorized purposes. Disbursement of funds under this act shall only be made for the following purposes:

1. Emergency assistance to Cherokee citizens for the following:

a. Medical emergencies that are suffered such as transportation, medication or supplies;

b. Housing assistance to avoid eviction or shutting off basic utilities;

c. Emergency housing repairs or to obtain adequate emergency housing after major house damage;

d. Assistance for emergency meals or clothing when there is a finding of immediate jeopardy to health, safety or employment; or,

e. Other assistance for basic needs of an individual or family that if not addressed immediately, within 24 hours or less, may result in hunger, loss of shelter, medical peril, job loss or family breakdown.

2. Repealed by LA 25–09.

3. Self-help emergency housing repairs to pay Cherokee citizens for materials only. These materials must be used for dwelling repairs needed to alleviate or eliminate safety factors for occupants and repairs that prevent the immediate development of these conditions. Recipients will be responsible for securing labor to complete projects.

4. Housing accessibility to make renovations for handicapped or elder access for Cherokee citizens. These renovations may include accessibility ramps, structural modifications, and structural assistive devices for the elderly (citizens who are 62 years of age or older) and people with physical disabilities to allow them better mobility and use of their houses and/or to remedy health and safety concerns.

5. Emergency education assistance to Cherokee citizens as defined by published guidelines for program administration.

6. Delegations to pay for promotional items and nominal honorariums for visitors and awards to deserving individuals or groups.

§ 105. Duplication of services prohibited

Assistance provided under this act shall not duplicate or replace assistance available under any other program. The intent of this legislation is to meet special needs not covered by other programs.

§ 106. Expedited payment

The Controller of Cherokee Nation, whenever practicable, shall issue funds authorized in this act directly to the vendor or civic organization providing the needed service. After eligibility is determined, the Controller is responsible for developing appropriate procedures, as needed, for distributing funds within forty-eight (48) hours if not immediately, where emergencies and imminent needs exist, to insure timely receipt of such assistance.

§ 107. Policies and procedures for emergency assistance and community support projects

A. Policies and procedures for emergency assistance. The Human Services Group Leader of Cherokee Nation shall designate an advocate/coordinator to ensure effective implementation and the Group Leader is hereby authorized and directed to develop such policies and procedures necessary to effectively implement the program, including but not limited to the specific types of services, determining eligibility, verification of circumstances, assuring that services are not duplicated, and conducting appropriate follow-up services and appeal rights in the event that assistance is denied. The policies and procedures will be published for review by the Council as well as the general public. Human Services shall coordinate with any other departments or groups of the Nation, such as Health or Community Services, as necessary to effectively carry out this act.

B. Policies and procedures for community support project awards. Individual Council Members may nominate worthy projects not to exceed the District's allocation to be funded from the Community Support Project fund, provided the Council of the Cherokee Nation approves by enactment.

§ 108. Policies and procedures for the self-help emergency housing repairs, housing accessibility and emergency education assistance programs

Policies and procedures shall be developed to implement these programs, including but not limited to the specific types of services, determining eligibility, verification of circumstances, assuring that services are not duplicated, and conducting appropriate follow-up services and appeal rights in the event that assistance is denied. The policies and procedures will be published for review by the Council as well as the general public. Executive officials shall conduct appropriate coordination with any other Departments or Groups of the Nation as necessary to effectively carry out this Act.

§ 109. Requests or referrals

The Council of Cherokee Nation may, individually, or as a body, make requests or referrals to the designated Human Services staff for identified needs. Any requests or referrals denied under the Program will be reported to the Council Member making the initial referral. The tribal Council

may consider for approval any emergency assistance application that has been denied by the Human Services Department of Cherokee Nation.

§ 110. Appropriations

The Council of Cherokee Nation may appropriate such sums as may be necessary to carry out the Emergency Assistance program requirements of this act.

§ 111. Reports

All expenditures for the Emergency Assistance Program shall be reported in the monthly Executive and Finance Committee of the Council. Further, a report regarding referrals not funded under the program will be made monthly in accordance with 62 CNCA § 107.

CHAPTER 11

DONATIONS AND CONTRIBUTIONS

§ 201. Short title

This act shall be known and may be cited as the Donations and Contribution Act of 2010.

§ 202. Purpose

The purpose of this act is to set forth parameters for the Executive and Legislative Branches to collaboratively approve funding requests for donations and contributions. Donations and contributions from the Nation to third parties are made to improve the quality of life for Cherokee citizens and establish positive partnerships between the Nation and other governments and organizations that share common goals.

§ 203. Appropriations

The Council may appropriate from time to time, subject to the Cherokee Constitution, Article X, Section 7, an undesignated pool of funds for contributions and donations.

§ 204. Subcommittee established

The Council shall establish a Subcommittee of the Executive and Finance Committee to consider and consent to expenditure of funding requests for donations and contributions.

§ 205. Coordination of requests

In order to expend enacted appropriations to the contributions and donations fund that are undesignated, Government Relations staff will collect and research requests for funding. Government Relations shall prepare a cover sheet with information about the organization, purpose

of the funding, whether the request may be directed to any other existing programs, and amounts of assistance from the Nation or its entities received by the requestor over the last two (2) years.

§ 206. Recommendations for award

The Principal Chief shall make recommendations for expenditure after reviewing the requests and the information collected in 62 CNCA § 205. All requests, recommended and not recommended, will be forwarded to the Subcommittee.

§ 207. Unanimous consent

The Principal Chief will only make awards to recommended projects that have unanimous consent of the Subcommittee.

§ 208. Unfunded requests

If a request for funding is not recommended by the Principal Chief, or if any recommended projects fail to have unanimous consent of the Subcommittee, the funding request may be considered by the Council for an appropriation pursuant to the normal appropriation process.

§ 209. Donations and contributions awarded by district

Donations and contributions made under this act shall be awarded equitably by district. Awards that inure to the benefit of multiple districts or benefit organizations outside the jurisdiction will not be considered in the calculation for equity.

§ 210. Limitations on awards

Funds will not be provided for the primary benefit of one (1) individual. Any organization may only receive funds under this appropriation once per fiscal year.

§ 211. Notice of award

Administration shall develop a cover letter of award, which may be co-signed by the Tribal Council Members of the applicant's district.

CHAPTER 12

COMMUNITY ASSISTANCE

§ 301. Short title

This act shall be known and may be cited as the Community Assistance Act of 2012.

§ 302. Purpose and findings

The Council finds it is necessary to enhance the health, education and welfare of Cherokee citizens through the periodic distribution of funds to community organizations and schools for activities which benefit Cherokee citizens, based on recommendations from Members of the Council.

The purpose of this act is to establish a program for such periodic distribution of funds to community organizations and schools impacting the health, welfare and education of Cherokee citizens.

§ 303. Definitions

A. "**Community organization**" shall mean any entity whose primary purpose is to serve the public on a non-profit basis.

B. "**Hardship**" shall mean an extraordinary circumstance impacting the health or welfare of a Cherokee citizen for which no existing Cherokee Nation program can provide assistance in a timely manner.

C. "**School**" shall mean a public or private educational school or institute of higher education located within the jurisdictional boundaries of Cherokee Nation, including any Indian Education Program or committee serving said school.

§ 304. Authorized purpose of community assistance funds

Disbursement of funds under this act shall be made only:

1. For the purpose of supporting community organizations that:

a. Are governed by individuals a majority of whom are citizens of Cherokee Nation;

b. Serve a constituency or membership of which a majority are citizens of Cherokee Nation; or

c. Engage in activities that substantially impact the health, welfare or education of Cherokee citizens.

2. For the purpose of supporting schools, county governments or municipal governments, for activities which substantially impact the health, welfare or education of Cherokee citizens.

3. For the purpose of addressing hardships.

§ 305. Procedures for approving funding

The Council may appropriate funds from time to time for disbursement pursuant to this act, at its direction, as follows:

1. Funding shall be allocated by Council seat on an equitable basis, except that individual Council Member travel funds from a previous fiscal year may be carried over and added to each Councilor's respective community assistance funds each fiscal year at the Council's direction.
2. The Speaker of the Council shall create and make copies available to each Council Member of an application form on which eligible schools or community organizations may apply for assistance, which shall require a written attestation by the applicant and the sponsoring Council Member that the applicant meets the eligibility criteria set forth in this act.
3. The Council, at its Executive and Finance Committee, shall consider for approval requests for disbursement of funds under this act to eligible community organizations or schools, the disbursement of which has been recommended orally or in writing by any Member of the Committee. Said approval may be made even in the absence of a written application by the applicant. Approval by the Committee shall create the presumption that the community organization or school is eligible to receive funds under this act.
4. Funds shall be distributed under this act only after receipt by the Speaker of the Council of an appropriate application form from the applicant, as set forth in paragraph 2 of this section, and approval of the disbursement as set forth in paragraph 3 of this section.
5. Approved disbursement of funds under this act shall be reported at the regular Council meeting following Committee approval. No action of the Council at its regular meeting is required for disbursement of funds under this act. Provided, the Council, at its regular meeting, may approve disbursement of funds to eligible applicants in extraordinary circumstances in which time is of the essence and approval of disbursement cannot reasonably wait until the next committee meeting.
6. Records relating to applications for funding, disbursement of funds to and expenditure of funds by community organizations and schools under this act shall be maintained by the Speaker of the Council and available for public inspection, subject to reasonable document retention policies developed by the Speaker of the Council.
7. The Speaker of the Council is authorized to develop for entities receiving funds under this act policies and procedures consistent with this act, including those relating to the accounting for disbursed funds by community organizations, schools, county and municipal governments, or in connection with hardships.

TITLE 63

PUBLIC HEALTH AND SAFETY

CHAPTER 1

GENERAL PROVISIONS [RESERVED]

CHAPTER 2

CHEROKEE NATION COMPREHENSIVE CARE AGENCY ORGANIC ACT

§ 101. Short title

This act shall be known and may be cited as the Cherokee Nation Comprehensive Care Agency Organic Act.

§ 102. Purpose

The purpose of this act is to establish a government agency to provide health and human services.

§ 103. Establishment

The Cherokee Nation Comprehensive Care Agency (hereinafter "Agency") is hereby established within the Executive Branch of the government of the Nation.

§ 104. Board of Directors

A. Number. The Board of Directors for the Agency shall consist of:

1. At least three (3) but no more than five (5) regular members;
2. Five (5) standing ex-officio members, which are the executive heads of Health Services, Human Services, and Home Health, or their designee(s), and the Chairs of the Council Health Committee and Tribal Services Committee. Ex-officio members shall not have a vote on the Board.

B. Terms. Regular members shall serve for terms of three (3) years and may hold their seat until they are retained or their replacement is seated. In order to stagger the expiration of office, of the first group of regular members appointed hereunder, one (1) shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, and any additional for terms of three (3) years.

C. Conflicts of interest. Except as authorized under the Constitution of Cherokee Nation, no regular member of the Agency shall, directly or indirectly, solicit, receive or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution from any political organization, candidacy or other political purpose. No regular member of the Commission shall be a member of any tribal or local committee 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.

D. Qualifications. To be eligible to serve as a regular member, a person must:

1. be at least twenty-five (25) years of age;

2. have a bachelor's degree from a college or university in a Health, Finance, Legal, Administration or related field, or have four (4) years or more of related experience, which may include four (4) years or more as a professional provider of health care or social services to elderly or disabled adults;

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.

E. Selection. The Principal Chief of Cherokee Nation shall select the regular members of the Board, subject to confirmation by majority vote of the Council of Cherokee Nation.

F. Vacancy. In the event of a vacancy in the membership of the Board, the Principal Chief shall fill such vacancy for the unexpired term, subject to confirmation by a majority vote of the Council.

G. Removal. Regular board 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 Supreme Court under such rules and procedures as the Council prescribes. A petition for removal for cause may be brought by a majority vote of the Tribal Council, or the Principal Chief.

H. Authority. Subject to tribal and federal law, the Board of Directors shall have legal authority and responsibility for the following:

1. Governance and operation of the organization not inconsistent with the Constitution and laws of Cherokee Nation;

2. Development of policies consistent with the mission;

3. Management and provision of all services, including the management of contractors;

4. Establishment of personnel policies that, at a minimum, address adequate notice of termination by employees or contractors with direct patient care responsibilities;

5. Fiscal operations;

6. Development of policies on participant health and safety, including comprehensive, systemic operational plan to ensure the health and safety of participants;

7. Quality assessment and performance improvement program;

8. Establishment of a consumer advisory committee to provide advice to the Board on matters of

concern to participants. Participants and representatives of participants must constitute a majority of the membership of this committee;

9. Buy, sell, lease, or rent, real or personal property, as landlord or tenant, for authorized Agency activity, provided that facilities through which programs, services, functions or activities designated in paragraph 11 are carried out shall be considered facilities of Cherokee Nation and may be leased by Cherokee Nation to the Indian Health Service pursuant to 25 U.S.C. §§ 450j(l) and 458aaa-15(a);

10. Entering into service provider contracts, including contracts, agreements or grants with private or public entities to provide comprehensive care services authorized by this Act, provided, however, that Cherokee Nation reserves all rights with regard to intergovernmental compacts or government-to-government agreements, including but not limited to those authorized under P.L. 93-638 as amended, and such rights are not delegated to the Agency under this act;

11. Carrying out designated programs, services, functions and activities that are the responsibility of Cherokee Nation under agreements entered into by Cherokee Nation under P.L. 93-638, as amended;

12. Acquire or consolidate with other entities to enhance services provided;

13. Take any other action not prohibited by law that the Board finds to be in the best interest of the people served by the Agency.

§ 105. Finances

A. Funds appropriated or transferred to the Agency by Cherokee Nation, including those funds acquired by Cherokee Nation pursuant to an Agreement entered into under P.L. 93-638, shall be used by the Agency for the purposes designated by Cherokee Nation. Other funds of the Agency earned or received, including third-party revenue generated on activities that the Agency is designated to carry out under 63 CNCA § 104(H)(11), shall be retained by the Agency and used to carry out the programs and services of the Agency for the benefit of its clients, patients, or participants.

B. The Agency shall establish and maintain its own management systems.

C. Regular Board members may be reasonably compensated pursuant to Board action, subject to available funds and any applicable law.

D. Upon dissolution of the Agency all assets shall become property of Cherokee Nation unless otherwise required by law.

§ 106. Reporting

The Board or the Chief Executive Officer of the Agency shall report at least annually to the

Principal Chief and Tribal Council as to its programs, finances, employees, facilities, plans, and any other information the Board deems important to convey.

TITLE 64

PUBLIC LANDS

CHAPTER 1

LANDS ACQUIRED FROM THE UNITED STATES

§ 1. Abandoned military and agency reservations

Every military and agency reservation, which is, or may be hereafter occupied by the United States, within the limits of this nation, and whenever the United States shall cease to occupy the same, shall revert to the Nation; and it will not be lawful for any citizen to take possession of any such reservation, except by the permission of the national authorities under the penalty of being removed therefrom.

CHAPTER 2

REAL PROPERTY ACQUISITION

§ 51. Short title

This act shall be known and may be cited as the "Real Property Acquisition Act of 2005".

§ 52. Purpose

The purpose of this act is to establish principles for real property acquisition that assure accordance and alignment with the purpose of Cherokee Nation. Acquisitions of any real property should sustain, enhance and support the economies and welfare of Cherokee Nation. Sound planning for real property acquisitions ensures achievement of an overall objective to restore the land and territory base of the Nation and advance the Nation's strategy. Real property acquisitions should be conducted consistent with existing strategic plans of the Nation, including but not limited to the Land Consolidation Plan as amended and the Strategic Land Plan. This act does not apply to commercial transactions of Cherokee Nation instrumentalities.

§ 53. Definitions

For purposes of this act:

1. "**Acquisition**" means the action to become the owner of certain property, whether purchased, transferred or donated with or without consideration.

2. "**Clear title**" means a marketable title, or a good title, free from encumbrances, obstruction, burden or limitation.

3. "**Real property**" means land, and generally whatever is erected or growing upon or permanently affixed to land.

4. "**Restricted land**" means land the title to which is held by an individual Indian and which can only be alienated or encumbered by the owner with the approval of the U.S. Department of the Interior because of limitations contained in the conveyance instrument pursuant to federal law.

5. "**Trust land**" means the land, or an interest therein, for which the United States holds title in trust for the benefit of an individual Indian or for Cherokee Nation.

§ 54. Real property acquisitions

A. Acquisitions of real property utilizing Nation funds or funds directed by the Nation should be prioritized utilizing the following criteria, which are listed in no particular order:

1. Building sustainable communities (housing potential, community facilities, infrastructure built, supports community economy/jobs or local businesses, etc.);

2. Historic or cultural significance to Cherokee Nation;

3. Economic development potential;

4. Consistency with Land Consolidation Plan, as amended, or Strategic Land Plan, including acquisitions that are adjoining or adjacent to existing tribal lands;

5. Sustainability without ongoing financial support, and/or cost/benefit analysis;

6. Involvement of community in planning for the real property acquisition;

7. Real property located in the Arkansas Riverbed Settlement "mandatory trust acquisition" area, or acquisitions of individual trust or restricted lands.

B. All real property acquisitions or acceptances should meet the following due diligence steps:

1. All tracts require a formal or informal ASTM 1527 (American Society for Testing Material);

2. A review to ensure no back property tax is owed;

3. Funds have been identified for acquisition cost and any related cost, i.e., future property tax payments until taken into trust status, property upkeep and maintenance, remodeling, utilities, etc.;

4. The property has a clear title;

5. A review to determine whether the property is in another tribal jurisdiction and if so, whether an agreement between the Nation and the other tribe is necessary.

C. The Principal Chief will designate the Group to coordinate real property acquisitions, and will develop policies and procedures to implement this act, which will include roles and responsibilities to process acquisitions of real property by Cherokee Nation.

CHAPTER 3

REAL AND PERSONAL PROPERTY DONATION

§ 101. Short title

This act shall be known and may be cited as the Cherokee Nation Land Donation Act of 2010.

§ 102. Purpose

The purpose of this act is to establish procedures by which individuals, corporations and entities may donate, by gift or otherwise, real property to be used for the benefit of Cherokee Nation.

§ 103. Definitions

"Donate" or **"gift"** means to give to Cherokee Nation, without any compensation, real or personal property excluding cash donations.

§ 104. Gifts or donations of property

A. The Treasurer of Cherokee Nation is authorized to receive real or personal property from individuals or corporations or other entities by gift or donation.

B. The Treasurer is authorized to conduct valuation studies, environmental studies, appraisals or any other tests or determinations to ascertain whether the receipt of such gift or donation is in the strategic interest of Cherokee Nation.

C. Cherokee Nation shall appropriate adequate funds to ensure the functions of this act may be carried out.

D. All proposed donations or gifts excluding cash donations shall be reported to the Cherokee Nation Tribal Council prior to its acceptance or rejection.

CHAPTER 4

LAND INTO TRUST BY FOREIGN NATIVE AMERICAN TRIBES

§ 151. Short title

This act shall be known and may be cited as the Land into Trust by Foreign Native American Tribes Act of 2011.

§ 152. Purpose

The purpose of this act is to establish procedures to approve any application by a federally-recognized Native American tribe or member(s) thereof, to have land put into federal trust status, when said land is within the jurisdictional area of Cherokee Nation and when said tribe or individual is neither Cherokee Nation nor a citizen of Cherokee Nation.

§ 153. Definitions

A. **"Federal trust status"** means land the title to which is held in trust by the United States for an individual Indian or a tribe.

B. **"Foreign Native American tribes"** means federally-recognized Indian Tribes or bands, excluding Cherokee Nation.

§ 154. Land into trust by foreign Native American tribes

A. Cherokee Nation, through its Principal Chief and its officers, shall object to any application, request, or proposal by a foreign Native American tribe to acquire, transfer, or otherwise place land in federal trust status within the jurisdictional boundaries of Cherokee Nation, unless the Principal Chief is authorized to consent to the same by a resolution of the Council of Cherokee Nation, approved by a two-thirds (2/3) vote of the Council's entire membership, and approved by the Principal Chief under Article VI, Section 10 of the Constitution of Cherokee Nation. The Principal Chief and the Officers of Cherokee Nation may be enjoined by the Courts of Cherokee Nation to carry out this obligation.

B. Except as authorized under subsection (A), neither the Principal Chief nor any other officer of Cherokee Nation may authorize or consent to establishment of federal trust status for land within the jurisdictional boundaries of Cherokee Nation by any foreign Native American tribes or member(s) thereof.

C. Except as authorized under subsection (B), neither the Principal Chief nor any other officer of Cherokee Nation shall have any authority to consent to or otherwise authorize the acquisition of land in federal trust status by any foreign Native American tribes or member(s) thereof. The grant of such consent or, assuming actual notice has been received, a failure to object to land acquired in federal trust status by foreign Native American tribes or members thereof within the jurisdictional area of Cherokee Nation without the resolution required in subsection (B) shall be considered a "willful neglect of duty" as defined in Article XI, Section 1 of the Constitution of Cherokee Nation.

TITLE 65

PUBLIC LIBRARIES

Reserved for Future Use

TITLE 66

RESERVED

Reserved for Future Use

TITLE 67

RECORDS

CHAPTER 1

GENERAL PROVISIONS

§ 1. Archives and Records Commission—Creation—Composition

There is hereby created the Archives and Records Commission, hereinafter referred to as the Commission, to be composed of the Principal Chief as Chairman, the Executive Director of the Cherokee National Historical Society, Inc., and one (1) member of the Cherokee Nation Council as members.

§ 2. Commission powers and duties generally

The Commission shall have sole and exclusive authority governing the use and disposition of all public records and archives of tribal officers, departments, commissions, agencies, and institutions of Cherokee Nation.

§ 3. Establishment of policies and procedures for storage, processing, servicing, etc., of records and historical documents

The Commission is authorized to establish policies and procedures for the storage, processing, and servicing of records for tribal departments; and to make provisions for the preservation, arrangement, repair, and reproduction of those documents that are determined by the Commission to be of historical value.

§ 4. Design, construction, purchase, etc., of buildings for storage of records

The Commission shall have the authority to design, construct, purchase, lease, maintain, operate, protect and improve buildings used by the Commission for the storage of governmental and archival records.

§ 5. Submission to Council of plans, estimates, and recommendations

The Chairman of the Commission shall transmit to the Council from time to time, and at least annually, such plans, estimates, and recommendations as have been approved by the Commission.

§ 6. Special advisory committees

The Commission is authorized to establish special advisory committees to consult with and make recommendations to it. The members of such special advisory committees shall be chosen from among leading historians, political scientists, archivists, and librarians. Members of such special advisory committees shall be reimbursed for transportation and other expenses on the same basis as an employee of Cherokee Nation.

§ 7. Cherokee National Archives

There is hereby established the Cherokee National Archives which shall be permanently located on the grounds of the Cherokee National Historical Society, Inc. Said Archives shall be the official repository for all public records and archives of tribal officers, departments, commissions, agencies, and institutions of Cherokee Nation.

§ 8. Recovery of records or archives belonging to Cherokee Nation

On behalf of Cherokee Nation, and at the request of the Commission, the General Counsel of Cherokee Nation may replevin any public records or archives illegally removed which were formally part of the records or files of any public office of Cherokee Nation.

§ 9. Liability of Cherokee Nation for infringement of rights arising from use of letters and other intellectual property in custody of Commission

With respect to letters and other intellectual property (exclusive of material copyrighted or patented), after they come into the custody of the Commission, neither Cherokee Nation nor its agents shall be liable for any infringement of literary property rights or analogous rights arising thereafter out of the use of such materials for display, inspection, research, reproduction, or other purposes.

CHAPTER 2

FREEDOM OF INFORMATION AND RIGHTS TO PRIVACY

§ 101. Short title

This act shall be known and may be cited as the Freedom of Information and Rights to Privacy Agenda Act of 2007.

§ 102. Findings and purpose

A. The Council of Cherokee Nation and the Principal Chief of Cherokee Nation find that it is vital in a democratic society that public business be performed in an open and public manner. Toward this end, provisions of this chapter must be construed so as to make it possible for Cherokee citizens, or their representatives, to have their public officials and governmental activities at a minimum cost or delay to the persons seeking access to public documents or meetings.

B. Citizens have a right to know the basis of the formulation of public policy. Therefore, it is the public policy of Cherokee Nation that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity.

§ 103. Definitions

For purposes of this chapter:

1. **"Meeting"** means the convening of a quorum of the constituent membership of a public body, whether corporeal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.
2. **"Person"** includes any individual, corporation, partnership, firm, organization, or association.
3. **"Public body"** means any Cherokee Nation board, commission, agency, authority, any public or governmental body or political subdivision of the Nation, including any organization, corporation, or agency supported in whole or in part by public funds under the authority of Cherokee Nation or which expends public funds under the care of the Nation, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the Nation, the business enterprises of the Nation and its political subdivisions, including, without limitation, bodies such as the Public Service Authority, the Port Authority, and any corporation for profit or non-profit.
4. **"Public record"** includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, law enforcement investigative files and names of confidential informants, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act.

5. "**Quorum**" for regular session of the Council means two-thirds (2/3) of members thereof regularly elected and qualified shall be in attendance. For all other meetings, unless otherwise defined by applicable law, quorum means a simple majority of the constituent membership of a public body.

6. "**Tribal Council**" means one legislative body called the Council of Cherokee Nation. This body consists of fifteen (15) members, who are members by blood of Cherokee Nation.

§ 104. Right to inspect and/or copy public records—Fees—Notification as to public availability of records—Presumption upon failure to give notice—Records to be available when requestor appears in person

A. Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by 67 CNCA § 105, in accordance with reasonable rules concerning time and place of access.

B. The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. However, Members of the Tribal Council may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

C. Each governmental department or branch of the Executive or Legislative public or corporate body, upon written request for records made under this chapter, shall within fifteen (15) days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefore. Nothing in this act shall supercede Legislative Act 98–6, relating to access to records by members of the Tribal Council. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen (15) days allowed herein, the request must be considered disapproved and the requestor may appeal the denial as provided by this act.

D. The following records of a public body must be made available for public inspection and

copying during the hours of operation of the public body without the requestor being required to make a written request or inspect or copy the records when the requestor appears in person:

1. minutes of the meetings of the public body;
2. all reports identified in 67 CNCA § 106(A)(8) for at least the fourteen (14) day period before the current day; and
3. documents identifying persons confined in any jail, detention center, or prison.

§ 105. Matters exempt from disclosure

A. A public body may, but is not required to, exempt from disclosure the following information:

1. Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential; and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.
2. Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses and information relating to public records which include the name, address, and telephone number. This provision must not be interpreted to restrict access by the public and press to information contained in public records.
3. Records of law enforcement and public safety agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:
 - a. disclosing identity of informants not otherwise known;
 - b. the premature release of information to be used in a prospective law enforcement action;
 - c. disclosing investigative techniques not otherwise known outside the government;
 - d. endangering the life, health, or property of any person.
4. Matters specifically exempted from disclosure by statute or law.
5. Documents of and documents incidental to proposed contractual arrangements and documents of

and documents incidental to proposed sales or purchase of property; however

a. these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;

b. a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve (12) months from the date of sale or purchase;

c. confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.

6. All salary compensation paid by public bodies to individuals by authorized positions as classified by Cherokee Nation laws or Executive and Legislative Human Resources or Personnel Policies and Procedures. The annual budgets shall contain such position listings without the names of the individuals holding such positions.

7. Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

8. Memoranda, correspondence, and working papers in the possession of individual members of the Executive and Legislative Departments or Branches or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

9. Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body to attract business or industry to invest within Cherokee Nation.

10. Information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of the gift or any member of his immediate family has any business transaction with the recipient of the gift within three (3) years before or after the gift is made, the identity of the maker is not exempt from disclosure.

11. Records exempt: Council, Committees, Commission and Board meetings in executive session; disclosure of deliberation; exemptions.

a. Meetings while acting as trustee of the retirement system or by its fiduciary agents to deliberate about, or make tentative or final decisions on, investments or other financial matters may be in executive session if disclosure of the deliberations or decisions would jeopardize the ability to implement a decision or to achieve investment objectives.

b. Records of the Board or of its fiduciary agents that discloses deliberations about, or a tentative or final decision on, investments or other financial matters is exempt from the disclosure requirements of this chapter, to the extent and so long as its disclosure would jeopardize the ability to implement an investment decision or program or to achieve investment objectives.

Adoption of annual investment plan; quarterly review; deliberations in executive sessions; exceptions to making records public; administrative costs; duty of care; independent advisors.

c. The panel may discuss, deliberate on, and make decisions on a portion of the annual investment plan or other related financial or investment matters in executive session if disclosure thereof would jeopardize the ability to implement that portion of the plan or achieve investment objectives.

d. A record of the panel or of the retirement system that discloses discussions, deliberations, or decisions on portions of the annual investment plan or other related financial or investment matters is not a public record to the extent and so long as its disclosure would jeopardize the ability to implement that portion of the plan or achieve investment objectives.

e. Not in conflict with any other disclosure rules subject to federal regulations.

12. The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a Nation regulatory agency.

13. If any public record contains material which is not exempt under subsection (A) of this section, the public body shall separate the exempt and the nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

B. Any record that is requested and is determined to be exempt and not disclosed or is disclosed and marked confidential shall be accompanied by a statement setting out the reasons for such determination.

§ 106. Certain matters declared public information—Use of information for commercial solicitation prohibited

A. Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of sections of this chapter:

1. the names, sex, race, title, and dates of employment of all employees and officers of public bodies;

2. administrative staff manuals and instructions to staff that affect a member of the public;

3. final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

4. those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;
5. written planning policies and goals and final planning decisions;
6. information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
7. the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to the Constitution and law of Cherokee Nation;
8. reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report;
9. final audits of Cherokee Nation and its subsidiaries.

B. No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.

§ 107. Meetings of public bodies shall be open

Every meeting of all public bodies shall be open to the public unless closed pursuant to 67 CNCA § 108.

§ 108. Meetings which may be closed—Procedure—Circumvention of chapter—Disruption of meeting—Executive sessions of Tribal Council

A. A public body may hold a meeting closed to the public for one or more of the following reasons:

1. Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of other employees or clients whose records are submitted for use at the hearing;
2. Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement

of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim;

3. Discussion regarding the development of security personnel or devices;

4. Investigative proceedings regarding allegations of criminal misconduct;

5. Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

B. Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "**specific purpose**" means a description of the matter to be discussed as identified in paragraphs 1 through 5 of subsection (A) of this section. However, when the executive session is held pursuant to 67 CNCA § 108(A)(1) or (A)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

C. No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

D. This chapter does not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

E. Sessions of the Tribal Council may enter into executive session authorized by the Constitution of this Nation and rules adopted pursuant thereto.

§ 109. Notice of meetings of public bodies

A. All public bodies must give written public notice of their regular meetings and special meetings as required by the Constitution and laws of Cherokee Nation. Provided, that agendas must be posted, in accordance with this act, ten (10) days prior to any regular meeting of a public body or twenty-four (24) hours prior to a special meeting.

B. Legislative committees must post their meeting agenda at least ten (10) days prior to the meeting. Subcommittees of standing legislative committees must give notice if it is practical to do so.

C. Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (A), must make reasonable and timely efforts to give notice of their meetings.

D. Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

E. Informal legislative conferences between the Principal Chief and the Council of Cherokee Nation are authorized, provided that the date, time and place of such meetings are posted at least ten (10) days in advance of such meetings. No formal action shall be taken at these conferences. Such conferences are open to the public unless closed pursuant to 67 CNCA § 108.

F. All public bodies shall make efforts to notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

§ 110. Minutes of meetings of public bodies

A. All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

1. The date, time and place of the meeting;
2. The members of the public body recorded as either present or absent;
3. The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken;
4. Any other information that any member of the public body requests be included or reflected in the minutes.

B. The minutes shall be public record and shall be available within a reasonable time after the meeting.

C. All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to 67 CNCA § 108, provided that in so recording, there is no active interference with the conduct of the meeting. Provided, further, that the public body shall not be required to furnish recording facilities or equipment.

§ 111. Injunctive relief, costs and attorney fees

A. Any citizen of the Nation may apply to the District Court of Cherokee Nation for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one (1) year following the date on which the alleged violation occurs or one (1) year after a public vote in public session, whichever comes

later. The Court may order equitable relief as it considers appropriate and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

B. If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the Court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

§ 112. Penalties

Any person or group of persons who willfully and maliciously violates the provisions of this chapter may be found guilty of a crime and upon conviction shall be fined not more than One Hundred Dollars (\$100.00) or imprisoned for not more than thirty (30) days for the first offense, shall be fined not more than Two Hundred Dollars (\$200.00) or imprisoned for not more than sixty (60) days for the second offense, and shall be fined Three Hundred Dollars (\$300.00) or imprisoned for not more than ninety (90) days for the third or subsequent offense.

§ 113. Identification (I.D.) records

Photographs, signatures, addresses, and digitized images from a driver's license or personal identification cards are not public records.

§ 114. Privacy of driver's license information

A. Any Department of Public Office may not sell, provide, or furnish to a private party a person's height, weight, race, social security number, photograph, or signature in any form that has been compiled for the purpose of issuing special identification cards or completing an application for specific program requirements. The department shall not release to a private party any part of the record of a person under fifteen (15) years of age who has applied for or has been issued a special identification card.

B. A person's height, weight, race, photograph, signature, and digitized image contained in compiled application request or special identification card record are not public records.

C. Notwithstanding any other provision of law, a private person or private entity shall not use an electronically-stored version of a person's photograph, social security number, height, weight, race, or signature for any purpose, when the electronically-stored information was obtained from a driver's license record.

CHAPTER 3

FREE FLOW OF INFORMATION

§ 201. Short title

This Act shall be known and may be cited as the Cherokee Nation Free Flow of Information Act of

2010.

§ 202. Purpose

The purpose of this act is to ensure the coordination of all departments of Cherokee Nation Government in the development and sharing of information concerning tribal citizens in order to provide better services to the Cherokee people.

§ 203. Definitions

A. "**Criminal records**" means any records that contain confidential criminal or investigatory information.

B. "**Medical records**" means any records that contain confidential health information.

§ 204. Central database

A. The Principal Chief shall ensure the creation of a central database of the address, date of birth, phone number (if available) and Cherokee registration number of all Cherokee Nation citizens.

B. In compiling this list, the various departments of Cherokee Nation Government shall cooperate and share information. These departments shall include, but are not limited to: Registration, Election Commission, Tax Commission, The Cherokee Phoenix and Housing Department.

C. The Cherokee Nation Health Services and the Cherokee Nation Marshal Service shall not provide information to the database to ensure that neither confidential health records nor criminal records are improperly disseminated.

D. The information collected by the various departments shall be used for Cherokee Nation internal use only, except as otherwise provided by law.

TITLE 68

REVENUE AND TAXATION

CHAPTER 1

GENERAL PROVISIONS

§ 1. Tax Code

The several tax laws codified herein shall be known as the Cherokee Nation Tax Code.

§ 2. Purpose

The purpose of the Cherokee Nation Tax Code is to raise revenues, in a fair and efficient manner, to enable the government of Cherokee Nation to provide governmental services to citizens of Cherokee Nation and to promote tribal economic development, self-sufficiency and a strong tribal government. As the population and needs of Cherokee Nation increase, with the resulting increase in the demand for governmental services partly as a result of increased employment and development with Cherokee Nation, it is an appropriate exercise of the sovereign authority of Cherokee Nation to require those earning income or possessing wealth in Cherokee Country as defined herein to share in the costs of such governmental services.

§ 3. Definitions

For the purposes of this Title:

1. "**Cherokee country**" means all "**Indian country**" lands as defined by federal law located within the geographical boundaries of Cherokee Nation, including but not limited to the following property located within said boundaries:
 - a. land held in trust by the United States of America for the benefit of Cherokee Nation;
 - b. All land within the limits of any Indian reservation, notwithstanding the issuance of any patent, including land set aside by the United States for and owned in fee by Cherokee Nation, and including rights-of-way running through the reservation;
 - c. All dependent Indian communities, including land set aside by the United States for and owned in fee by Cherokee Nation; and
 - d. All Indian allotments, the Indian titles to which have not been extinguished, including individual allotments held in trust by the United States or allotments owned in fee by individual Indians subject to federal law restrictions regarding disposition of said allotments and including rights-of-way running through the same.
2. "**Commission**" means the Cherokee Nation Tax Commission as defined herein.
3. "**Individual retail tobacco licensees**" shall mean individuals who are licensed by the Nation and who are citizens of the Nation.
4. "**Nation**" means Cherokee Nation.
5. "**Non-citizens**" means persons who are not citizens of Cherokee Nation.
6. "**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.
7. "**Restricted and trust individual lands**" means Indian allotments as defined in paragraph d of

subdivision 1 of this section.

8. "**Tax**" means compulsory payment levied on wages, income, property (tangible or intangible), sales of goods, products or services, transfers of property or the severance of any minerals or oil and gas for the support of the government of the Nation.

9. "**Tribal enterprises retail tobacco licensees**" shall mean businesses, corporations and other business entities which are licensed by the Nation and which are owned by the Nation or in which a majority interest is owned by the Nation.

10. "**Tribal lands**" means the following types or combination of types of "Cherokee country" land, regardless of whether characterized as a reservation or dependent Indian community; land the title to which is held in trust by the United States for the benefit of the Nation; land held by the Nation subject to federal restrictions against alienation and land set aside by the United States for Cherokee Nation and owned in fee by the Nation.

§ 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.

§ 5. Distribution of tax revenue

At least seventy-five percent (75%) of all future tax appropriations, from revenues other than those collected pursuant to Chapter 9 of this Title, shall be dedicated for the purpose of education, health and human services, housing programs/projects and economic development.

CHAPTER 2

CHEROKEE NATION TAX COMMISSION AND ENFORCEMENT PROCEDURES

§ 11. Establishment

The Cherokee Nation Tax Commission is hereby established as a part of the Executive Branch of the government of the Nation.

§ 12. Membership

A. The Commission shall consist of three (3) members, at least two (2) of whom shall be citizens of the Nation and at least two (2) of whom shall reside within the boundaries of the Nation. To be eligible to serve as a Commissioner, a person must (i) be at least twenty-five (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.

B. The Principal Chief of Cherokee Nation shall select the members of the Commission, subject to confirmation by majority vote of the Council of Cherokee Nation.

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 (1) member to serve as Chairman, one (1) member to serve as Vice-Chairman and one (1) member to serve as Secretary.

D. The terms of office of the Commissioners shall be three (3) years; provided, however, that in order to stagger the expiration of office, one (1) of the first group of Commissioners appointed hereunder shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, and one (1) for a term of three (3) years.

E. Commissioners 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 Supreme Court 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 Council Members, or the Principal Chief. Except as authorized under the Constitution of 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 committee 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 (20) days of the occurrence of the vacancy, fill such vacancy for the unexpired term, subject to confirmation by a majority vote of the Council.

§ 13. Powers

The Commission shall have the following powers:

1. To review and study all sources of income and wealth within the Nation and all possible taxes thereon.
2. To recommend to the Council such taxes as would be beneficial to the Nation, including without limitation taxes on wages, income, property (tangible and intangible), sales of goods, products or services, transfers of property or the severance of any minerals or oil and gas.
3. To enforce and administer the provisions of the Cherokee Nation Tax Code and to adopt by majority vote such other rules and regulations as it deems necessary for the proper functioning of

the Commission and administration of Cherokee Nation Tax Code.

4. To devise an operational structure for itself and for any staffing requirements it may find necessary to the fulfillment of the duties and obligations contained herein, any such plan to be presented to the Council. The total amount disbursed by the Commission in any one (1) fiscal year for the payment of salaries, expenses and incidentals shall not, however, exceed the amount appropriated therefor by the Council.

§ 14. 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.

§ 15. 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.

§ 16. Salaries

The annual compensation, payable monthly, of the Chairman, Vice-Chairman and Secretary of the Commission shall be as determined in accordance with the annual budget appropriation.

§ 17. Civil actions for tax penalties and interest

In any case of failure of a person or corporation liable for taxes under this Title to pay the taxes, penalties or interest due, the amount of such taxes, penalties and interest may be recovered in a civil action before the District Court of Cherokee Nation. Such actions must be brought within three (3) years of the due date of any tax payment or tax return or the actual date of payment of any tax, whichever is the later, except in any case involving fraud, in which case an action must be brought within three (3) years of the discovery of the fraud.

§ 18. Refunds of excess tax payments

Any person or corporation who believes that it has overpaid taxes under this Title may apply to the Commission for a refund within six (6) months of the overpayment. Any tax paid, which after a hearing pursuant to the rules and regulations adopted by the Commission is found to be in excess of that required to be paid, shall be refunded to the person paying the tax, or credited against taxes

due from the taxpayer.

§ 19. Appeals

A. The District Court of Cherokee Nation shall have original jurisdiction to hear appeals from final decisions of the Commission.

B. Any party may appeal any final decision of the Commission within thirty (30) days after such decision by filing a notice of appeal with the Commission, paying tax as determined by the Commission and serving a copy to Cherokee Nation. Thereafter the Commission shall promptly file the full record of the proceeding, including the notice of appeal, with the District Court.

C. In all appeals, the District Court shall give proper deference to the administrative expertise of the Commission. The District Court 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 District Court shall issue a written decision on all appeals.

D. The District Court may, in its discretion, award costs and attorney fees to Cherokee 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.

E. The Supreme Court shall have exclusive jurisdiction to hear an appeal from the District Court of Cherokee Nation.

§ 20. Finality of Commission or Supreme Court action

Any final finding or determination of the Supreme Court in proceedings pursuant to 68 CNCA § 19 shall be final and binding in any other proceeding against or by the same person before the Commission or the Supreme Court.

§ 21. Settlements of taxes due

A. The Commission upon unanimous consent, may compromise the liability of the taxpayer for the payment of taxes and/or interest by entering in writing with the taxpayer a settlement agreement that adequately protects the interests of the Nation.

B. If entered into after any court acquires jurisdiction of the matter, a settlement agreement shall be part of the stipulated order or judgment disposing of the case.

C. As a condition for entering into a settlement agreement, the Commission may require the provision of security for payment of any taxes due according to the terms of the settlement agreement.

D. A settlement agreement is conclusive as to the liability or nonliability for payment of taxes

relating to the periods referred in the settlement agreement, except upon a showing of fraud, malfeasance, misrepresentation or concealment of a material fact.

§ 22. Power to compact

The Principal Chief shall have the authority to negotiate a compact or contract with the State of Oklahoma in order to ensure that Cherokee Nation receives certain tax exemptions and revenues to which it is entitled under federal and tribal law in an efficient and timely manner. Such compact or contract must be approved by a majority of the Council.

§ 23. Penalty and interest

A. If any amount of tax imposed by this code is not paid before the same becomes delinquent, interest, at the rate of ten percent (10%) per month until payment of the tax, shall be calculated and collected as part of the delinquent tax. Interest may not be waived.

B. A penalty for failure to file monthly tobacco reports shall be ten percent (10%) per month of the tax due for each and any part of a month that the monthly report is delinquent, however this penalty shall not exceed ten percent (10%) of the tax due for the delinquent month. An additional penalty for failure to pay tax due shall be ten percent (10%) per month of the tax due for each and any part of a month that the tax is delinquent, however this penalty shall not exceed fifty percent (50%) per month of the tax due for the delinquent month. Penalties will not be subject to waiver, except at the discretion of the Commission and can result in revocation of license, where payment of the total amount of such tax is a result of good cause and not as a result of negligence, design, or inadvertence. The minimum penalty shall be Five Hundred Dollars (\$500.00).

§ 24. Substitute returns prepared by Commission

The Commission may assess tax based on substitute returns prepared by the Commission where no timely return or report was filed by the person required to file a return or report.

§ 25. Initial application fee

There shall be a One Hundred Dollars (\$100.00) initial application fee in addition to annual license fees for all business licenses including sales and tobacco licenses.

CHAPTER 3

SALES TAX

§ 31. Definitions

For purposes of this chapter:

1. **"Business enterprise"** means any activity engaged in or caused to be engaged in by any person

with object of gain, benefit, or advantage, either direct or indirect by retail sales of goods or services.

2. "**Citizen**" is defined by Article IV, Section 1 of the Constitution of Cherokee Nation.

3. "**Event held on an irregular basis**", for purposes of this section, means any event that does not occur on a continuous and ongoing basis, even if there is some frequency or pattern of occurrences. Events held on "**an irregular basis**" may include, but are not limited to, events held once a week or only certain weeks, events that are held every weekend or only on particular weekends, events held once a month or for only certain months, and other events that are held on a periodic basis, as well as those which occur more sporadically.

4. "**Gross receipts**" or "**gross proceeds**" means the total amount of consideration for the sales of any items of value or goods or services taxable under this chapter, whether the consideration is in money or otherwise. "**Gross receipts**" or "**gross proceeds**" shall include, but not be limited to:

a. cash paid;

b. any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment;

c. any amount for which credit or a discount is allowed by the vendor;

d. any value of a trade-in or other property accepted in-kind by the vendor as consideration.

There shall not be any deduction from the gross receipts or gross proceeds on account of cost of the property sold, labor service performed, interest paid, or losses, or of any expenses whatsoever, whether or not the tangible personal property sold was produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale.

5. "**Non-profit**" means a non-profit organization that employs less than ten (10) employees.

6. "**Person**" means any individual, company, partnership, joint venture, joint agreement association, mutual or otherwise, limited liability company, corporation, estate, trust business trust receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district any other political subdivision of the state, or any group or combination acting as a unit in the plural or singular number.

7. "**Promoter**" or "**organizer**" means any person who organizes or promotes a special event which results in the rental, occupation or use of any structure, lot, tract of land, sample or display case, table or any other similar items for the exhibition and sale of tangible personal property or services taxable under 68 CNCA § 32 et seq. by special event vendors.

8. "**Retail sales tax**" means a compulsory payment levied on the retail sales price on all items of value or goods or services, as further defined herein, for the support of the government of

Cherokee Nation.

9. **"Special event"** means an entertainment amusement recreation, or marketing event that occurs at a single location on an irregular basis and at which tangible personal property is sold. **"Special event"** shall include, but not be limited to, gun shows, knife shows, craft shows, antique shows, flea markets, carnivals, bazaars, art shows, and other merchandise displays or exhibits.

10. **"Special event vendor"** means a person making sales of tangible personal property or services taxable under 68 CNCA § 32 et seq. at a special event within this Nation and who is not permitted under 68 CNCA § 32.

11. **"Veteran"** means a person who served in the active military, naval, or air service, Nation Guard or Military Reserve and who was discharged or released under conditions other than dishonorable.

§ 32. Tax levy—Rate

A. There is hereby levied a sales tax of six percent (6%) on the gross receipts or gross proceeds of all items of value or goods or services bought, sold, rented, leased or exchanged, or any combination thereof on all transactions on, through, by or with any business enterprise which is located on tribal lands. Exempt from this tax are sales to Oklahoma public schools, and to certain non-profits. Also, exempt from this tax are sales of tangible personal property or services to veterans who are enrolled citizens of Cherokee Nation who have been honorably discharged from active service in any branch of the Armed Forces of the United States, National Guard, or Military Reserve and those veterans who have been certified by the United States Department of Veterans Affairs or its successor to be in receipt of disability compensation at the one-hundred-percent rate and the disability shall be permanent and have been sustained through military action or accident or resulting from disease contracted while in such active service; provided, sales for the benefit of the person to a spouse of the eligible person or to a member of the household in which the eligible person resides and who is authorized to make purchases on the person's behalf, when such person is not present at the sale, shall also be exempt for purposes of this paragraph.

B. The Commission is hereby directed to make such assessments effective upon the first full month following the effective date as defined in LA 01-01, Section 21-1-5 of and continuing monthly thereafter.

§ 33. Retail sales licensing

Every retail business enterprise must apply for and receive from the Commission a retail sales license prior to establishing any place of business or retail outlet for the sale of products on restricted tribal lands. Forms for such application and license shall be provided by the Commission. Retail business enterprises operating on restricted tribal lands as of the effective date as defined in LA 01-90, Section 21-1-5 shall apply for a license.

§ 34. Retail sales license

The retail sales license shall be valid for one (1) calendar year from the date of issue and shall be nontransferable and nonassignable. A separate license shall be required for each separate location at which a retailer may establish a place of business or retail outlet. The license shall be conspicuously posted in a public area in each such place of business or retail outlet. A license fee of Twenty Dollars (\$20.00) shall be paid for each new or renewal license issued.

§ 35. Application for special event permit

A. Application. Every promoter or organizer of a special event shall file an application for a special event permit with the Cherokee Nation Tax Commission at least twenty (20) days before the beginning of the special event. If more than one special event is to be held at the same location during a single calendar year, all may be included in one (1) application, and a separate permit will be issued for each event. Each permit will include the dates of the event to be held, and must be prominently displayed at the site of the event for its duration. If an applicant wishes to have permits issued for additional events after an application has been previously submitted, another supplemental application must be filed for the additional events. The application form for a special event permit may be obtained from the Revenue and Taxation Dept., Cherokee Nation Tax Commission, P.O. Box 948 Tahlequah, OK 74464.

B. Fee. There is a fee of One Hundred Dollars (\$100.00) for each application filed, which must be remitted with the application.

C. Tax. A flat fee will be the responsibility of the promoter or organizer which will be assessed for each special event in lieu of tribal sales tax and will be determined by the Cherokee Nation Tax Commission.

D. Promoter or organizer to distribute vendors' reporting forms. Special event promoters and organizations are required to provide sales report forms to special event vendors that will be selling tangible personal property and services at the event.

E. List of vendors. Within fifteen (15) days following the conclusion of the special event, the organizer or promoter shall also submit a list of vendors at each event that hold a valid sales tax permit issued under 68 CNCA § 33. The list shall include the vendor's name, address, telephone number and sales tax permit number.

F. Failure to comply. Failure by the promoter to comply with the requirements of this section or failure by vendors of the promoter's previous special events to comply with the provisions of subsection (B) of this section shall be subject to penalty and interest.

G. Penalty and interest. If any amount of tax imposed by this code is not paid before the same becomes delinquent, interest at the rate of ten percent (10%) per month until payment of the tax, shall be calculated and collected as part of the delinquent tax. Interest may not be waived.

CHAPTER 4

TOBACCO TAX

§ 41. Definitions

For the purposes of this chapter:

1. "**Cigarette**" means all rolled tobacco or any substitute therefore, wrapped in paper or any substitute therefor and weighing not to exceed three (3) pounds per thousand (1,000) cigarettes.
2. "**Consumer**" means any person who received or comes into possession of cigarettes or tobacco products for the purpose of consuming or otherwise disposing of them in any way other than an exchange for value.
3. "**Contraband**" means any cigarettes, tobacco or related products upon which all applicable Cherokee Nation taxes have not been paid.
4. "**Decal**" means a picture, design, or label made to be transferred (as to glass) from specially prepared paper.
5. "**Firmly affixed**" means permanently attached, directly to the device, using the adhesive provided on the decal and does not include placing decal on the device using any other object, surface, or separate adhesive strip or apparatus.
6. "**Permit**" or "**license**" means a written warrant or license granted by the Commission.
7. "**Retailer**" means any person who comes into possession of cigarettes or tobacco products for the purpose of selling or who sells them at retail, any person not coming with the definition of a wholesaler having possession of more than one thousand (1,000) individual cigarettes, five hundred (500) individual cigars or more than two (2) pounds of other tobacco products, and any person operating one, two, or three vending machines.
8. "**Sale**" or "**sales**" means all sales, barters, exchanges or other transfers of ownership of cigarettes or tobacco products from one person to another, or the use or consumption occurring in Cherokee country in the first instance, of cigarettes or tobacco products from outside Cherokee country, upon which the tax imposed by this chapter has not been placed or paid.
9. "**Stamp**" means the stamp or stamps produced by the Commission by which the tax levied hereunder is paid.
10. "**Tobacco**" means either cigarettes or tobacco products.
11. "**Tobacco product**" means any smokable product of any species of the tobacco plant, including smoking in pipes or rolling into cigarettes, any roll of tobacco for smoking irrespective of size or shape or adulteration which has a wrapper made chiefly of tobacco and includes but is

not limited to those items commonly known as cigars, cheroots, or stogies, and any articles or products made from tobacco or any substitute therefore except cigarettes, and including chewing tobacco of any description and snuff.

12. **"Use"** means the exercise of any right or power over cigarettes or tobacco products incident to the ownership thereof except sales of cigarettes or tobacco products in the regular course of business.

13. **"Vending machines"** or **"machine"** means any coin-operated machine that dispenses a product in exchange for money and operates unattended, except for refills and repairs.

14. **"Wholesaler"** means any jobber or person who is organized and existing or doing business primarily to sell cigarettes or tobacco products to and render services to retailers and who makes such sales or renders such services to retailers located in Cherokee country; provided, that, at least seventy-five percent (75%) of the entire amount of gross sales occurring in Cherokee country are made at wholesale. Irrespective of the foregoing requirements, any jobber or person who is recognized and licensed as a wholesaler in the jurisdiction wherein said jobber or person resides, is incorporated, or has its principal place of business shall be a wholesaler as defined by this chapter, and any operator of four (4) or more cigarette vending machines shall be a wholesaler as defined by this chapter.

§ 42. Tax on cigarettes

There is hereby levied upon the sale, use, gift, possession or consumption of cigarettes occurring in Cherokee country a tax which shall be assessed at the rate established by the Cherokee Nation/State of Oklahoma Tobacco Tax Compact, as amended or superseded by agreement of both parties.

§ 43. Tax on tobacco products

There is hereby levied upon the sale, use, gift, possession, or consumption of tobacco product occurring in Cherokee country a tax which shall be assessed at the rate established by the Cherokee Nation/State of Oklahoma Tobacco Tax Compact, as amended or superseded by agreement of both parties.

§ 44. Tax paid once

Such taxes pursuant to 68 CNCA §§ 42 and 43 shall be paid only once on any cigarettes or tobacco products sold, used, received, or possessed in Cherokee country. Cigarettes and tobacco products, on which taxes pursuant to 68 CNCA §§ 42 and 43 have been paid, are exempt from the taxes imposed by 68 CNCA § 32.

§ 45. Evidence of tax

Payment of the taxes imposed by this chapter may be evidenced by stamps applied to each taxable

package containing tobacco which shall be furnished by and purchased from the Commission or by an impression of such stamp by use of a metering device approved by the Commission, or by invoice and receipt, or certification by wholesalers who have collected tax as determined by the Commission.

§ 46. Impact of tax

The impact of the taxes imposed by this chapter is declared to be on the consumer, user, or possessor and when such tax is paid by any other person that payment shall be considered an advance payment and shall be added to the price to be recovered from the ultimate user, possessor, or consumer. Every wholesaler who has paid such taxes shall show, and every retailer who has paid such taxes may show, the amount of such taxes as a separate item on any invoices which they may issue.

§ 47. Payment of tax

A. Every wholesaler who shall operate in Cherokee country a warehouse, supply house, storage house, truck or other point from which distribution of cigarettes or tobacco products to retailers or vending machines will be made shall, upon withdrawal from storage and prior to placing in a vending machine or making any sale, distribution, or transfer of possession or ownership of any such cigarettes or tobacco products, cause the same to have affixed thereto such stamp or stamps as are required by the Commission and pay the proper tax as required by the code.

B. Every retailer who comes into possession or ownership of any cigarettes or tobacco products from any source which does not have affixed thereto the proper stamps, shall within seventy-two (72) hours of receipt thereof excluding Sundays and legal holidays and prior to making any sale or distribution for consumption, cause the same to have affixed thereto such stamp or stamps as are required by the Commission and pay the proper tax as required by this code.

C. Every consumer who shall come into possession or ownership of cigarettes or tobacco products from any source which does not have affixed thereto the proper stamp or stamps shall within seventy-two (72) hours of receipt thereof excluding Sundays and legal holidays and prior to the consumption, gift, or other use thereof cause the same to have affixed thereto such stamp or stamps as are required by the Commission and pay the proper tax as required by this code.

§ 48. Exclusions from taxation

A. Notwithstanding the provision of 68 CNCA § 47(C) or any other provision of law, any natural person who shall come into possession or ownership of cigarettes or tobacco products outside Cherokee country for personal use and consumption only, and upon which is affixed evidence showing that any taxes imposed by the jurisdiction from which said cigarettes or tobacco products were acquired to have been paid shall have exempted from payment of taxes pursuant to this chapter the following amounts of each of the following in possession and/or ownership at any one time:

1. Cigarettes—one thousand (1,000) individual cigarettes;
2. Cigars—five hundred (500) individual cigars;
3. Other tobacco products—no more than two (2) pounds total.

B. Notwithstanding the provisions of 68 CNCA § 47(C) or any other provision of law, possession, gift, or use of noncommercial, privately produced tobacco for religious or ceremonial use shall be exempt from taxation; provided, however, that if such tobacco is sold, such sale shall be prima facie evidence that the tobacco is not intended for religious or ceremonial use.

§ 49. Unstamped tobacco contraband

A. Any cigarettes or tobacco products found in the custody or control of any person upon which a tax stamp is required to have been placed which does not bear a proper tax stamp or have other evidence of the proper tax having been paid as required by this code and any vehicles or tangible personal property including vending machines used in their transportation, storage, consumption, or concealment are hereby declared to be contraband and subject to seizure, forfeiture and sale. The Commission may seize contraband, sell contraband and forward proceeds to Cherokee Nation.

B. The forfeiture provisions of this section with regard to vehicles and other personal property shall apply only to persons in possession of cigarettes or tobacco products with the intent to sell, barter, give away, or exchange the same for value; provided, that possession of more than one thousand (1,000) individual cigarettes or five hundred (500) individual cigars, or two (2) pounds of tobacco products shall create rebuttable presumption and be prima facie evidence that such cigars, cigarettes, or tobacco products are possessed with the intent to sell, barter, give away, or exchange the same for value.

C. Any cigarettes or tobacco products upon which a tax stamp is affixed found in the custody or control of an unlicensed wholesaler or unlicensed retailer is hereby declared contraband and is subject to seizure, forfeiture and sale.

D. Cigarettes and tobacco products held by, in the custody of, or under the control of any tobacco retailer who has not applied for and received a valid Cherokee Nation Tax Commission, or state of Oklahoma tobacco retailer license, within the fourteen (14) county area of Cherokee Nation at any location which does not constitute "Indian country" as defined by federal law, are hereby declared contraband and are subject to seizure, forfeiture and sale.

§ 50. Records

The Commission shall promulgate rules requiring that all wholesalers and retailers of tobacco within the tribal jurisdiction maintain for not less than three (3) years complete and adequate records, including invoices, of all tobacco received and sold or otherwise disposed of, and tax stamps purchased paid. The Commission may inspect said records at any time to determine

whether sufficient stamps have been purchased to account for all tobacco received and sold or otherwise disposed of by said wholesaler or retailer, and whether the proper tax has been paid.

§ 51. Reports

Every wholesaler or retailer of cigarettes or tobacco products shall submit monthly reports to the Commission on forms prescribed and furnished by the Commission disclosing the opening and closing inventories of unstamped tobacco; stamped tobacco; tobacco stamps; tax paid; purchases of tobacco including the invoice number, name and address of seller, date and amount of each type of tobacco sold and such other information pertinent to their business done in Cherokee country as the Commission shall require; and sales of tobacco; including, if sold for resale, invoice number, name and address of buyer, date and amount of each type of tobacco sold and such other information pertinent to their business done in Cherokee country as the Commission shall require.

§ 52. Wholesale and retail stocks to be separate

Every person who is both a wholesaler and retailer of cigarettes or tobacco products shall keep separate records, make separate reports, and keep all stock of tobacco separated and identifiable for the wholesale and retail portions of such person's business.

§ 53. Repealed by LA 05–06, eff. April 1, 2006

§ 54. Collection of tax

Wholesalers may only sell cigarettes and tobacco products to retailers licensed by the Commission and retailers may only buy cigarettes and tobacco products from entities licensed by the Commission. The Commission may require the wholesaler or retailer to collect and remit tax to the Commission. Such tax collected and remitted shall be deemed an advance payment of the tax for the credit of the retailer. There is hereby created a fund not to exceed One Million Dollars (\$1,000,000.00), to make loans available to tobacco retailers that are adversely and wrongfully affected by the Oklahoma Tax Commission emergency rules passed on February 22, 2006. The Nation will be repaid for such loans through the rebate amount that the Oklahoma Tax Commission sends to the Nation. The appropriate staff of the Legislative and Executive Branches are hereby directed to produce procedures for the fair and equitable allocation of these funds.

§ 55. Wholesaler licensing

Every wholesaler of cigarettes or tobacco products must apply and receive from the Commission a tobacco wholesaler license prior to establishing any place of business, warehouse, or wholesale outlet for the sale of cigarettes or tobacco products in Cherokee country. Forms for such application and license shall be provided by the Commission. Wholesalers of cigarettes or tobacco products operating in Cherokee country as of the effective date as defined in LA 01–90, Section 21–1–5 shall apply for a tobacco wholesaler license within one (1) month of such effective date.

§ 56. Tobacco wholesaler license

The tobacco wholesaler license shall be valid for one (1) calendar year from the date of issue and shall be nontransferable and nonassignable. A separate license shall be required for each separate location at which a wholesaler may establish a place of business, warehouse, or wholesale outlet. The license shall be conspicuously posted in a public area in each such place of business, warehouse, or wholesale outlet. A license fee of Twenty Dollars (\$20.00) shall be paid for each new or renewal license issued.

§ 57. Retailer licensing

Every retailer of cigarettes or tobacco products must apply for and receive from the Commission a tobacco retailer license prior to establishing any place of business or retail outlet for the sale of cigarettes or tobacco products in Cherokee country. The Commission may issue retailer licenses only for places of business or retail outlets located on individual restricted land, individual trust land or tribal land. Forms for such application and license shall be provided by the Commission. Retailers of cigarettes or tobacco product operating in Cherokee country as of the effective date as defined in LA 01-90, Section 21-1-5 shall apply for a tobacco retailer license within one (1) month of such effective date.

§ 58. Tobacco retailer license

The tobacco retailer license shall be valid for one (1) calendar year from the date of issue and shall be nontransferable and nonassignable. A separate license shall be required for each separate location at which a retailer may establish a place of business or retail outlet. The license shall be conspicuously posted in a public area in each such place of business or retail outlet. A license fee of Twenty Dollars (\$20.00) shall be paid for each new or renewal license issued.

§ 59. Other unlawful acts

It shall be unlawful for any retailer to sell cigarettes and tobacco products in Cherokee country without first applying for and receiving a tobacco retailer license at any location constituting Cherokee country. It shall further be unlawful for any retailer to sell cigarettes and tobacco products within the fourteen (14) county area of Cherokee Nation at any location which does not constitute "Indian country," as defined by federal law, without first affixing tax stamps or paying tax as required by the State of Oklahoma and/or without first applying for and receiving a tobacco retailer license from the State of Oklahoma. Failure to conspicuously post a valid Cherokee Nation Tax Commission, or state tobacco retailer license at the location establishes a presumption of violation of this section.

§ 60. Vending machine permits

A. Every wholesaler or retailer of cigarettes or tobacco products must apply for and receive from the Commission a tobacco vending machine permit prior to operating any vending machine in Cherokee country. The Commission may issue vending machine licenses only for vending machines located on individual restricted land, individual trust land or tribal land. Forms for such

application and permits shall be provided by the Commission. Wholesalers or retailers of cigarettes or tobacco products operating any vending machines in Cherokee country as of the effective date as defined in LA 01-90, Section 21-1-5 shall apply for a tobacco vending machine permit within one (1) month of such effective date.

B. The vending machine permit shall be valid for one (1) calendar year from the date of issue and shall be nontransferable and nonassignable. A separate permit shall be required for each separate vending machine. The permit shall be attached to the vending machine in such a manner as to be clearly visible to the public and to persons purchasing cigarettes or tobacco products therefrom. A fee of Ten Dollars (\$10.00) shall be paid for each new or renewal permit issued.

C. Any operating vending machine from which cigarettes or tobacco products may be purchased not having a tobacco vending machine permit attached thereto is contraband in Cherokee country and is subject to seizure and sale as is provided by law.

D. Every owner(s) of any vending machine or machines must apply for and receive from the Commission a vending machine permit prior to operating any vending machine in Cherokee country. The Commission may issue vending machine permits only for vending machines located on individual restricted land, individual trust land or tribal land. The Commission shall provide forms for such application and permits. Owner(s) of any vending machines operated in Cherokee country as of the effective date as defined in LA 46-02, Section 16 shall apply for a vending machine permit within ninety (90) days after approval of this act.

E. The vending machine permit shall be valid for one (1) calendar year from the date of issue and shall be nontransferable and nonassignable. A separate permit shall be required for each separate vending machine. The permit shall be firmly affixed to the vending machine in such a manner as to be clearly visible to the public and to persons purchasing vending machine products therefrom. Any operating vending machine from which any kind of product may be purchased not having a vending machine permit attached thereto is contraband in Cherokee country and is subject to seizure and sale as is provided by law.

F. This act shall not apply to any machine operated for legal gaming purposes at a gaming establishment decaled by the Cherokee Nation Gaming Commission, to any machine kept at a regular place of business of distributors or manufactures for sale or lease without being operated.

G. The license tax levied by this enactment shall be in addition to all other taxes levied by law.

H. When such machine shall have been seized or possession taken to prevent further unlawful use thereof, the same shall remain under the exclusive jurisdiction of the Cherokee Nation Tax Commission upon payment of the proper tax, penalty and costs, or until the same is disposed of under applicable law for the collection of the taxes due, together with penalties and costs.

I. It shall be the responsibility of the owner(s) to purchase a permit for each vending machine that will be placed in a place of business located within the Cherokee Nation 14-county jurisdictional boundaries.

§ 61. Civil fine for violations

The Commission may impose a fine for each violation of possession, control or sale of contraband cigarettes or tobacco in an amount equal to the retail value of the contraband cigarettes. This fine may include cigarettes or tobacco sold and not in the possession of the violator. In addition, the Commission may impose a fine, not to exceed Ten Thousand Dollars (\$10,000.00) for retail possession, control, transportation or sale of cigarettes and tobacco without a tobacco wholesale or retail license issued by the Commission.

§ 62. Criminal penalty

It is a crime to possess contraband cigarettes as defined in 68 CNCA § 49(A).

CHAPTER 5

CHEROKEE NATION/STATE TOBACCO TAX COMPACT

§ 71. Short title

This Act shall be known and may be cited as the "Cherokee Nation/State Tobacco Tax Compact Act of 2008."

**TOBACCO TAX COMPACT BETWEEN THE STATE OF OKLAHOMA AND THE
CHEROKEE NATION**

August 2008

WHEREAS, the CHEROKEE Nation (hereinafter referred to as the "Nation"), is a federally-recognized Indian Tribe with inherent sovereign powers of self-government predating the formation of the United States;

WHEREAS, the State of Oklahoma (hereinafter referred to as "State") is an independent sovereign state within the United States of America possessed of full powers of state government;

WHEREAS, the Nation and its members are in possession of various tracts of land in its jurisdiction within the state, known and commonly referred to as "Indian Country";

WHEREAS, federal Indian law recognizes that tribal jurisdiction is extant in Indian Country regarding the rights of Indian Nations to pass their own laws and be governed by them, including the right to sell cigarettes and other tobacco products to tribal members free from State taxation; and

WHEREAS, the State recognizes the financial, cultural, educational and economic contributions of the Nation to the State and its members, and the Nation recognizes the need to develop and

maintain good Tribal/State governmental relations.

NOW, THEREFORE, the Cherokee Nation, by and through its Principal Chief, Chad Smith, and the State of Oklahoma, by and through its Governor, Brad Henry, do hereby enter into this Compact for the mutual benefit of the Nation and the State, to-wit:

1. Regardless of any subsequent enactment by the State of any laws or administrative rules regarding the rate of taxation on the sale of cigarettes and other tobacco products, only the provisions of this Compact shall govern the minimum Tribal rate of taxation and payment to the State on the retail sales of cigarettes and other tobacco products in the Nation's Indian Country as defined by federal law, including 18 U.S.C. § 1151, hereinafter referred to as "Compact Jurisdiction", when said retail sales are made by (a) businesses owned by the Nation, (b) licensees who are members of the Nation, or (c) businesses licensed by the Nation in which the majority interest is owned by the Nation or members of the Nation, provided that nothing herein shall prohibit the Nation from enacting any laws and/or regulations regarding the retail sale, use or possession of cigarettes and other tobacco products in the Nation's Jurisdiction that would not be in conflict with the provisions set forth herein. The entities or groups described in clauses (a), (b), and (c) of this paragraph shall be collectively referred to as the "Retailers" or individually as a "Retailer." Nothing contained herein shall impair the ability of the Oklahoma Tax Commission to regulate cigarette manufacturers, importers, wholesalers, distributors, distributing agents, jobbers, or warehousemen ("Wholesalers"), provided such regulation shall not interfere with the rights of the Nation or its Retailers under this Compact.

2. (a). The Nation agrees to require as a condition to licensing and continuation of licensing that all Retailers comply with the provisions of this Compact

(b). The Nation shall furnish to the State the following information with respect to each of the Retailers unless unavailable to the Nation:

1. The owner's name(s) and address(es);

2. A list of any tax-related permits held;

3. For any Tobacco business of the Nation not in operation on July 1, 2008, documentation or certification that business premises are located within the Compact Jurisdiction.

4. The location of offices and business records; and

5. A copy of any reports by any Wholesalers or Retailers to the Nation documenting all sales of cigarettes and other tobacco products within the Compact Jurisdiction;

6. The current list of all Wholesalers providing Retailers within the Compact Jurisdiction with cigarettes or tobacco products; and

7. Any complaints, audit reports or concluded investigation findings related to the wholesale or

retail sale of cigarettes or tobacco products within the Compact Jurisdiction.

(c). The State agrees to provide the following information from the Oklahoma Tax Commission to the Nation's Tax Commission unless unavailable to the Oklahoma Tax Commission:

1. The name and address of Wholesalers licensed by the State;
2. The number and dollar amount of Compact stamps purchased by Wholesalers for sale to Retailers;
3. A copy of any reports by Wholesalers or Retailers to the State documenting wholesale or retail sales within the Compact Jurisdiction;
4. A current list of all Wholesalers providing the Retailers with cigarettes or tobacco products;
5. Any complaints, audit reports or concluded investigation findings related to the wholesale or retail sale of cigarettes or tobacco products within the Compact Jurisdiction; and

The State and Nation stipulate and agree, for the sole purposes of the provisions of paragraph 2(c) hereof, the Nation is and shall be considered by the State as a "foreign country" for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205C.7. and the Nation is and shall be considered by the State as an "international authority" for purposes of 68 O.S. § 312J.

The State and Nation further stipulate and agree, for the sole purposes of the provisions of paragraph 2(c) hereof, this Compact shall constitute a "contract" between the Nation and the Oklahoma Tax Commission for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205.C.16.

The Nation and the State, in consideration hereof, stipulate and agree that any information received from the records and files of the Oklahoma Tax Commission or the Cherokee Nation Tax Commission will be treated and considered as confidential and privileged, to be used for the Nation's or the State's purposes in the administration and collection of the Tobacco Payment and the Tribal Tax provided herein which are the subject of this Compact, and not be disclosed to any third party, including, but not limited to the Nation's Retailers and any and all manufacturers, distributors and wholesalers of cigarettes and other tobacco products. A disclosure to a governmental agency for regulatory or enforcement purposes, in a court proceeding or arbitration to enforce the provisions of this Compact or to a court in response to a subpoena or other court order, shall not constitute a breach of this paragraph.

3. In exchange for the Nation's imposition of the Tribal Tax described in Paragraph 4 below and for the other obligations agreed to by the Nation herein, the State agrees to accept a reduced excise tax payment in lieu of the excise and all other taxes generally imposed upon cigarettes and tobacco products by Title 68 of the Oklahoma Statutes ("Tobacco Payment") for all sales of cigarettes and tobacco products by Retailers within the Compact jurisdiction, without reference to the Tribal membership or non-membership status of the ultimate purchasing consumer, in the amount of fifty

percent (50%) of all applicable State taxes on cigarettes and other tobacco products. Provided, however, for any Retailer located within twenty (20) miles of the state line between Oklahoma and Kansas, Oklahoma and Arkansas or Oklahoma and Missouri, in existence and doing business as of January 1, 2009, ("Border Retailer") the Tobacco Payment shall be in the amount of twenty-five percent (25%) of all applicable State taxes on cigarettes and other tobacco products ("Border Rate") until such time as the State of Kansas, the State of Arkansas or the State of Missouri increases its tax on tobacco products to a rate at or above the rate currently in effect within the State. When such increase becomes effective in any such state, the Border rate provided herein shall no longer apply to the Border Retailers within twenty (20) miles of such state and the Border Retailer shall pay the Tobacco Payment provided for Retailers that are not Border Retailers. The State agrees that an amount equal to \$2.00 per carton of cigarettes of the Tobacco Payment will be used by the State for the purpose of health care including but not limited to cancer and diabetes treatment and prevention in the Tulsa and Northeast Oklahoma area. The parties agree that the Tobacco Payment is, for purposes of the Master Settlement Agreement, a reduction in State excise taxes and all other taxes generally applicable to the sale of cigarettes and tobacco products.

The Nation agrees that the State may collect the Tobacco Payment directly from the Wholesaler, and that the Wholesaler must collect the Tobacco Payment directly from the Retailers. The Nation agrees to require the Retailers to: (A) pay the Tobacco Payment, (B) pass both the Tobacco Payment and the Tribal Tax on to the ultimate consumer in the retail price of the cigarettes or tobacco products and (C) refrain from selling, distributing, transporting, soliciting sales of or in any matter dealing with cigarette brands and products of manufacturers who do not fully comply with the requirements of 37 O.S. §§ 600.21–600.23 and only deal in tobacco products of complying manufacturers, as evidenced by their names and list of brands as maintained on the Oklahoma Attorney General's website. If any Retailer purchases cigarettes or tobacco products from an unlicensed Wholesaler or fails to comply with any of its obligations under this paragraph, the Nation shall take necessary enforcement measures to ensure compliance with this paragraph by the Retailer, provided that if the Retailer continues to violate any obligations of this paragraph ninety (90) days following notification to the Nation and Retailer from the State of such violation the State may remove such Retailer from the list of Retailers entitled to benefits under this Compact until such time as the Retailer is in compliance with its obligations hereunder, when the Retailer shall automatically be returned to the list.

If the State amends any applicable State tax on cigarettes or other tobacco products in effect as of January 1, 2008, the Nation shall have the right to cancel this Compact upon thirty days' prior written notice to the State or may elect to pay a Tobacco Payment of 50% of all State taxes generally applicable to cigarettes and tobacco products provided the Nation continues to require the Tribal Tax set forth in paragraph 4 below.

4. The State authorizes, and the Nation requires, all Wholesalers licensed by the State and selling cigarettes or tobacco products to any Retailer to: (a) collect a "Tribal Tax" on all cigarettes and tobacco products purchased by the Nation or a Retailer for resale in the Compact Jurisdiction, without reference to the membership or non-membership status of the purchasing consumer, in the amount of \$1.50 per carton of ten (10) packs of twenty (20) cigarettes, \$1.88 per carton of ten (10) packs of twenty-five (25) cigarettes, and its "Border Retailers" in the amount of \$4.07 per carton of

ten (10) packs of twenty (20) cigarettes, \$5.10 per carton of ten (10) packs of twenty-five (25) cigarettes., and on other tobacco products in the amount of fourteen and six tenths percent (14.6%) of all applicable State taxes now in effect (b) remit the Tribal Tax to the Nation's Tax Commission on the same schedule as the payments described in Paragraph 3 above are made to the State; and (c) provide sufficient documentation to the State and to the Nation's Tax Commission to demonstrate that the appropriate Tribal Tax and Tobacco Payment have been remitted. The Nation may rebate to Border Retailers a payment reflecting lost profit from the Tribal Tax. If any Wholesaler selling cigarettes or tobacco products to a Retailer fails to properly collect and remit the Tribal Tax described in this paragraph, the State and Nation shall take necessary enforcement measures to ensure compliance with this paragraph by the Wholesaler.

The Nation may at its discretion, designate an additional tribal tax to be collected in the same manner, whose payment may be reflected by the use of either a single joint tax stamp or a second tax stamp supplied by the Nation. Should the Nation designate a higher Tribal Tax rate to be collected by the Wholesalers, the Nation must, thirty (30) days prior to its implementation, deliver written notice of its intent to implement such a tax, together with notice of its effective date to the Oklahoma Tax Commission. The Nation shall be required to bear the cost of producing any stamp that might be required should it elect a higher Tribal Tax. Nothing herein shall affect or impair the Nation's inherent authority to impose other taxes on the sale, purchase, or possession of cigarettes or tobacco products under Tribal law.

5. The Tribal Tax provided for in paragraph 4 above and the Tobacco Payment provided in Paragraph 3 above shall be collected, in advance, by the Wholesaler selling cigarettes and other tobacco products to the Retailers for resale to consumers in the Compact Jurisdiction and shall be collected at the time of the wholesale transaction. The Nation agrees that the Tribal Tax and the Tobacco Payment shall be included in the retail price and passed on to consumers, and will require the Retailers to do so. Pursuant to the terms of purchase of stamps from the State, each month the Wholesaler shall remit the Tobacco Payment to the State of Oklahoma Tax Commission and the Tribal Tax to the Nation's Tax Commission.

6. Any business, not a Retailer operating within the Compact Jurisdiction and engaging in the sale of cigarettes and other tobacco products, shall not be subject to the Compact and its provisions and shall be governed by applicable Oklahoma and Tribal law. The State may charge such retailers the excise tax imposed on cigarettes and other tobacco products provided by Title 68 of the Oklahoma Statutes.

7. The Nation agrees that it will require the Retailers to purchase cigarettes and other tobacco products only from Wholesalers that are duly licensed by the State of Oklahoma. The Nation preserves its authority to license any Wholesaler located within the Compact Jurisdiction. The Nation agrees that the Tobacco Payment provided for in this Compact applies only to the Retailers' retail sales of cigarettes to the consumer, and the Nation agrees to require its Retailers not to sell or otherwise transfer cigarettes or tobacco products stamped with the tax stamp authorized under this Compact to anyone other than the consumer. Except for transfers between Retailers authorized to sell tobacco products at the Tobacco Payment rate under this Compact, the Nation agrees to prohibit its Retailers from selling or otherwise transferring cigarettes or other tobacco products

stamped with reduced tax stamps to anyone other than the consumer at retail outlets located in the Nation's Compact Jurisdiction, including sales or transfers to other retailers outside the Compact Jurisdiction.

8. Except as otherwise provided herein with respect to any additional Tribal Tax the Nation may impose, all cigarettes sold by the Retailers shall bear a single stamp, verifying that the Tobacco Payment and the Tribal Tax have been paid to the Wholesaler at the time of purchase. Except as otherwise provided herein with respect to any additional Tribal Tax the Nation may impose, the State shall bear all costs relative to the affixing of the tax stamp, unless the parties mutually agree otherwise, and shall require the Wholesaler to affix the required stamp.

9. (a) The parties agree that unstamped cigarettes, counterfeited stamped cigarettes, mutilated stamped cigarettes and cigarettes and tobacco products on which the Tobacco Payment and the Tribal Tax required to be paid pursuant to this Compact have not been paid are contraband and that each party has the right to seize contraband within its respective jurisdiction: the Nation may seize all contraband located within the Compact Jurisdiction; and the State may seize all contraband in the State of Oklahoma, excepting the Compact Jurisdiction.

(b) The State shall exempt all sales of cigarettes and other tobacco products to and by the Nation's Retailers from sales and excise and all other taxes generally imposed by Title 68 of the Oklahoma Statutes in consideration of the agreement by the Nation to require the Retailers to make the aforementioned Tobacco Payment.

10. A. The goal of the parties shall be to resolve all disputes amicably and voluntarily whenever possible. A party asserting noncompliance or seeking an interpretation of this Compact first shall serve written notice on the other party. The notice shall identify the specific Compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and any factual basis for the claim. Representatives of the Nation and state shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute. Any and all disputes arising, whether directly or indirectly, out of the interpretation, performance or enforcement of this Compact, which are not resolved by good faith negotiations within thirty (30) days, shall be determined by the US District Court for the Northern District of Oklahoma, which shall have the sole and exclusive jurisdiction of any and all such disputes. The parties hereto mutually waive any claim of sovereign immunity they might have, including but not limited to, exhaustion of tribal remedies or 11th Amendment immunity, to the extent, and only to the extent, necessary for a determination of rights and liabilities, if any, by the US District Court and the enforcement of that determination upon its becoming a final, non-appealable judgment. This waiver shall not be construed to allow any consequential, punitive, or exemplary damages against either party; neither does this waiver include the allowance of any attorney's fees or costs not specifically articulated elsewhere within this Compact. The parties agree that nothing herein is intended to create a direct right of action against the State of Oklahoma or the Nation by any person or entity not a party hereto through court action, arbitration or otherwise for any matter related to this Compact, its interpretation or performance or nonperformance of the parties hereto, except as otherwise set forth herein, and the limited waiver of sovereign immunity set forth herein shall not extend to any person entity or party other than the State of Oklahoma and the Nation.

B. In the event that the US District Court for the Northern District of Oklahoma declines to accept and exercise jurisdiction of any dispute, then, and only in that event, the following procedures may be invoked:

1. Subject to the limitation set forth in paragraph 2 of this Part, either party may refer a dispute arising under this Compact to arbitration under the rules of the American Arbitration Association (AAA), subject to enforcement or pursuant to review as provided by paragraph 2 of this Part by a federal district court. Notice of demand for arbitration shall be sent in writing to the other party. The remedies available through arbitration are limited to enforcement of the provisions of this Compact and a determination of any liabilities for a breach thereof. The parties consent to the jurisdiction of such arbitration forum and court for such limited purposes and no other, and each waives immunity with respect thereto. The expenses of arbitration shall be borne equally by the parties. The arbitrators must be licensed attorneys. One shall be appointed by the Nation and one by the State. A third shall be appointed by the other two previously selected arbitrators. Once the first arbitrator is selected by the party invoking arbitration, the other party shall have no more than twenty (20) days from receiving written notice of the first party's election to select its arbitrator. Within twenty (20) days of selection of the second arbitrator, the two arbitrators selected by the parties will select the third arbitrator. Neutrality is required of all arbitrators, and shall not be waived as to party selected arbitrators. The expenses of arbitration shall be borne equally by the parties. The arbitration shall be conducted pursuant to the Commercial Arbitration Rules ("CAR") of the American Arbitration Association ("AAA") except those rules relating to administration of the arbitration by AAA, provided that nothing in the CAR or any other rules of the AAA shall be deemed to give State courts jurisdiction over any disputes arising from this Compact. The Arbitrators shall determine the applicable law to construe the relative rights and obligations of the parties. The panel of arbitrators may modify the aforesaid procedures and shall modify the procedures on joint motion of the parties, specify such substitute and/or additional procedures as they may deem necessary.

A party asserting noncompliance or seeking an interpretation of this Compact under this section shall be deemed to have certified that to the best of the party's knowledge, information, and belief, formed after reasonable inquiry, the claim of noncompliance or the request for interpretation of this Compact is warranted and made in good faith and not for any improper purpose, such as to harass or to cause unnecessary delay or the needless incurring of the cost of resolving the dispute. If the dispute is found to have been initiated in violation of this Part, the Arbitrator, upon request or upon his or her own initiative, may impose upon the violating party an appropriate sanction, which may include an award to the other party of its reasonable expenses incurred in having to participate in the arbitration; and

2. Notwithstanding any provision of law, either party to the Compact may bring an action against the other in the US District Court for the Northern District of Oklahoma for the review of any arbitration award under paragraph 1 of this Part pursuant to the Federal Arbitration Act. The decision of the court shall be subject to appeal. Each of the parties hereto waives immunity and consents to suit therein for such limited purposes, and agrees not to raise the Eleventh Amendment to the United States Constitution or comparable defense to the validity of such waiver. Nothing

herein shall be construed to authorize a money judgment other than for damages for failure to comply with an arbitration decision requiring the payment of monies.

11. This agreement shall terminate on June 30, 2013. At the end of said term, this Compact shall continue in full force and effect for consecutive terms of five (5) years, unless either party hereto gives to the other written notice that the Compact shall terminate at the end of the present term provided that such notice is received at least six (6) months prior to said termination. Nothing in this Compact shall prevent the parties by mutual agreement from establishing an earlier or later termination date or otherwise modifying this agreement

12. By entering into this Compact, the Nation does not concede that the laws of the State of Oklahoma, including its tax laws, apply to the Nation or its members regarding activities and conduct within the Compact Jurisdiction.

13. Should another Indian Nation or Tribe become entitled to more favorable Tobacco Payment terms after the execution of this Compact by virtue of execution of a new compact, other than in specifically designated areas along the Kansas, Arkansas or Missouri borders, such more favorable Tobacco Payment terms and any conditions to such Indian Tribe becoming entitled to such more favorable Tobacco Tax Payment terms may be adopted by the Nation upon written notice to the State, and shall be incorporated into this Compact and shall supersede any inconsistent terms within this Compact.

14. Neither party shall be deemed the drafter of this Compact in the event of any action to interpret its terms. Therefore, the rule of construction that in the case of an ambiguity, the ambiguity is construed against the author is not applicable. Furthermore, any rule of construction of ambiguities either in favor of or against a State or Tribal governmental entity is not applicable to this Compact.

15. The parties agree that if any provision in this Compact is found to be unenforceable, the parties shall agree in writing on a mutually acceptable substitute for such provision or agree in writing that no substitute is necessary. By entering into this Compact, the Nation further agrees that all funds received from the Tribal Tax, except for administrative expenses, shall be devoted to economic development, health, welfare, education and other governmental purposes of the Nation. It is further agreed that no such funds shall be used by the Nation, directly or indirectly to purchase tobacco nor shall be remitted or rebated to tobacco retailers, with the exception that the Nation may use the Tribal Tax to provide rebates to Border Retailers negatively impacted by the Tribal Tax rates reflected in this Compact

16. This Compact comprises the entirety of the agreement between the parties hereto. Any and all prior or contemporaneous representations, predictions, warranties or other inducements, however denominated, are merged within the terms of this Compact, and shall not survive its execution. There are no representations, promises, predictions, warranties, inducements or other agreements, however denominated, between the parties other than as set forth herein. This Compact may not be amended or modified except by written agreement, approved and executed by the parties hereto.

17. In consideration for execution of this Compact, the parties hereby fully release each other from

any and all claims that either party may have against the other or their agents, representatives, employees, attorneys, insurers, assigns and successors, tribally licensed Retailers to this date, for any actions associated with failure to collect the appropriate tax on the sale of cigarettes or tobacco products under the terms of any prior Compact between the Nation and the State or applicable State law, and/or any and all other claims that either party may have against the other based upon any prior Compact, including but not limited to, full satisfaction and release of all claims and issues involved in any pending arbitration. In accord with this agreement, the parties will file a joint motion for dismissal with prejudice in those arbitration proceedings.

18. Any notice required hereunder to the State shall be delivered to the Governor of the State of Oklahoma at 2300 N. Lincoln Blvd., Room 212, Oklahoma City, Oklahoma 73105-4890. Any notice to the Nation shall be delivered to the Nation's Principal Chief at P.O. Box 948, Tahlequah, OK 74465, and to the Nation's Tax Commission at P.O. Box 948, Tahlequah, OK 74465. Notice shall be by United States mail, postage prepaid.

19. The Nation agrees to require the Retailers to maintain complete records of all purchases and sales of cigarettes and other tobacco products by brand including information related to payment of both the Tobacco Payment and the Tribal Tax. Such records shall be maintained for a period of five (5) years from the date of any purchase or sale.

20. Nothing in this Compact shall be deemed to authorize the State to regulate the Nation's government, including the Cherokee Nation Tax Commission, or to interfere in any way with the Nation's selection of its governmental officers, including members of the Cherokee Nation Tax Commission. This Compact shall not affect tribal federal or state civil adjudicatory or criminal jurisdiction.

21. The Nation agrees that the Nation and the Nation Retailers will not sell, distribute, transport, solicit sales for, or in any manner deal with cigarette brands and tobacco products of a manufacturer who does not fully comply with the requirements of 37 O.S. §§ 600.21 through 600.23, and will only deal in cigarettes and other tobacco products of complying manufacturers, as evidenced by the placement of the manufacturer's name and its product brands on the list of complying manufacturers and brands maintained on the Oklahoma Attorney General's website.

It is agreed this 3rd day of November, 2008.

Chad Smith,

Principal Chief Chad Smith

Cherokee Nation

ATTEST

Secretary of State

Brad Henry, Governor

State of Oklahoma

CHAPTER 6

LANDFILL USER FEE

§ 101. Short title

This chapter shall be known and may be cited as the Cherokee Nation Landfill Out-of-Nation User Fee.

§ 102. Purpose

It is the purpose of this chapter to impose a certain fee for waste materials generated outside the original territorial jurisdiction of the Cherokee Nation; providing for the fee to be in addition to any other charges; providing for the fee to be deposited in a certain account; and providing for a statement of purpose for the fees collected.

§ 103. Definitions

As used in this chapter, unless the context otherwise requires:

1. **"Disposers"** means any person, company, business or organization that disposes of waste.
2. **"Fee"** means Out-of-Nation user fee.
3. **"Landfill"** means the Cherokee Nation Landfill.
4. **"Original territorial jurisdiction"** means all land within the fourteen (14) county area of northeastern Oklahoma as defined by the treaties of 1828, 1833 and 1835 and the Patent of 1838 between the United States of America and Cherokee Nation.

§ 104. Assessment

A. There is imposed and assessed a One Dollar and Fifty Cent (\$1.50) per ton fee for waste disposed of at the Cherokee Nation Landfill where the said waste is generated from outside the original territorial jurisdiction of Cherokee Nation.

B. The fee assessed by this section is to be charged against waste producers using the landfill in addition to any charges specified in contract or elsewhere.

§ 105. Reports—Provision for deposit of fees—Use of fees collected

A. The Cherokee Nation Department of Natural Resources shall prepare monthly reports indicating:

1. the tonnage of waste materials received for disposal.
2. the amount of fees assessed or collected pursuant to this chapter.
3. expenditure of fees.

B. All fees received pursuant to this act shall be credited to a separate account in the landfill operating budget.

C. The fees shall be expended for purposes of maintaining the landfill operations in an environmentally-protective manner and for the development of technical assistance programs, educational curricula, recycling and litter prevention and other programs that promote the environmental protection, health, safety and welfare of the citizens of Cherokee Nation.

D. All out-of-Nation user fees collected prior to the effective date of this chapter shall be deposited and expended in the same manner as those fees hereinafter collected.

CHAPTER 7

CONTROLLED DANGEROUS SUBSTANCE TAX

§ 450.1. Definitions

As used in 68 CNCA § 450.2 et seq.:

1. "**Commission**" means the Cherokee Nation Tax Commission.
2. "**Controlled dangerous substance**" means a drug, substance, or immediate precursor specified in Schedules I through V of the Uniform Controlled Dangerous Substances Act which is held, possessed, transported, transferred, sold or offered to be sold in violation of the laws of this state.
3. "**Dealer**" means a person who in violation of the Uniform Controlled Dangerous Substances Act manufactures, distributes, produces, ships, transports, or imports into Cherokee Nation or in any manner acquires or possess more than forty-two and one-half (42 1/2) grams of marihuana, or seven (7) or more grams of any controlled dangerous substance other than marihuana, or ten (10) or more dosage units of any controlled dangerous substance other than marihuana which is not sold

by weight. A quantity of a controlled dangerous substance is measured by the weight of the substance whether pure, impure or dilute, or by dosage units when the controlled dangerous substance is not sold by weight, in the possession of the dealer. A quantity of a controlled dangerous substance is dilute if it consists of a detectable quantity of pure controlled dangerous substance and any excipients or fillers.

§ 450.2. Levy of tax—Calculation

There shall be levied, assessed, collected, and paid in respect to controlled dangerous substances, a tax in the following amounts:

1. On each gram of marihuana, or each portion of a gram, Three Dollars and Fifty Cents (\$3.50).
2. On each gram or portion of a gram of a controlled dangerous substance, other than marihuana, Two Hundred Dollars (\$200.00).
3. On each fifty (50) dosage units or portion thereof, of a controlled dangerous substance, that is not sold by weight, other than marihuana, One Thousand Dollars (\$1,000.00).

For the purpose of calculating the tax pursuant to this section, a quantity of marihuana or other controlled dangerous substance is measured by the weight of the substance whether pure, impure or dilute, or by dosage units when the substance is not sold by weight, in the possession of the dealer. A quantity of a controlled dangerous substance is dilute if it consists of a detectable quantity of pure controlled dangerous substance and any excipients or fillers.

§ 450.3. Manner of payment of tax—Intent and purpose of act

A. The tax levied by 68 CNCA § 450.2 shall be paid by affixing stamps in the manner and at the time herein set forth.

When a dealer purchases, acquires, transports, or imports into this state a controlled dangerous substance on which a tax is levied by 68 CNCA § 450.2, the dealer shall have the stamp affixed on the controlled dangerous substance immediately after receiving the controlled dangerous substance. Each stamp may be used only once.

Taxes imposed upon controlled dangerous substances by 68 CNCA § 450.2 are due and payable immediately upon acquisition or possession of a controlled dangerous substance in this state by a dealer.

B. It is the intent and purpose of this act that no dealer shall possess any controlled dangerous substance upon which a tax is imposed by 68 CNCA § 450.2 unless the tax has been paid on the controlled dangerous substance as evidenced by a stamp issued by the Commission.

§ 450.4. Rules and regulations—Purchase of stamps—Reporting forms—Use of stamps in administrative, civil and criminal proceedings

A. The Commission shall promulgate rules and regulations for a uniform system of providing, affixing, and displaying official stamps for any controlled dangerous substance on which the tax levied in 68 CNCA § 450.2 is imposed.

B. The official stamps to be affixed to all controlled dangerous substances shall be purchased from the commission. The dealer purchasing said stamps shall pay in cash one hundred percent (100%) of face value for each stamp at the time of purchase. The Commission shall make the stamps in denominations of Ten Dollars (\$10.00).

C. The Commission shall provide reporting forms for the reporting and payment of the taxes levied by 68 CNCA § 450.2. Dealers are not required to give their name, address, social security number, or other identifying information on the forms. Neither the Commission nor any public employee may reveal facts contained in a report required by this section, nor can any information contained in such a report be used against the dealer in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due pursuant to this act from the dealer making the report.

D. A stamp denoting payment of the tax levied by 68 CNCA § 450.2 shall not be used against the taxpayer in a criminal proceeding, except that the stamp may be used against the taxpayer in connection with the administration or civil or criminal enforcement of the tax levied by 68 CNCA § 450.2.

§ 450.5. Immediate assessment and collection of tax—Delinquency—Penalties

A. The taxable period of the tax levied by 68 CNCA § 450.2 for any dealer not possessing valid stamps showing that the tax has been paid shall be declared terminated by the Commission. The Commission shall immediately assess the tax and applicable penalties from any information in its possession, notify the taxpayer, and demand immediate payment thereof. In the event of any failure or refusal to pay the tax and penalties immediately by the taxpayer, the tax shall become delinquent and the Commission shall proceed to collect such tax and penalties in the manner prescribed by law.

B. No person may bring an action to enjoin the assessment or collection of any taxes, interest or penalties imposed by the provisions of this act.

C. The tax and penalties assessed by the Commission pursuant to the provisions of this act are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity.

§ 450.6. Exemptions from tax

Nothing in this act requires any person, including but not limited to pharmacists or doctors licensed by the State of Oklahoma, lawfully in possession of a controlled dangerous substance, to pay the tax levied by 68 CNCA § 450.2.

§ 450.7. Disposition of revenues

The revenue, including interest and penalties, collected pursuant to this act shall be paid monthly by the Commission to the Treasurer to be placed in the Drug Abuse Education Revolving Fund created in 21 CNCA § 2417. The monies shall be budgeted and expended by Cherokee Nation for drug abuse education programs.

§ 450.8. Civil and criminal penalties—Immunities

A. Any dealer violating the provisions of this act, except 68 CNCA § 450.9, shall pay a civil penalty of one hundred percent (100%) of the amount of the tax levied in 68 CNCA § 450.2 in addition to the actual tax levied in said section.

B. Any dealer manufacturing, distributing, producing, shipping, transporting, importing or possessing any controlled dangerous substance without affixing the appropriate stamp, upon conviction, is guilty of a crime.

C. Nothing in this act may in any manner provide immunity for a dealer from criminal prosecution pursuant to Cherokee Nation law.

§ 450.9. Reuse of used stamp prohibited—Penalties

A. No person shall willfully remove or otherwise prepare any adhesive stamps, with intent to use, or cause the same to be used, after it has already been used or knowingly or willfully buy, sell, offer for sale, or give away, any such washed or restored stamp to any person, or knowingly use the same, or have in his possession any washed, restored, or altered stamp which has been removed from the controlled dangerous substance to which it had been previously affixed.

B. No person shall for the purpose of indicating the payment of any tax levied by 68 CNCA § 450.2, reuse any stamp which has heretofore been used for the purpose of paying any tax levied by 68 CNCA § 450.2, or buy, sell, offer for sale, or have in his possession, any counterfeit stamps.

C. Any person convicted of violating any provision of this section shall be guilty of a crime.

CHAPTER 7–A

BOAT AND MOTOR LICENSING AND TAX

§ 500. Short title

This act shall be known and may be cited as the Cherokee Nation Boat and Motor Licensing and Tax Code.

§ 501. Purpose

The purpose of this act is to establish a boat and motor licensing system within Cherokee Nation; to raise revenues through the issuance and renewal of boat and/or motor license tags, tax and titles to enrolled citizens of Cherokee Nation.

§ 502. General powers and duties of Tax Commission

A. The Cherokee Nation Tax Commission is hereby granted authority and jurisdiction to administer the Cherokee Nation Boat and Motor Licensing and Tax Code, and the Commission is hereby authorized to promulgate, adopt and enforce all necessary rules and regulations and prepare forms and records to enact and enforce the provisions of the Cherokee Nation Boat and Motor Licensing and Tax Code.

B. The Cherokee Nation Marshal Service is hereby granted authority and jurisdiction to enforce the provisions of and any rules pertaining to the Cherokee Nation Boat and Motor Licensing and Tax Code within their jurisdiction.

C. The Commission shall have the authority in cases of dispute to determine the factory-delivered price of any boat or motor.

§ 503. Boat and outboard motor registration

A. "**Eligible boat or motor**" shall mean any boat or motor, which is owned by a tribal citizen who resides within the reservation boundaries of Cherokee Nation and which is principally garaged within said boundaries on lands owned, leased or occupied by Cherokee Nation or any tribal citizen in trust, restricted or fee status.

B. Registration fees for boats and outboard motors are assessed for the period beginning July 1 and ending June 30 of the following year. Three (3) year registration fees are also available and are assessed for a period beginning on July 1 and ending June 30 of the third year.

C. A boat or outboard motor must be registered yearly whether in use or not. If an owner fails to do so, registration fees and penalties are due for the current year and one year previous.

D. Registration fees are based on a combination of the actual purchase price and the number of years registered.

§ 504. Registration fees and taxes

The Commission shall register and collect:

TITLE FEES

The Commission shall charge a fee of Six Dollars (\$6.00) for issuing an original or transfer certificate of title and a fee of Six Dollars (\$6.00) for issuing a duplicate certificate of title.

REGISTRATION TAX

There is hereby levied a registration tax of one and one-half percent (1 1/2%) of the value of each boat and motor upon the transfer of legal ownership of any such boat or motor registered in this Nation.

REGISTRATION FEES

1. If the actual purchase price is less than \$150.00
 - a. 1st year fee = administrative charge (\$1.00) plus \$0.50 for the first year.
 - b. 2nd year through 20th year fee = first year's fee
2. If the actual purchase price is over \$150.00
 - a. 1st year fee = administrative charge (\$1.00) plus \$0.50 for every \$100.00 of the actual purchase price or any fraction thereof. Fee shall not exceed \$100.00.
 - b. 2nd year through 10th year fee = 80% of the previous year's fee plus the administrative charge (\$1.00). Fee shall not exceed \$100.00.
 - c. 11th year through 20th year fee = 80% of the 10th year fee plus administrative charge (\$1.00).
 - d. Amounts for Codes Q1, Q2 and Q3 are based on the actual purchase price and may not be equal to one fourth, one half or three fourths of the full year price due to the \$100.00 registration fee maximum.
3. If the actual purchase price of the boat or outboard motor is not known, registration fee will be based on book value from NADA.
4. The following quarterly periods in which a boat or outboard motor is purchased or enters the 14-county tribal jurisdictional boundary area determines the portion of a full year registration fee due:

July 1 through September 30	Full year registration
October 1 through December 31	3/4 year registration
January through March 31	1/2 year registration
April 1 through June 30	1/4 year registration

5. A three-year registration fee is also available and is equal to ninety percent (90%) of the total of the individual years' fees.

§ 505. Penalty on new assignments

A. New boats and outboard motors must be registered within thirty (30) days from the date of assignment on the MSO or notarized bill of sale.

B. If not registered within thirty (30) days, twenty-five cents (\$0.25) per day penalty is due. However, the penalty will never exceed two (2) times the registration fee.

§ 506. Penalty on renewal registration

A. Boat and outboard motor registrations expire June 30 of each year.

B. The month of July is considered a grace month during which no penalty accrues.

C. On August 1, the penalty accrues twenty-five cents (\$0.25) per day. However, the penalty will never exceed two (2) times the registration fee.

CHAPTER 8

FUEL TAX [REPEALED]

§§ 701 to 708. Repealed by LA 18-96, eff. September 16, 1996

CHAPTER 8-A

FRANCHISE TAX

§ 1201. Corporations and organizations to which chapter applicable

The terms of this chapter shall apply to every corporation organized under the laws of Cherokee Nation, or qualified to do, or doing business in Cherokee Nation in a corporate or organized capacity by virtue of creation or organization under the laws of Cherokee Nation or any state, territory or district, or a foreign county, including associations, joint-stock companies and business trusts as defined by 68 CNCA § 1202, but not including limited liability companies as defined by 18 CNCA § 211.

§ 1202. "Doing business" defined

When the term "**doing business**" is used in this chapter, it shall mean and include each and every act, power or privilege exercised or enjoyed in Cherokee Nation, as an incident to, or by virtue of the powers and privileges acquired by the nature of such organizations, as are enumerated in the preceding section.

§ 1203. Tax on domestic corporations and business organizations

There is hereby levied and assessed a franchise or excise tax upon every corporation, association, joint-stock company and business trust organized under the laws of Cherokee Nation, equal to One Dollar and Twenty-Five Cents (\$1.25) for each One Thousand Dollars (\$1,000.00) or fraction thereof of the amount of capital used, invested or employed in the exercise of any power, privilege or right inuring to such organization, within Cherokee Nation; it being the purpose of this section to require the payment to Cherokee Nation of this tax for the right granted by the laws of Cherokee Nation to exist as such organization and enjoy, under the protection of the laws of Cherokee Nation, the powers, rights, privileges and immunities derived from Cherokee Nation by reason of the form of such existence. Provided however, the franchise or excise tax described under this act shall not be imposed on corporations which comply with the Indian preference requirements of 40 CNCA § 301 et seq.

§ 1204. Tax on foreign corporations and business organizations

There is hereby levied and assessed upon every corporation, association, joint-stock company and business trust, organized and existing by virtue of the laws of some other state, territory or country, now or hereafter doing business in Cherokee Nation, as hereinbefore defined, a franchise or excise tax equal to One Dollar and Twenty-Five Cents (\$1.25) for each One Thousand Dollars (\$1,000.00) or fraction thereof of the amount of capital used, invested or employed within Cherokee Nation; it being the purpose of this section to require the payment of a tax by all organizations not organized under the laws of Cherokee Nation, measured by the amount of capital, or its equivalent, used, invested or employed in Cherokee Nation for which such organization receives the benefit and protection of the government and laws of Cherokee Nation. Provided however, the franchise or excise tax described under this act shall not be imposed on corporations which comply with the Indian Preference requirements of 40 CNCA § 301 et seq.

§ 1205. Minimum and maximum taxes

In determining the amount of tax to be levied, assessed and collected under the terms of this chapter, the minimum amount shall, in no case, be less than Ten Dollars (\$10.00) nor shall the maximum amount exceed Twenty Thousand Dollars (\$20,000.00).

§ 1206. Corporations and organizations exempted

The terms of this article shall not apply to the following institutions, foreign or domestic: savings and loan associations, small business investment companies licensed under the Federal Small Business Act of 1958¹, credit unions, trust companies, real estate trusts operating under the Federal Real Estate Trust Act of 1960², insurance companies, including surety and bond companies, retirement or pension funds, savings banks and savings fund societies; nor to any organization enumerated in 68 CNCA § 1201 if such organization is neither organized for profit nor operated for profit, irrespective of the form of organization.

¹ 15 U.S.C. § 631 et seq.

² 26 U.S.C. § 856 et seq.

§ 1207. No tax for year in which other tax or fee paid

The tax herein levied shall not be exacted for the fiscal year during which a domestic or foreign corporation, association or organization has paid an incorporating, filing or qualifying fee or tax to the Office of the Principal Chief or his authorized representative. However, such corporations or organizations shall file a "no tax" report to comply with such regulations as shall be adopted by the Cherokee Nation Tax Commission, who shall, upon such filing, issue a "no tax" license expiring on the next ensuing June 30th. Provided, that in the computation of the tax imposed by this chapter no credit shall be allowed against such tax by reason of any money paid to the Office of the Principal Chief or his authorized representative as additional incorporation, qualifying or filing fee covering an increase of authorized capital or capital apportioned to Cherokee Nation.

§ 1208. Purpose and disposition of revenue—When due

A. It is hereby declared to be the purpose of this chapter to provide for revenue for general governmental functions of Cherokee Nation.

B. All monies collected under this chapter shall be transmitted monthly to the Office of the Principal Chief or his authorized representative to be placed in an account of Cherokee Nation.

C. The tax levied by this chapter shall become due and payable on the 1st day of July each year, and if not paid before the next ensuing September 1st, penalties hereinafter provided shall apply.

§ 1209. Capital—Computation

A. For the purpose of computing the amount of annual franchise tax levied upon and payable by the corporations, associations and organizations enumerated in 68 CNCA §§ 1203 and 1204, the word "**capital**" shall be construed to include the following:

Outstanding capital stock, surplus and undivided profits, which shall include any amounts designated for the payment of dividends until such amounts are definitely and irrevocably placed to the credit of stockholders, subject to withdrawal on demand, plus the amount of bonds, notes, debentures or other evidences of indebtedness maturing and payable more than three (3) years after issuance. The term "**capital**" stock where herein used shall include all written evidence of interest or ownership in the control or management of a corporation or other organization. The term "**evidence of indebtedness**" where herein used shall not include any deposit made in any bank.

B. Advances made by a parent to a subsidiary or by a subsidiary to a parent corporation, organization or association shall be eliminated by both the parent and subsidiary from the calculations necessary to determine the amount of taxable capital employed in the business of either or both the parent and subsidiary. Provided, however, advances made for purely operating

expenses may, upon proper showing satisfactory to the Cherokee Nation Tax Commission, be included in such calculations.

C. The amount of capital employed in the Cherokee Nation is hereby declared to be that portion of the capital of the corporation, association or organization which equals the proportion which the property owned, or property owned and business done, in Cherokee Nation bears to the total property owned, or total property owned and total business done, by the corporation, association or organization.

D. In the determination of the amount of tax payable under this chapter where intangibles are involved, such as notes, accounts receivable, stocks, bonds, and other securities, including cash, and the business of the corporation is managed, directed and controlled from within Cherokee Nation, the value of such intangibles shall be apportioned wholly to Cherokee Nation, unless a commercial or business situs for such intangibles has been established elsewhere.

E. Management, direction and control of the corporation's business shall be deemed to be within Cherokee Nation where (1) the corporation is incorporated under the laws of Cherokee Nation, or (2) where any corporation organized under the laws of a state transacts business in Cherokee Nation as its principal business, or maintains in Cherokee Nation its "business domicile" or "commercial domicile".

F. The portion of capital of any corporation, association or organization employed in Cherokee Nation, shall be segregated, and its value stated, based upon the proportions herein prescribed, and shall be reported to the Cherokee Nation Tax Commission; and the amount of said capital so reported shall be prima facie the measure of the value of the capital of such corporation, association or organization, apportioned to Cherokee Nation, for the purposes of this chapter.

G. The capital of a bank holding company or multi-bank holding company shall not include the capital, as defined in this chapter, of the owned bank or banks. Such banks, bank holding companies and multi-bank holding companies each shall comply with the terms of this chapter as separate corporations.

§ 1210. Annual statement or return

A. In addition to any other statement required by law, each and every corporation, association or organization, as enumerated in 68 CNCA §§ 1201, 1203, and 1204, subject to the provisions of this chapter, shall, during the period of July 1st to August 31st, inclusive, of each year, file with the Cherokee Nation Tax Commission a statement under oath of its president, secretary or managing officer, or managing agent in Cherokee Nation, in such form, including balance sheets as at the close of its last preceding taxable year for which an income tax return was required to be filed, as the Cherokee Nation Tax Commission may prescribe, showing:

1. the amount of its authorized capital stock, interests, certificates, or other evidence of interest or ownership;

2. the amount thereof then paid up;
3. the number of units into which the same is divided;
4. the par value of each unit and the number of such units issued and outstanding;
5. the location of the office or offices;
6. the value of all property owned or used in its business and wherever located;
7. the value of all property owned or used in its business within Cherokee Nation as it existed on the last day of said year;
8. the total amount of all business wherever transacted during said year;
9. the total amount of business transacted within Cherokee Nation during such year;
10. the names of its officers and the residence and post office address of each as the same appear of record on June 30th.

B. If any corporation, association or organization making a return under the provisions of this article has no authorized capital, or if any of its shares of stock or other evidences of interest or ownership have no par value, then such corporation, association or organization shall so state in its return, and shall, in addition thereto, state the book value of its shares of stock or other evidences of interest or ownership. And it shall also, in making its return, make the showing required of all other corporations, associations and organizations; and each foreign corporation shall state the name of its registered agent in Cherokee Nation.

C. A corporation or organization subject to the tax levied by 68 CNCA § 1203 or 1204 for which the computation of capital employed in Cherokee Nation equals or exceeds Sixteen Million Dollars (\$16,000,000.00), shall file a maximum franchise tax return on such form as may be prescribed by the Cherokee Nation Tax Commission.

D. A corporation or organization subject to the tax levied by 68 CNCA § 1203 or 1204 for which the computation of capital employed in Cherokee Nation is Eight Thousand Dollars (\$8,000.00) or less shall file a minimum franchise tax return on such form as may be prescribed by the Cherokee Nation Tax Commission.

E. The Cherokee Nation Tax Commission shall prescribe a form for use by corporations or organizations subject to the minimum tax and maximum tax imposed by 68 CNCA § 1205 in order for such corporations or organizations to determine if the value of capital employed in the Cherokee Nation requires filing either a minimum franchise tax return or maximum franchise tax return. If a corporation or organization is required to file either the minimum or maximum franchise tax return, such return shall not be subject to the requirements of subsection (A) of this section and the return shall only contain such information as may be prescribed by the

Commission.

§ 1211. Organization of business trust

The Office of the Principal Chief or his authorized representative shall not receive for filing in their office any instrument providing for the organization of any business trust unless and until a duplicate of such instrument is provided for filing with the Cherokee Nation Tax Commission, which duplicate shall show the filing references of the Office of the Principal Chief or his authorized representative in whose office the original of such instrument is filed, and it is hereby made the duty of Office of the Principal Chief or his authorized representative to see that such duplicate is immediately forwarded to the Cherokee Nation Tax Commission.

§ 1212. Penalties—Uniform procedure—Operation without license—Suspension and forfeiture

A. If the report herein required and the tax levied is not filed and paid within the time provided under 68 CNCA § 1208(C), the Cherokee Nation Tax Commission shall levy and collect a penalty for such delinquency in the amount of ten percent (10%) of the tax due. Such penalty shall be collected and apportioned in the same manner as is the tax itself, and the Cherokee Nation Tax Commission may enter an order directing the suspension of the charter or other instrument of organization, under which the corporation, association or organization may be organized, and the forfeiture of all corporate or other rights inuring thereunder.

B. Any person who attempts or purports to exercise any of the rights, privileges or powers of any such domestic corporation, association or organization, or who does or attempts to do any business in Cherokee Nation in behalf of any such foreign corporation, association or organization, without having first obtained a license therefor, as provided herein, or after any such license so obtained shall have been canceled, forfeited, or expired, shall be guilty of a misdemeanor.

C. Each trustee, director or officer of any such corporation, association or organization, whose right to do business within the Cherokee Nation shall be so forfeited, shall, as to any and all debts of such corporation, association or organization, which may be created or incurred with his knowledge, approval and consent, within Cherokee Nation after such forfeiture and before the reinstatement of the right of such corporation to do business, be deemed and be held liable thereon in the same manner and to the same extent as if such trustees, directors and officers of such corporation, association or organization were partners. Any corporation, association or organization whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of Cherokee Nation, except in a suit to forfeit the charter of such corporation, association or organization. In any suit against such corporation, association or organization on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, association or organization unless its right to do business in Cherokee Nation shall be reinstated as provided herein. Every contract entered into by or in behalf of such corporation, association or organization, after such forfeiture as provided herein, is hereby declared to be voidable.

D. Notice of such suspension and forfeiture shall be forwarded by certified mail, return receipt requested, to the last-known address of the registered agent or managing officer of each corporation, association or organization, and the Cherokee Nation Tax Commission may cause notice of such suspension and forfeiture to be published in a newspaper of general circulation in the county in which the general business office of each such corporation, association or organization is located in Cherokee Nation and in the newspaper *Cherokee Phoenix*.

E. The Cherokee Nation Tax Commission shall immediately upon entering an order suspending and forfeiting any such charter or other instrument of organization, transmit the name of each such corporation, association or organization named therein to the Office of the Principal Chief or his authorized representative who shall immediately record the same and such record shall constitute notice to the public. The suspension and forfeiture herein provided for shall become effective immediately upon such record being made and the certificate of the Office of the Principal Chief or his authorized representative shall be prima facie evidence of such suspension and forfeiture.

F. After the issuance of such order of suspension and forfeiture by the Cherokee Nation Tax Commission, the charter or other instrument of organization may only be revived and reinstated upon the payment of the accrued fees and penalties and reinstatement fee in the amount of Fifteen Dollars (\$15.00), and a showing by the corporation, association or organization of a full compliance with the laws of Cherokee Nation. Such payment of accrued fees and penalties must be made prior to the expiration of the time provided in such charter or other instrument of organization for the life of such corporation, association or organization.

§§ 1213, 1214. Reserved

CHAPTER 9

MOTOR VEHICLE LICENSING AND TAX

FINDINGS, PURPOSE, DEFINITIONS

DUTIES OF TAX COMMISSION—REGISTRATION OF VEHICLES—FEES AND TAXES—CERTIFICATES OF TITLE—LICENSE PLATES—PENALTIES

FINDINGS, PURPOSE, DEFINITIONS

§ 1301. Findings

A. As a sovereign, federally-recognized Indian tribe, Cherokee Nation has the power and authority to issue motor vehicle license tags to its enrolled citizens living within its territorial boundaries, in accordance with the United States Supreme Court's decision in *Sac & Fox Nation vs. Oklahoma Tax Commission*, 508 U.S. 114 (1993).

B. A large number of the Nation's citizens have expressed support for a motor vehicle licensing and registration tag code which would authorize the Cherokee Nation Tax Commission to issue

tribal tags and administer a tribal tag system within the territorial area of Cherokee Nation.

C. The State public school system within Oklahoma relies in part on revenue generated by the sale of automobile license tags by the State of Oklahoma. Thousands of minor children enrolled as citizens of Cherokee Nation attend public schools in eastern Oklahoma. Therefore, to minimize the impact of the sale of automobile license tags by the Cherokee Nation Tax Commission on the public schools within Cherokee Nation, a portion of the revenues generated by the sale of such tags should be allocated to the public schools within the Nation's territorial boundaries.

D. As a federally-funded Indian school, Sequoyah High School receives no monies from the State of Oklahoma's automobile licensing revenues. Therefore, a portion of the revenue received from the issuance of vehicle license tags by Cherokee Nation should be allocated to Sequoyah High School.

E. The Cherokee Nation Immersion Program receives no monies from the State of Oklahoma automobile licensing revenues. Therefore, a portion of the revenue received from the issuance of vehicle license tags by Cherokee Nation should be allocated to the Cherokee Nation Immersion Program.

F. The Cherokee Nation Headstart Program receives no monies from the State of Oklahoma automobile licensing revenues. Therefore, a portion of the revenue received from the issuance of vehicle license tags by Cherokee Nation should be allocated to the Cherokee Nation Headstart Program.

G. If possible, Cherokee Nation should endeavor to enter into a compact with the State of Oklahoma to coordinate its motor vehicle licensing activities with those of the Oklahoma Tax Commission, to make appropriate motor vehicle licensing information available to federal, state and local law enforcement agencies, and to engage in revenue-sharing for the benefit of public schools within the territorial boundaries of Cherokee Nation.

§ 1302. Purposes

The purpose of this act is to establish a vehicle and trailer licensing system within Cherokee Nation; to raise revenues through the issuance and renewal of vehicle and trailer license tags and titles to enrolled citizens of Cherokee Nation; to provide for the expenditures of said revenues for certain purposes, including an allocation of a portion of said revenues to the public schools within the territorial boundaries of Cherokee Nation and to Sequoyah High School; and to authorize the Principal Chief to negotiate with officials of the State of Oklahoma for a compact addressing certain matters relating to the registration and licensing of motor vehicles by the Cherokee Nation Tax Commission.

§ 1303. Short title

This Act shall be known and may be cited as the Cherokee Nation Motor Vehicle Licensing and Tax Code.

§ 1304. Definitions

For the purposes of this code, and notwithstanding any other definitions set forth elsewhere in this Title, the words and terms set forth below shall be defined as follows:

1. "**Abandoned vehicle**" means an article of personal property, any service rendered to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due such person from the owner for such service; or a vehicle that is determined to be abandoned by the Cherokee Nation District Court after proper public notice is given so an unknown owner or interest holders may attend court proceedings to protest legal change of ownership.
2. "**Act**" shall mean this act, LA 01-01.
3. "**Administrator**" shall mean the Administrator of the Commission.
4. "**All-terrain vehicle**" means a vehicle powered by an internal combustion engine manufactured and used exclusively for off-highway traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebars for steering.
5. "**Assembled vehicle**" means a vehicle from which major components from two or more vehicles are being incorporated into a single unit.
6. "**Commercial trailer**" shall mean any trailer used primarily for the transportation of goods in the ordinary course of any trade or business.
7. "**Commercial vehicle**" shall mean any vehicle used primarily for the transportation of persons or goods in the ordinary course of any trade or business.
8. "**Commission**" shall mean the Cherokee Nation Tax Commission.
9. "**Eligible vehicle**" shall mean any personal vehicle, commercial vehicle, motorcycle, recreational vehicle, farm truck, farm tractor, farm trailer or other trailer, which is owned by a tribal citizen or owned by the federally-recognized Delaware Tribe of Indians for the use of conducting official government business, which is located within the historical boundaries of Cherokee Nation and is principally garaged within said boundaries on lands owned, leased or occupied by Cherokee Nation or any tribal citizen in trust, restricted or fee status. Also included are vehicles belonging to active military personnel and college students who maintain permanent residency in the 14-county jurisdiction but are temporarily domiciled in another location. The Commission shall determine the appropriate documentation for active military personnel or college student residency, and shall develop procedures for determining whether vehicles are owned by the federally-recognized Delaware Tribe of Indians and eligible for registration and licensing.

10. **"Farm tractor"** shall mean any vehicle owned by a farmer and used primarily for pulling or towing farming equipment, tilling the soil or in other agricultural activities. Provided, that no vehicle shall be registered as a farm tractor unless the applicant produces an income tax Schedule F for the preceding year or presents a valid exemption card issued pursuant to the provisions of 68 O.S. § 1358.1. Provided, further, that said Schedule F or exemption card must pertain to the applicant, the applicant's spouse, or a business entity owned and controlled by the applicant or the applicant's spouse. Provided, further, that an applicant shall not be eligible to register more than four (4) tractors as farm tractors. Businesses shall not be included in said limitation.

11. **"Farm trailer"** shall mean any trailer owned by a farmer and used primarily for the purpose of transporting farm animals or products to market or for the purpose of transporting to the farm material or things to be used thereon, and not for commercial or industrial purposes. Provided, that no vehicle shall be registered as a farm trailer unless the applicant produces an income tax Schedule F for the preceding year or presents a valid exemption card issued pursuant to the provisions of 68 O.S. § 1358.1. Provided, further, that said Schedule F or exemption card must pertain to the applicant, the applicant's spouse, or a business entity owned and controlled by the applicant or the applicant's spouse. Provided, further, that an applicant shall not be eligible to register more than four (4) trailers as farm trailers. Businesses shall not be included in said limitation.

12. **"Farm truck"** shall mean any vehicle equipped with four or more wheels and a cargo area for the conveyance of property that is used primarily for agricultural purposes, but not for commercial or industrial purposes. Vans and sport utility vehicles shall not be eligible to carry a farm truck tag. Provided, that no vehicle shall be registered as a farm truck unless the applicant produces an income tax Schedule F for the preceding year or presents a valid exemption card issued pursuant to the provisions of 68 O.S. § 1358.1. Provided, further, that said Schedule F or exemption card must pertain to the applicant, the applicant's spouse, or a business entity owned and controlled by the applicant or the applicant's spouse. Provided, further, that an applicant shall not be eligible to register more than four (4) trucks as farm trucks. Business shall not be included in said limitation.

13. **"Low-speed electrical vehicle"** means any four-wheeled electrical vehicle that is powered by an electric motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour but not greater than twenty-five (25) miles per hour and is manufactured in compliance with the National Highway Traffic Safety Administration standards for low-speed vehicles in 49 C.F.R. § 571.500.

14. **"Major component"** means a body or cab, frame, and front end or rear end clip, if the public VIN is changed.

15. **"Manufactured home"** shall mean structures, transportable in one or more sections, which, in the traveling mode, are eight feet (8') or more in width or forty feet (40') or more in length, or, when erected on site, are more than three hundred twenty square feet (320 sq. ft.), and which are built on a permanent chassis and designed to be used as dwellings with or without permanent foundations when connected to the required utilities, and include the plumbing, heating, air conditioning and electrical systems contained thereon.

16. **"Medium-speed electrical vehicle"** means any self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one (1) mile is more than thirty (30) miles per hour but not greater than thirty-five (35) miles per hour.

17. **"Mini-truck"** means a foreign-manufactured import or domestic-manufactured vehicle powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters (1,000 cu cm) or less, which is sixty-seven inches (67") or less in width, with an unladen dry weight of three thousand four hundred pounds (3,400 lbs.) or less, traveling on four or more tires, having a top speed of approximately fifty-five (55) miles per hour, equipped with a bed or compartment for hauling, and having an enclosed passenger cab.

18. **"Motorcycle"** shall mean any two or three-wheeled personal vehicle.

19. **"Nation"** shall mean Cherokee Nation.

20. **"Off-road motorcycles"** (ORM's) means a motorcycle manufactured for and used exclusively off roads, highways, and any other paved surfaces. Small street or sidewalk mini-motorcycles or scooters are not included in this category.

21. **"Person"** shall mean any natural person or legal entity legally competent to hold title to a vehicle.

22. **"Reservation boundaries of Cherokee Nation"** shall mean the territorial boundaries of the Nation as they existed as of January 1, 1900.

23. **"Personal vehicle"** shall mean any vehicle having four or more wheels, including but not limited to cars, trucks, vans and sport utility vehicles, and any motorcycle; provided however, the definition of personal vehicle shall not include a commercial vehicle as defined in subdivision 4 of this section, a farm truck as defined in subdivision 9 of this section, a farm trailer as used in subdivision 8, a farm tractor as used in subdivision 7 of this section, or a recreational vehicle as defined in subdivision 16 of this section.

24. **"Physical disability"** means an illness, disease, injury or condition by reason of which a person:

a. cannot walk two hundred (200) feet without stopping to rest;

b. cannot walk without the use or assistance from a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistive device;

c. is restricted to such an extent that the person's forced (respiratory) expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/hg on room air at rest;

- d. must use portable oxygen;
- e. has functional limitations which are classified in severity as Class III or Class IV according to standards set by the American Heart Association;
- f. is severely limited in the person's ability to walk due to an arthritic, neurological or orthopedic condition;
- g. is certified legally blind; or
- h. is missing one or more limbs.

To qualify for a "physically disabled" plate an individual must meet one or more of the above requirements, and present sufficient documentation that they are persons qualified through the Oklahoma Department of Public Safety (DPS) as being physically disabled and having a five- (5) year expiration parking permit from DPS attesting to such disability.

25. "**Rebuilt vehicle**" shall mean any salvage vehicle which has been rebuilt and inspected for the purpose of registration and title with Cherokee Nation, another tribe or state.

26. "**Recreational vehicle**" shall mean any vehicle that is equipped to serve as temporary living quarters for recreational, camping or travel purposes and is used solely as a family or personal conveyance.

27. "**Salvage vehicle**" shall mean any vehicle which is within the last ten (10) model years and has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value, immediately prior to the damage.

28. "**Trailer**" shall mean any portable structure having two or more wheels that is built on a chassis and is designed to be towed by a vehicle and not propelled by its own power, with a width not exceeding eight (8) feet in travel mode and overall length not exceeding forty (40) feet, including the hitch or coupling, whether used for towing property or livestock or as a temporary dwelling for travel or recreational use. "**Trailer**" shall include in its meaning any mobile home until such time as it becomes affixed to the land.

29. "**Tribal citizen**" shall mean any person who is duly enrolled as a citizen of Cherokee Nation pursuant to the Cherokee Nation Membership Act, 11 CNCA § 1 et seq., LA 06-92, as amended.

30. "**Utility vehicle**" means a vehicle powered by an internal combustion engine, electric engine or combination thereof, manufactured and used exclusively for off-highway use, equipped with seating for two or more people and a steering wheel, traveling on four or more wheels.;

31. "**Vehicle**" shall mean any wheeled conveyance for carrying persons or property capable of

being propelled under its own power through the use of an electric engine or internal combustion engine greater than fifty cubic centimeters (50cc), designed primarily for use on roads and/or highways and equipped with brakes, headlights, taillights, brake lights, a horn, turn signals and a rear-view mirror, the ownership of which is reflected on a certificate of title.

§ 1305. Negotiation of compact—Effective date

A. The Principal Chief is hereby authorized to negotiate with appropriate officials of the State of Oklahoma for a compact between Cherokee Nation and the State of Oklahoma, the provisions of which would (i) allocate a portion of the revenue generated by motor vehicle license fees to the public schools within the Nation's jurisdictional area; (ii) coordinate motor vehicle title information with the appropriate state agencies; and (iii) address any other issues which may arise and may be resolved through a tribal-state compact. Provided, no such compact shall take effect until approved by way of Tribal Resolution enacted in accordance with 25 CNCA § 26 and all other parties have executed or approved the compact as required by applicable law.

B. The provisions of this act shall not take effect until the Commission adopts its rules and regulations pursuant to 68 CNCA § 1352.

§ 1306. Revenue sharing

A. A portion of the revenue generated from fees, taxes, penalties and fines generated in connection with the issuance of motor vehicle licenses hereunder shall be allocated to Sequoyah High School, the Cherokee Nation Head Start program and the public schools within the reservation boundaries of Cherokee Nation and as described in subsection (B) of this section, to the Marshal Service and to certain counties and municipalities in accordance with the provisions of subsection (B) of this section.

B. Allocation of revenues. The fees, taxes, penalties and fines collected by the Commission pursuant to the provisions of this act shall be allocated and expended for the purposes set forth in the following paragraphs:

1. The fees, taxes, penalties and fines collected by the Commission shall be applied to the costs and expenses of the Commission in carrying out the provisions of this act, as authorized and appropriated in the Nation's comprehensive annual budget. Provided, however, that said costs and expenses shall be paid out of revenues remaining after the prior allocations of funds pursuant to paragraphs 2 and 3 of this subsection.

2. An amount equal to thirty-eight percent (38%) of all fees and taxes collected by the Commission shall be allocated and made available to Oklahoma public schools located within the reservation boundaries of Cherokee Nation that have students who are tribal citizens; to Sequoyah High School; and to the Cherokee Nation Head Start program in accordance with the provisions of paragraph 2 of subsection (C) of this section. Such students shall be included in a certified Cherokee student count by an eligible school under this subsection in order to participate in the allocation of revenues. Any public school located outside the reservation boundaries shall be

eligible to receive a share of the allocation pursuant to paragraph 2 of subsection (C) of this section provided all three (3) of the following conditions are met with respect to such school: (a) any portion of the district of which said school is a part is within the reservation boundaries; *and* (b) any portion of the premises of said school is located within two (2) miles of the reservation boundary; *and* (c) the school has one or more enrolled Cherokee students as referenced herein.

3. Twenty percent (20%) of all fees and taxes collected by the Commission shall be made available for contribution to the cost of constructing or maintaining federal highways, state highways, or highways constructed or maintained with funds apportioned pursuant to 47 O.S. § 1104(A) that are part of the counties' collector system, within the Nation's reservation boundaries, to be allocated among such highway projects in accordance with paragraph 3 of subsection (C) of this section.

4. An amount not to exceed twenty percent (20%) but not less than five percent (5%) of the amount of such fees and taxes remaining after the amounts appropriated pursuant to paragraphs 1, 2 and 3 of this subsection shall be available to and allocated among counties and municipalities within the Nation's reservation boundaries and/or the Cherokee Nation Marshal Service in accordance with paragraph 4 of subsection (C) of this section.

5. Any funds not appropriated or expended pursuant to paragraphs 1, 2, 3 or 4 of this subsection shall remain available in the General Fund for appropriation and expenditure pursuant to Legislative Act. All amounts apportioned under subsection (C) of this section shall be appropriated as part of the Nation's comprehensive annual budget.

C. Distribution and expenditure of revenues. All revenues set aside pursuant to subsection (B) of this section shall be distributed and expended as follows:

1. Within ten (10) days after the end of each month during which this act is in effect, the Commission shall prepare and submit to the Controller a report setting forth separately the amounts collected by the Commission as fees, taxes, penalties and fines. The Commission shall make available any documents or records requested by the Controller to verify the accuracy of the report. In addition to the foregoing report, the Commission shall prepare and submit to the Controller any other reports as may be requested by the Controller.

The Principal Chief shall cause a copy of any report prepared pursuant to this paragraph to be delivered to the Tribal Council upon receipt of same by the Controller.

2. Each year, five percent (5%) of the revenues set aside under paragraph 2 of subsection (B) of this section shall be allocated for programs to assist public schools within Cherokee Nation with the A-F grading system, specifically to assist with teaching core subjects with emphasis placed on STEM classes/programs. This amount shall be matched with an equal amount to be paid from revenues described in paragraph 4 of subsection (B). Education services shall develop policies and procedures for the priority level of distribution for these funds. In particular, special consideration shall be granted to schools who receive a C-F and have a high enrollment of Cherokee students. The remaining ninety-five percent (95%) of the revenues set aside under paragraph 2 of subsection (B) of this section shall be distributed pro rata each year among eligible public schools, Sequoyah

High School and Cherokee Nation Head Start program based on each school's qualified student enrollment determined as follows: for the purposes of this distribution formula, (a) the qualified student enrollment for each public school shall be equal to the total number of its enrolled Cherokee students, as determined annually from a certified Cherokee student count as described in paragraph 2 of subsection (B) of this section, submitted and documented by the Superintendent of each eligible public school district as of October 1 of each year, and subject to review by the Cherokee Nation Education Department; and (b) the qualified student enrollment for Sequoyah High School shall be equal to the total number of its enrolled Indian students in accordance with the most recent Bureau of Indian Affairs student count; and (c) the qualified student enrollment for Cherokee Nation Head Start shall be equal to the total amount of its enrolled Indian students, who are at least four (4) years old as of October 1 of each year, submitted and documented by the Director of the program.

The pro rata share referred to in this paragraph shall be the percentage that each such school's qualified student enrollment bears to the total qualified student enrollment of all such schools within the reservation boundaries and as described in paragraph 2 of subsection (B) of this section; Sequoyah High School; and the Cherokee Nation Head Start program. Provided, however, for any year that the available per-pupil federal education funding for Indian students attending Sequoyah High School is less than eighty-five percent (85%) of the state per-pupil expenditures for students attending public schools in the State of Oklahoma, each Indian student enrolled at Sequoyah High School shall be weighted as two (2) Indian students for the purposes of the distribution formula in this paragraph.

The Cherokee Nation Education Department is hereby authorized to develop and implement policies and procedures necessary for review and proper documentation of the student counts for purposes of this act. Such policies and procedures shall, at a minimum, contain procedures by which appropriate parties will be notified about the requirements herein; requirements for documentation and substantiation of student count submissions; and procedures for appeal of determinations affecting an entity's student count.

3. The funds set aside under paragraph 3 of subsection (B) of this section shall be allocated each year to governmental agencies or political subdivisions for expenditure on construction or maintenance projects on federal highways, state highways, or highways constructed or maintained with funds apportioned pursuant to 47 O.S. § 1104(A) that are part of the counties' collector system, within the Nation's reservation boundaries. The projects and their respective allocations hereunder shall be identified in the comprehensive annual budget approved by the Tribal Council. These funds are to be distributed equally between Council Members for appropriation.

4. The funds set aside under paragraph 4 of subsection (B) of this section shall be allocated among the counties and municipalities within the Nation's reservation boundaries and/or to the Marshal Service in accordance with and as appropriated in the comprehensive annual budget of Cherokee Nation.

5. No funds allocated and distributed under this subsection shall be made available to the schools, highway projects, counties, municipalities or Marshal Service until appropriated as part of the

comprehensive annual budget for the applicable fiscal year. Any revenue distributions to Sequoyah High School or the Cherokee Nation Head Start program pursuant to this act shall first be used to meet any matching requirements for federal funds, if applicable. The Controller, with the assistance of any officer designated by the Principal Chief, shall be responsible for calculating and making all expenditures authorized by this subsection.

DUTIES OF TAX COMMISSION—REGISTRATION OF VEHICLES—FEES AND TAXES— CERTIFICATES OF TITLE—LICENSE PLATES—PENALTIES

§ 1351. General powers and duties of Tax Commission

The Commission is hereby vested with the power, authority and duty to administer and enforce this Cherokee Nation Motor Vehicle Licensing and Tax Code. This power, authority and duty includes, but is not limited to, the calculation of all taxes, fees, penalties and fines assessed in accordance with the provisions of this act, as well as contracting with Oklahoma tag agents to distribute motor vehicle tags and process motor vehicle registration documents, if the Commission determines that utilizing Oklahoma tag agents for such purposes is in the best interests of the Nation. The Administrator shall be responsible for carrying out the rules, regulations and directives of the Commission and the Commission may delegate to the Administrator such authority as it deems proper for said purpose, provided that the authority to adopt rules and regulations pursuant to 68 CNCA § 1352 shall not be delegable to the Administrator or any other person.

§ 1352. Rules and regulations

The Commission shall adopt such rules and regulations, and amendments thereto, as it deems necessary to administer and enforce this code, which rules and regulations need not be approved by the Tribal Council, provided that said rules and regulations and any amendments thereto shall not be inconsistent with this code and shall be made available to the Council immediately after adoption. The Commission shall adopt such rules and regulations no later than one hundred fifty (150) days after the earlier of (i) the approval of a compact pursuant to 68 CNCA § 1305(A), or (ii) May 31, 2001. The rules and regulations shall provide for a process to appeal decisions of the Administrator assessing any fees, taxes, fines or penalties authorized by this act. Any decision by the Commission on a question so presented on appeal shall be final. The rules and regulations shall also set forth the procedures and requirements for perfecting the lien of a secured party against any vehicle registered pursuant to this act.

§ 1353. Registration of vehicles required

It shall be unlawful for any person, including without limitation any tribal citizen, to operate any vehicle on the public streets, alleys, roadways or highways within the reservation boundaries of Cherokee Nation unless such vehicle is properly registered and tagged under the provisions of this act or under the laws of the United States, a territory, a state or a federally-recognized Indian tribe with jurisdiction over the lands where such vehicle is principally garaged. Except as expressly authorized by tribal compact between Cherokee Nation and another federally-recognized Indian tribe, it shall be unlawful for the purposes of this section for any Indian to operate a motor vehicle

on any tribal fee or trust or individual Indian trust or restricted land within the reservation boundaries of Cherokee Nation if (i) said motor vehicle is tagged by another federally-recognized Indian tribe and (ii) the owner of said motor vehicle resides within the reservation boundaries of Cherokee Nation and the motor vehicle is principally garaged within the reservation boundaries of Cherokee Nation.

§ 1354. Registration fees and taxes

Eligible vehicles and trailers may be registered with Cherokee Nation, subject to the following fees and taxes:

1. Registration fees. There is hereby levied on every eligible vehicle registered with Cherokee Nation, an annual registration fee of the following:

Registration years 1–4:	\$75.00
Registration years 5–8:	\$65.00
Registration years 9–12:	\$45.00
Registration years 13–16:	\$25.00
Registration years 17 and over:	\$10.00

a. The registration fee on an eligible vehicle previously registered with any other tribe or with any state or territory will be calculated as if the vehicle had been registered with Cherokee Nation for the same number of years it had been so previously registered.

b. Exceptions.

i. The annual registration fee for tribal citizens who present documentation that they are entitled to veteran status shall be as follows:

(I) Any active or former member of a branch of the United States military, not including veterans of foreign wars or disabled veterans, Special Fee: \$65.00 for registration years 1–4; \$45.00 for registration years 5–12; and for registration years 13 and over, the same fees as provided above in this subdivision 1 for other eligible vehicles;

(II) Veterans of foreign wars, Special Fee: \$60.00 for registration years 1–4; \$40.00 for registration years 5–12; and for registration years 13 and over, the same fees as provided above in this subdivision 1 for other eligible vehicles;

(III) Disabled veterans, Special Fee: \$5.00 for registration years 1–8; and for registration years 9 and over, no fee;

(IV) Winners of medals of honor, bronze or silver stars, equivalent medals for bravery or heroism in combat, Special Fee: \$7.00 for registration years 1–8; and for registration years 9 and over, no fee;

(V) Prisoners of war: exempt from registration fee.

ii. The annual registration fee on farm trucks and farm tractors shall be \$25.00.

iii. The annual registration fee on a commercial trailer shall be \$45.00.

iv. The annual registration fee on a farm trailer shall be \$20.00.

v. The one-time permit fee for all-terrain vehicles is \$6.00.

vi. The annual registration fee for tribal citizens who present documentation that they are personally qualified through the Oklahoma Department of Public Safety (DPS) as being physically disabled and having a five (5) year expiration parking permit from DPS shall be free of charge. Any Cherokee citizen who is eligible for a "physically disabled" license plate or whose vehicle has had modifications because of the physical disability of the owner or of an individual related to the owner within the second degree of consanguinity (parent, grandparent, child, grandchild or sibling by blood) may register the vehicle for the fee prescribed above. This fee shall be in lieu of all other registration fees provided by this act.

2. Registration tax on personal vehicles. There is hereby levied a registration tax of one and one-half percent (1 1/2%) of the actual purchase price of personal vehicles not previously registered with Cherokee Nation or any other tribe or with any state, provided that the actual purchase price is no more than twenty percent (20%) less than the average retail value. This registration tax shall also be levied upon any vehicle registered pursuant to this act upon its sale by a tribal citizen to another tribal citizen. The "**average retail value**" as used in this subdivision shall be determined from a published index of automobile values to be specified by the Commission in its rules and regulations adopted pursuant to this act.

3. Registration tax on commercial vehicles. There is hereby levied on every commercial vehicle registered with Cherokee Nation a registration tax equal to one-half (1/2) of the amount of the tax which would otherwise be imposed by subdivision 2 of this section if the vehicle were a personal vehicle. Provided, however, the owner of said vehicle shall be required to sign an affidavit, under oath, in such form as shall be prescribed by the Commission, stating that the vehicle will be used primarily for trade or business purposes, and shall either:

a. affix the federal employer identification number of said business to the affidavit, or

b. cause the name of the business to be permanently affixed to each side of said vehicle in letters or numerals of at least one inch (1") in height and in a color contrasting with the color of said vehicle.

Proof of trade or business purposes shall be required each year for subsequent registrations. This registration tax shall also be levied on any commercial vehicle registered pursuant to this act upon its sale by one tribal citizen to another tribal citizen.

4. Registration tax on motorcycles. There is hereby levied a registration tax on every motorcycle

not previously registered with Cherokee Nation or any other tribe or with any territory or state at the same rate as described in subdivision 2 of this section. This registration tax shall also be levied on any motorcycle registered pursuant to this act upon its sale by a tribal citizen to another tribal citizen.

5. Registration tax on recreational vehicles. There is hereby levied a registration tax on every recreational vehicle not previously registered with Cherokee Nation or any other tribe or with any territory or state equal to one-half (1/2) of the amount of tax which would otherwise be imposed by subdivision 2. This registration tax shall also be levied on any recreational vehicle registered pursuant to this act upon its sale by a tribal citizen to another tribal citizen.

6. Registration tax on farm trucks and farm tractors. There shall be no registration tax levied on farm trucks or farm tractors.

7. Registration tax on farm trailers and commercial trailers. There shall be no registration tax levied on farm trailers or commercial trailers.

8. Lien for delinquent fees, etc. Any delinquent fees, taxes, penalties or interest due under the provisions of this act with respect to any vehicle shall constitute a lien of first priority against said vehicle. The Commission shall not register, title or renew the registration for any such vehicle until the delinquent fees, taxes, penalties or interest are paid.

9. Registration tax on manufactured homes.

a. There is hereby levied a registration tax on every new manufactured home not previously registered with Cherokee Nation or any other tribe or with any territory or state at the rate of one and one-half percent (1 1/2%) of the actual purchase price.

b. There is hereby levied a registration tax on every used manufactured home not previously registered with Cherokee Nation or any other tribe or with any territory or state at the rate equal to one-half (1/2) of the amount of the tax which would otherwise be imposed on a new manufactured home under paragraph a of this subdivision. The three quarter percent (3/4%) registration tax on a used manufactured home shall be applied to sixty-five percent (65%) of one half (1/2) of the actual purchase price/value.

10. Registration tax on assembled vehicles. There is hereby levied a registration tax of one and one-half percent (1 1/2%) of the actual purchase price of assembled vehicles not previously registered with Cherokee Nation or any other tribe or with any territory or state, provided that the actual purchase price is no more than twenty percent (20%) less than the average retail value. This registration tax shall also be levied upon any vehicle registered pursuant to this act upon its sale by a tribal citizen to another tribal citizen. "**Average retail value**" is determined as used in subdivision 2 of this section.

Assembled vehicles shall require:

a. Affidavit of assembly and ownership. Affidavit shall be approved by the Cherokee Nation Tax Commission Motor Vehicle Division.

b. Upon approval of the affidavit of assembly and ownership the Cherokee Nation Marshal Service shall conduct an inspection and permanently affix a Cherokee Nation assigned number to the vehicle.

11. Registration tax on abandoned vehicles. There is hereby levied a registration tax of one and one-half percent (1 1/2%) of the actual purchase price of abandoned vehicles not previously registered with Cherokee Nation or any other tribe or with any territory or state, provided that the actual purchase price is no more than twenty percent (20%) less than the average retail value. This registration tax shall also be levied upon any vehicle registered pursuant to this act upon its sale by a tribal citizen to another tribal citizen. "**Average retail value**" is determined as used in subdivisions 2 and 4 of this section.

The Cherokee Nation Tax Commission shall adopt rules and regulations to set forth the procedures and requirements for the ownership transfer of abandoned vehicles.

12. Registration tax for all-terrain and utility vehicles. Except for persons that possess an agricultural exemption pursuant to this section, the registration tax shall be levied upon transfers of legal ownership of all-terrain vehicles, utility vehicles and motorcycles used exclusively off roads and highways. The registration tax for new and used all-terrain vehicles, utility vehicles and motorcycles used exclusively off roads and highways shall be levied at one and one-half percent (1 1/2%) of the actual sales price of each new and used all-terrain vehicle and motorcycle used exclusively off roads and highways before any discounts or credits are given for a trade-in. The Cherokee Nation Tax Commission shall promulgate regulations as to effective date taxes on utility vehicles.

13. Registration tax for 100-percent disabled veterans. Any vehicle which is purchased by an individual who has been honorably discharged from active service in any branch of the Armed Forces of the United States or the Oklahoma National Guard and who has been certified by the United States Department of Veterans Affairs, its successor, or the Armed Forces of the United States to be a disabled veteran in receipt of compensation at the one-hundred-percent rate for a permanent disability sustained through military action or accident resulting from disease contracted while in such active service shall be exempt from registration tax. Provided, this exemption may not be claimed by an individual for more than one vehicle in a consecutive three- (3) year period.

14. Possessory/laborers' lien. Laborers who perform work and labor on or storage of a vehicle for any person under a written or verbal contract, if unpaid for the same, shall have a lien on the production of their labor, for such work, labor or storage; provided that such lien shall attach only while the title to the property remains in the original owner.

The Cherokee Nation Tax Commission shall adopt rules and regulations to set forth the procedures and requirements for possessory/laborers' liens.

15. Registration tax for mini-trucks. Mini-trucks shall be registered pursuant to the provisions of the Cherokee Nation Motor Vehicle Licensing and Tax Code. The Cherokee Nation Tax Commission shall promulgate rules for the titling and registration of mini-trucks.

Mini-trucks which have been titled and registered pursuant to the provisions of the Cherokee Nation Motor Vehicle Licensing and Tax Code may be operated on the roadways of the state of Oklahoma; provided, however, mini-trucks shall not be permitted to travel upon any highway in this state which is a part of the National System of Interstate and Defense Highways. Operators of mini-trucks shall comply with all traffic regulations and rules of conduct for the operation of motor vehicles on the roadways of the state of Oklahoma provided by law.

§ 1355. Certificates of title

A. Application for certificate of title. Prior to the initial registration of any vehicle with Cherokee Nation, the owner shall apply to the Commission, on a form that the Commission shall by regulation direct, for a certificate of title for said vehicle. Prior to issuance of a certificate of title for a vehicle, the Commission shall require the applicant to furnish proof of purchase from a licensed new or used car dealer, or a properly endorsed vehicle certificate of title issued by the Commission or some other tribal, state or territorial licensing authority. Notice of liens against said vehicle shall be placed upon said title upon request of the lending institution in accordance with regulations adopted by the Commission pursuant to this act. The procedures for placing and releasing liens on vehicles and reflecting same on the certificate of title shall be provided by regulations adopted by the Commission pursuant to this act.

B. Title fees. The Commission shall charge a fee of Six Dollars (\$6.00) for issuing an original or transfer certificate of title and a fee of Six Dollars (\$6.00) for issuing a duplicate certificate of title. A receipt shall be given for said fees. If an Oklahoma tag agency issues the certificate of title, the agency shall charge the same fees as are provided in this subsection.

C. Original, transfer and duplicate titles.

1. An "**original title**" shall be issued to the first purchaser of a vehicle from a new vehicle dealer.

2. A "**transfer title**" shall be the title issued to a second or subsequent owner of an eligible vehicle whether purchased from an individual or dealer.

3. A "**duplicate title**" shall be the title issued to the owner of record of an eligible vehicle to replace a lost, stolen or mutilated original or transfer title.

D. Salvage and rebuilt title.

1. A salvage title shall be issued to any vehicle ten (10) model years and newer which has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value, immediately prior to the damage.

2. A rebuilt title shall be issued on any salvage vehicle which has been rebuilt and inspected for the purpose of registration and title with Cherokee Nation, another tribe or state.

E. Repealed by LA 24-04, eff. June 17, 2004.

F. Manufactured home title.

1. A manufactured home title shall be issued and subtitled as follows:

a. **"Manufactured home—original title"** shall be issued to the first purchaser of a new manufactured home from a manufactured home dealer.

b. **"Manufactured home—transfer title"** shall be the title issued to a second or subsequent owner of an eligible manufactured home whether purchased from an individual or dealer.

c. **"Manufactured home—duplicate title"** shall be the title issued to the owner of record of an eligible manufactured home to replace a lost, stolen or mutilated original or transfer title.

§ 1356. License plates

A. Standard license plate. Each vehicle registered with the Cherokee Nation shall be issued a license plate to be properly displayed on the rear of said vehicle. The Commission shall be responsible for the design of all license plates issued hereunder which plates shall conform to the following requirements:

1. Each license plate shall be made of metal with a background and lettering of sufficient contrast so as to be easily read from a distance of not less than fifty (50) feet;

2. Each license plate shall bear the name of Cherokee Nation along the upper portion of the plate;

3. Each license plate shall bear the Cherokee Nation seal;

4. Each license plate shall bear the word Oklahoma;

5. Each license plate number shall contain no more than seven (7) characters, made up of numbers, letters or a unique combination of both, unless otherwise provided herein;

6. The identifying symbols on the license plate shall be large and clear enough to be read by the unaided eye at a distance of not less than fifty (50) feet;

7. Each license plate shall provide a space for the placement of month and year decals in two corners of the license plate;

8. The license plates for each class of vehicles shall bear some mark or decal as determined by the

Commission so as to make it different from those assigned to other classes of vehicles; and

9. The Commission may in its discretion provide by regulation for special identifying symbols or legends to be placed upon personal vehicles license plates issued for:

- a. the physically handicapped;
- b. veterans of the Armed Forces;
- c. winners of selected medals for heroism in combat;
- d. past or present prisoners of war;
- e. parents whose child has been killed as a result of service in the Armed Forces; and
- f. past and present elected tribal officials.

The Commission shall require such documentation as it deems appropriate that the owner of the vehicle is eligible for the special symbol or legend.

B. Cherokee Nation government vehicles. The Commission shall issue without charge appropriate titles, certificates of registration, license plates and decals for any vehicle owned by Cherokee Nation or its agencies. Title to any such vehicles shall be in the name of Cherokee Nation and such vehicles shall not be sold or transferred except in accordance with applicable law.

C. Delaware Tribe of Indians government vehicles. The Commission shall issue without charge appropriate titles, certificates of registration, license plates and decals for any eligible vehicle owned by the federally-recognized Delaware Tribe of Indians, its agencies. Title to any such vehicles shall be in the name of the Delaware Tribe of Indians and such eligible vehicles shall not be sold or transferred except in accordance with applicable law.

D. Physically-disabled license plate. For those eligible individuals a specially-designed plate will be available which shall prominently display the international accessibility symbol, which is a stylized human figure in a wheelchair. Upon the death of the physically-disabled person, the special license plate shall be returned to the Tax Commission. There shall be no fee for such plate in addition to the rate provided by this act for the registration fee of the vehicle.

E. Lost, mutilated or destroyed license plate or decal.

1. In the event of loss, mutilation or destruction of a license plate or decal issued to an eligible vehicle the owner of the vehicle shall file an affidavit showing such fact and obtain a replacement plate or decal. The charge shall be Ten Dollars (\$10.00) for each such plate or decal.

2. In the event a license plate becomes so mutilated as to make its numbers, letters or decals illegible, the owner/operator of the vehicle to which the plate was issued shall be subject to a fine

of Fifty Dollars (\$50.00). Law enforcement shall have the authority to detain and cite any owner or operator of vehicles bearing such mutilated license plates.

§ 1357. Documents required for registration

A. Each applicant for vehicle registration with the Nation shall present with the completed application form the following items:

1. A valid certificate of title to the vehicle in the name of the applicant; and
2. Unless the vehicle is currently registered with Cherokee Nation pursuant to this act in the applicant's name, proof of current and valid vehicle registration with another tribe, territory or state, or if a new purchase, a copy of the bill of sale; and
3. A valid Oklahoma drivers license showing applicant's residence within the reservation boundaries of Cherokee Nation; and
4. Proof of current liability insurance policy or bond covering any liability for an accident involving such motor vehicle, with coverage limits, exclusive of interest and costs, of not less than Ten Thousand Dollars (\$10,000.00) because of bodily injury to or death to any one (1) person in any one (1) collision or accident and, subject to said limit for one (1) person, not less than Twenty Thousand Dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one (1) collision or accident, and not less than Ten Thousand Dollars (\$10,000.00) because of injury to or destruction of property of others in any one (1) collision or accident; and
5. Evidence that the owner of the vehicle is a tribal citizen and lives within the reservation boundaries of Cherokee Nation or, if outside the boundaries, within the territorial areas of other tribes to the extent and as provided for in a compact with the State of Oklahoma approved pursuant to 68 CNCA § 1304(A).

B. Penalties for late registration.

1. Any tribal citizen residing within the reservation boundaries of Cherokee Nation, or owning and garaging a vehicle within said boundaries, who is eligible to apply for a certificate of title, certificate of registration, tag and decal for said vehicle shall have thirty (30) days after purchasing or obtaining possession of said vehicle, or thirty (30) days after the expiration of the previous tag issued by Cherokee Nation, another tribe, Oklahoma or other state or territory, within which to apply for a Cherokee Nation certificate of title, certificate of registration, tag and decal. Failure to apply within the prescribed time will result in the civil penalty of Twenty-Five Cents (\$0.25) per day beginning on the first day following the expiration of said 30-day period, provided that no such penalty shall be assessed unless and until an application for registration is made. Provided, the foregoing penalty shall not exceed two (2) times the registration fee for the vehicle and shall be assessed and collected by the Commission at the time of application for a new or renewal registration for said vehicle. No such application shall be granted until all civil penalties and fines owed by the applicant pursuant to this act are paid in full along with all other taxes and fees

payable hereunder, except that penalties need not be paid if the Administrator waives the penalties in whole or in part in accordance with paragraph 2 of subsection (B) of this section. Any vehicle last registered with Cherokee Nation pursuant to this act whose tag has been expired for twelve (12) months or longer and being operated upon any tribal trust or fee land within the reservation boundaries of Cherokee Nation is hereby declared contraband and shall be subject to seizure and sale by the Commission; provided, that not less than thirty (30) days prior to the date of sale the Commission shall give notice of the date and time of sale to the owner and any lienholder whose name(s) appears on the most recent application for registration and/or lien entry form for said vehicle, by certified mail sent to the address set forth therein, during which period the owner may avoid the sale and recover the vehicle by paying all fees, taxes, fines and penalties then owing with respect to said vehicle. The proceeds of such sale shall be deposited into the General Fund and shall be available for appropriation and allocation under 68 CNCA § 1305(B), unless there is a lienholder whose lien has been perfected in accordance with the regulations of the Commission, in which event the proceeds shall be first applied to the costs of sale, then to any such lienholders in accordance with their respective priorities, and the balance, if any, into the General Fund for appropriation and allocation pursuant to this act.

2. The Administrator shall have the authority to waive penalties in whole or in part for failure to register a vehicle in accordance with this act in cases where such vehicle is proven to have been inoperable during the registration period. Proof of inoperability may be by, but is not limited to, submission of parts or repair receipts or such other evidence deemed appropriate by the Administrator.

3. The Administrator shall have the authority to deny registration or renewal registration to any applicant when the application information submitted by the applicant is determined by the Administrator to be fraudulent or incorrect. If a vehicle is registered hereunder and thereafter the Administrator determines that the registration was made on the basis of false or fraudulent information, the Administrator shall notify the applicant-owner that the registration has been revoked. Notification shall be done by certified mail and shall be complete upon acceptance of, or refusal to accept, delivery of the notice.

4. Penalties under this section shall not apply if the vehicle has been properly registered with any other tribe, state, territory or the United States.

C. Application form. The vehicle registration application form shall be as prescribed by the Commission pursuant to regulations promulgated by it hereunder and shall include provisions whereby the applicant expressly submits himself or herself to the jurisdiction of Cherokee Nation and its courts for purposes of enforcement of this act, including without limitation the assessment and collection of any penalties, fines or interest provided for hereunder.

§ 1358. Operation of motor vehicle within Cherokee Nation

A. Every operator of a vehicle upon the public streets, alleys, roadways or highways within the reservation boundaries shall have in their possession a currently valid United States, state or territorial driver's license and shall exhibit such license to any law enforcement officer upon

request.

B. Every owner and/or operator of a vehicle operated upon the public streets, alleys, roadways or highways within the reservation boundaries shall maintain with some insurance company or surety company a liability insurance policy or bond, to cover any liability arising from a collision or an accident involving such motor vehicle, with limits, exclusive of interest and costs, of not less than Ten Thousand Dollars (\$10,000.00) because of bodily injury to or death of one (1) person in any one (1) collision or accident and, subject to said limit for one (1) person, not less than Twenty Thousand Dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one (1) collision or accident, and not less than Ten Thousand Dollars (\$10,000.00) because of injury to or destruction of property of others in any one (1) collision or accident. This requirement shall not apply to any operator if the owner of such vehicle has insurance with the foregoing minimum limits that covers the operator while he or she is operating the vehicle.

C. Every owner of a vehicle registered with the Nation pursuant to the provisions of this act shall carry in such vehicle at all times a current owner's security verification form identifying the vehicle, which form must be issued by an insurance company or surety company and shall produce such form upon request for inspection by any law enforcement officer or representative of the Commission and, in case of a collision or accident, the form shall be shown upon request to any person injured by said collision or whose vehicle or property has been damaged by said collision. Said form shall not be valid or sufficient unless issued by an insurance carrier authorized to transact business in the State of Oklahoma. Provided, however, that residents of other states operating a vehicle registered in another state, territory or an Indian tribe from another state must have in effect liability insurance or other coverage, together with proof of same, as is required under the financial responsibility laws of the state, territory or Indian tribe where the vehicle is registered, or liability insurance coverage or other forms of financial security, and proof thereof, that meet the requirements of Oklahoma financial responsibility laws applicable to non-residents.

D. The following shall not be required to carry an owner's or operator's security verification form or an equivalent form during operation of a vehicle and shall not be required to surrender such form for vehicle registration purposes:

1. Any vehicle owned or leased by the federal, state, territory or tribal government, or any agency or political subdivision thereof;
2. Any vehicle bearing the name, symbol or logo of a business, corporation or utility on the exterior whose business, corporation or utility has a deposit, bond, self-insurance or fleet policy on file with the Commission in an amount that meets the minimum limits of subsection (B) of this section, or the financial responsibility laws of the State of Oklahoma, whichever amount is greater, or
3. Any vehicle not required to carry such security verification form under the provisions of 47 O.S. § 7-602, as amended, replaced or recodified from time to time.

§ 1359. Penalties

A. Any Indian operating a vehicle registered pursuant to this act within the jurisdiction of Cherokee Nation, including without limitation any tribal citizen, who knowingly issues or promulgates false or fraudulent information in connection with either the financial security verification form or an equivalent form of an owner or operator shall be guilty of a misdemeanor punishable by a fine not exceeding Five Hundred Dollars (\$500.00) or imprisonment for not more than six (6) months or by both such fine or imprisonment.

B. Any Indian who operates a vehicle, or allows to be operated a vehicle owned by him or her, on the streets, alleys, roads and highways in the reservation boundaries of Cherokee Nation in violation of this act shall be guilty of a misdemeanor punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

C. Any vehicle operated in violation of any provision in 68 CNCA §§ 1353 to 1358, inclusive, shall be considered a public nuisance. The Commission shall have the authority to seize any Cherokee Nation license plate placed upon such vehicle and prohibit the return or re-registration of the vehicle until a security verification form is filed with the Commission or other appropriate action as ordered by the Commission is taken to assure that such vehicle shall not be used in violation of this act. If such vehicle has been in a collision or accident, any law enforcement officer shall impound such vehicle until a security verification form is filed with the Commission or other appropriate action as ordered by the Commission is taken.

§ 1360. Recognition of foreign titles and registration

It shall not be unlawful by reason of this act for any person to possess or operate a vehicle within the reservation boundaries of the Cherokee Nation so long as the vehicle is properly registered and tagged by the jurisdiction in which such persons resides or in which the vehicle is principally garaged and such jurisdiction extends like or similar recognition to the vehicle tags, certificates of title and registrations issued by the Cherokee Nation.

CHAPTER 20

TRIBAL–STATE MOTOR VEHICLE LICENSING COMPACT BETWEEN CHEROKEE NATION AND THE STATE OF OKLAHOMA

§ 2001. Tribal-state motor vehicle licensing compact

This Tribal–State Motor Vehicle Licensing Compact (hereinafter, "Compact") is entered into by and between Cherokee Nation, a federally-recognized Indian tribe (hereinafter, the "Nation"), and the State of Oklahoma (hereinafter, "State"), to be effective upon the date described hereinbelow.

Section 1: Recitals

a) The Nation is a federally-recognized Indian tribe with its capitol located in the City of

Tahlequah, State of Oklahoma.

b) On the 15th day of January, 2001, the Nation's Tribal Council enacted a new motor vehicle code, L.A. 01–01, pursuant to which the Nation intends to exercise its authority to issue motor vehicle licenses to its citizens within the boundaries of its jurisdictional area to the extent authorized under applicable decisions of the United States Supreme Court. Copies of L.A. 01–01 and all amendments thereto in effect as of the effective date of this Compact are attached hereto as Exhibit A. Said boundaries encompass a portion of the lands within the Indian Territory that were ceded by the United States to the Nation pursuant to the Indian Removal Act of 1830, 4 Stat. 411, the 1835 Treaty of New Echota, 7 Stat. 478, and a fee patent executed by the President of the United States pursuant to Article 3 of said treaty. These ceded lands included what is now all of present-day Sequoyah, Adair, Cherokee, Mayes, Delaware, Rogers, Washington, Nowata and Craig Counties, and portions of present-day McIntosh, Muskogee, Wagoner, Tulsa and Ottawa Counties, in northeastern Oklahoma.

c) The Nation and the State have agreed that it would be in their respective best interests to enter into this Compact that would coordinate the Nation's motor vehicle licensing system with that of the State in the manner and to the extent set forth hereinbelow.

Section 2: Purpose and Scope

The purpose of this Compact is to set forth the agreement between the Nation and the State with respect to the Nation's licensing of motor vehicles and other vehicles owned by the Nation's enrolled citizens in accordance with the provisions of Cherokee Nation's motor vehicle licensing code, LA 01–01, as in effect on the date this Compact is effective (hereinafter, the "CN Motor Vehicle Code"); coordinating the use of and/or access to motor vehicle titling and registration information with the State for law enforcement and other purposes; developing agreed-to procedures for communicating and transmitting such information; and allocating a portion of revenues collected by the Nation from the licensing of vehicles for the benefit of schools and certain counties and municipalities within the Nation's jurisdictional area.

Section 3: Definitions

Wherever used in this Compact, the words and phrases set forth below shall have the following meanings:

a) "**Citizen**" shall mean a person who is an enrolled member of Cherokee Nation as provided in 68 CNCA § 1304.

b) "**CN Motor Vehicle Code**" shall mean L.A. 01–01 and the amendments thereto, codified as 68 CNCA § 1301 et seq., which are attached to this Compact as Exhibit A.

c) "**Indian country**" shall mean "Indian country" as that term is defined in 18 U.S.C. § 1151 and has been interpreted by the Supreme Court of the United States in *Oklahoma Tax Commission vs. Sac and Fox Nation*, 508 U.S. 114 (1993), and other decisions of said Court.

d) "**Jurisdictional area of Cherokee Nation**" shall mean the area in the State of Oklahoma that lies within the boundaries of Cherokee Nation as more particularly described in Exhibit B attached to this Compact.

e) "**Motor vehicle**" or "**Vehicle**" shall have the same meaning given to the term "Eligible vehicle" in 68 CNCA § 1304 and any other vehicle eligible for registration thereunder.

f) "**Tribal motor vehicle license**" shall mean a license plate or tag issued by Cherokee Nation for a particular motor vehicle or other vehicle in accordance with provisions of the CN Motor Vehicle Code and of Section 3 of this Compact.

g) "**Nation**" shall mean Cherokee Nation.

h) "**State**" shall mean the State of Oklahoma.

Section 4: Tribal Motor Vehicle License

The parties stipulate and agree that the Nation, as a federally-recognized Indian tribe, has the sovereign authority to issue motor vehicle licenses in accordance with the United States Supreme Court's decision in *Oklahoma Tax Commission vs. Sac and Fox Nation*, 508 U.S. 114 (1993). However, the Nation and the State disagree in their respective interpretations of the Court's decision in *Sac and Fox Nation*, including without limitation the question of what lands or territory are to be considered "Indian country" in light of the Court's decision in that case, and by entering into this Compact the Nation and State do not intend to resolve that question. However, the Nation and State both recognize the practical difficulty in determining whether a vehicle is principally garaged in Indian country, under either party's legal interpretation of the term Indian country. Accordingly, in order to avoid the uncertainties and costs associated with litigation, and to promote a cooperative relationship between the Nation and the State of Oklahoma, the parties agree as follows:

a) The Nation agrees that it will issue tribal motor vehicle licenses only to persons who are citizens residing within the jurisdictional area of Cherokee Nation and in accordance with the provisions of the CN Motor Vehicle Code. The Nation agrees that it will not issue motor vehicle licenses to persons who reside outside the jurisdictional area of Cherokee Nation or to any person living within the jurisdictional area of Cherokee Nation who is not an enrolled citizen of Cherokee Nation.

b) The State agrees not to challenge (1) the registration of motor vehicles provided that they are registered to citizens by the Nation's Tax Commission in accordance with the CN Motor Vehicle Code and this Compact, or (2) the validity of tribal motor vehicle tags issued to persons residing within the jurisdictional area of Cherokee Nation provided that said tags are issued to a citizen in accordance with the provisions of the CN Motor Vehicle Code and this Compact.

c) Notwithstanding any other provision of this Compact, the Nation and State agree that

enforcement and administration of the CN Motor Vehicle Code shall be the sole and exclusive responsibility of the Nation. This Compact shall not be construed, and is not intended, to enlarge, diminish or otherwise affect the civil or criminal law enforcement jurisdiction or obligations of either party.

Section 5: Tribal Motor Vehicle Information; Use of Oklahoma Tag Agents

a) The Nation and the State agree that each has a significant interest in sharing information relating to the registration of motor vehicles and other vehicles by the Nation and by the State so that (i) the Nation can verify registration information furnished by its citizens when applying for tribal motor vehicle licenses for vehicles previously registered with the State of Oklahoma, and (ii) law enforcement officers and agencies of the State of Oklahoma, other states and other Indian tribes can promptly verify the ownership and the current registration status of automobile and other vehicles bearing motor vehicle or other vehicle license tags issued by the Nation. Accordingly, the Nation and the State agree to share such registration information with the State as hereinafter provided.

b) The Nation shall transmit to the Oklahoma Tax Commission (OTC) motor vehicle ownership and registration information for each vehicle it registers, which information shall be included in the OTC's motor vehicle information database so that state, local, federal and tribal law enforcement and other governmental agencies may access such information to the same extent and in the same manner that such agencies have access to such information with regard to motor vehicles registered with the OTC, in order to confirm the ownership and currency of registration of each such vehicle with the Nation's Tax Commission. The Nation shall transmit the motor vehicle ownership and registration information to the OTC no later than fifteen (15) days after the date on which the motor vehicle is registered with the Nation, except information for vehicles registered prior to the effective date of this Compact shall be transmitted no later than sixty (60) days after the Compact goes into effect. The Nation shall bear any and all costs in providing the information to the OTC.

c) The parties further agree that the Nation may negotiate appropriate agreements with Oklahoma tag agents to process the Nation's motor vehicle registration and licensing documents and transmit information relating to motor vehicles registered by the Nation to the OTC as stated in paragraph (b), above. The fees and charges for services performed by any such agents on behalf of the Nation shall be as negotiated by the Nation and the agents and neither the State nor any political subdivision of the State, including the OTC, will bear any responsibility for such fees and charges.

d) Regardless of whether the Nation engages the services of Oklahoma tag agents in transmitting motor vehicle registration and ownership information to the State pursuant to this Compact, the parties acknowledge, stipulate and agree that the State shall have no responsibility for issuing certificates of title and registration under the CN Motor Vehicle Code. The content, accuracy and maintenance of all records relating to motor vehicle titles and registration issued by the Nation shall be the sole and exclusive responsibility of the Nation.

Section 6: Payments to Oklahoma Public Schools, Sequoyah High School, Certain Highway Projects, Counties and Municipalities

The Nation has adopted the CN Motor Vehicle Code, as amended, providing for annual payments by the Nation of a portion of tribal motor vehicle licensing revenues to Oklahoma public schools, counties, municipalities, and federally- and/or state-funded highway construction or maintenance projects located within the jurisdictional area of Cherokee Nation, as well as to Sequoyah High School and the Cherokee Nation Marshal Service. Said payments shall be made by the Nation directly to the schools, agencies conducting such highway projects, counties, municipalities and Marshal Service in accordance with the CN Motor Vehicle Code, as in effect on the date on which this Compact is effective, and the annual appropriations thereunder. Provided, as a condition of this Compact, the Nation agrees to appropriate and distribute each year during which this Compact remains in effect: (1) an amount equal to thirty-eight percent (38%) of all fees and taxes collected annually by the Cherokee Nation Tax Commission under the CN Motor Vehicle Code to said public schools and Sequoyah High School in accordance with the allocation formula set forth in 68 CNCA § 1306; (2) an amount equal to twenty percent (20%) of all such fees and taxes so collected for expenditure on the construction or maintenance of the following highways within the jurisdictional area of Cherokee Nation: federal highways, state highways or highways constructed or maintained with funds apportioned pursuant to 47 O.S. § 1104(A) that are part of the counties' collector system, all in accordance with 68 CNCA § 1306(C)(3) of said Code; and (3) an amount equal to five percent (5%) of the amount of such fees and taxes remaining after payment of the Nation's costs incurred in administering the CN Motor Vehicle Code to counties and municipalities within the jurisdictional area of the Cherokee Nation and/or to the Cherokee Nation Marshal Service, as provided in 68 CNCA § 1306(C)(4) of said Code. The Nation further agrees that it will continue making said annual payments to said schools, counties, municipalities, Marshal Service and highway construction or maintenance projects in accordance with the provisions of the CN Motor Vehicle Code, as in effect on the day this Compact becomes effective, so long as this the Compact remains in effect.

Section 7: Sovereign Powers and Jurisdiction Unaffected; No Partnership or Agency Created

Nothing in this Compact is intended or shall be construed to enlarge, diminish or otherwise affect the sovereign powers or jurisdiction of either party over any persons or territory. Nothing in this Compact shall prohibit the State from requiring motor vehicle registration and the payment of fees and taxes by any resident of this state who does not reside, or whose motor vehicle is not principally garaged, in Indian country. No provision in this Compact shall be construed as an admission, concession or acknowledgement by the State that (1) the Nation has civil or criminal jurisdiction over territory that is not "Indian country" or (2) any particular lands and/or territory constitute Indian country, either as a formal or informal reservation or otherwise. Nor shall any provision herein be construed as an admission, concession or acknowledgement by the Nation that (1) it does not have such jurisdiction over territory that is not Indian country or (2) any particular lands and/or territory do not constitute Indian country either as a formal or informal reservation or otherwise. Further, this Compact is not intended, and shall not be construed, to create a partnership, joint venture or agency relationship between the Nation and the State.

Section 8: Term

This Compact shall remain in effect for a period of ten (10) years, commencing on the effective date described in Section 9 hereof, and shall automatically renew for a like period unless prior to the end of the initial term either of the parties gives written notice to the other that the Compact shall not be renewed. Provided, however, the parties agree that either party may terminate this Compact without cause by giving the other party ninety (90) days' written notice in accordance with Section 9 hereof, and provided further that either party may terminate the Compact for cause by giving the other party twenty (20) days' written notice in accordance with said section, which notice shall state the conduct, occurrence or condition giving rise to cause for termination. Provided, the parties agree that if either is terminating for cause, the party proposing to terminate the Compact should-but is not required to-give the other party opportunity and reasonable time to cure or otherwise correct the conditions described in the notice as grounds for termination.

Section 9: Effective Date

This Compact shall go into effect when it has been executed and/or approved by all of the following: the Governor of the State of Oklahoma, the Joint Committee of the Oklahoma Legislature on State-Tribal Relations, the Principal Chief of Cherokee Nation, and the Tribal Council of Cherokee Nation.

Section 10: Notices

All notices authorized or required under this Compact shall be in writing and sent by way of certified U.S. mail to the following officials or their successors in office:

To the State of Oklahoma:

Governor Frank Keating

212 State Capitol Building

2300 North Lincoln Blvd.

Oklahoma City, OK 73105

To the Cherokee Nation:

Chad Smith, Principal Chief

Cherokee Nation

P.O. Box 948

Tahlequah, OK 74435

EXECUTED by the parties on the dates set forth below.

STATE OF OKLAHOMA

By: _____

Frank Keating, Governor

Date: _____

CHEROKEE NATION

By: _____

Chad Smith, Principal Chief

Date: _____

Approved:

Joint Committee on State-Tribal Relations

By: _____

Chairman

Date: _____

Cherokee Nation Tribal Council

[Copy of Resolution No. attached as Exhibit C]

TITLE 69

ROADS, BRIDGES AND FERRIES

Reserved for Future Use

TITLE 70

SCHOOLS AND EDUCATION

CHAPTER 1

GENERAL PROVISIONS

§ 1. Neglect or refusal to compel child to attend school

A. It shall be unlawful for a parent, guardian, custodian or other person having control of a child who is over the age of five (5) years, unless such child has been screened by the Cherokee Nation, or an educational or behavioral health expert and such child is determined not to be ready for kindergarten, and under the age of eighteen (18) years, to neglect or refuse to cause or compel such child to attend and comply with the rules of some public, private or other school including home school, unless other means of education are provided for the full term the schools of the district are in session. One-half (1/2) day of kindergarten shall be required of all children five (5) years of age or older as appropriately provided, or as otherwise excepted from same by this section. A kindergarten program shall be directed toward developmentally appropriate objectives for such children. The program shall require that any teacher employed on program within the public school system shall be certified in early childhood education.

B. It shall be unlawful for any child who is over the age of sixteen (16) years and under the age of eighteen (18) years, and who has not finished four (4) years of high school work, to neglect or refuse to attend and comply with the rules of some public, private or other school including home school, or receive an education by other means for the full term the schools of the district are in session.

Provided, that this section shall not apply:

1. If any such child is prevented from attending school by reason of mental or physical disability, to be determined by the board of education of the district upon a certificate of the school physician or public health physician, or, if no such physician is available, a duly licensed and practicing physician.

2. If any such child is excused from attendance a school, due to an emergency, by the principal teacher of the school in which such child is enrolled, at the request of the parent, guardian, custodian or other person having control of such child.

3. If any such child who has attained his or her sixteenth birthday is excused from attending school by written, joint agreement between:

a. The school administrator of the school district where the child attends school, and

b. The parent, guardian or custodian of the child. Provided, further, that no child shall be excused from attending school by such joint agreement between a school administrator and the parent, guardian or custodian of the child unless and until it has been determined that such action is for the best interest of the child and/or the community, and that said child shall thereafter be under the supervision of the parent, guardian or custodian until the child has reached the age of eighteen (18) years; or

4. If any such child is excused pursuant to subsection (C) of this section.

C. A school shall excuse a student from attending school for the purpose of observing religious days if before the absence, the parent, guardian, or person having custody or control of the student submits a written request for the excused absence. The district shall excuse a student pursuant to this subsection for the days on which the religious holy days are observed and for the days on which the student must travel to and from the site where the student will observe the days.

D. It shall be the duty of the juvenile and law enforcement officers to enforce the provisions of this section. Any parent, guardian, custodian, child or other person violating any of the provisions of this section shall be guilty of a crime, and upon conviction thereof shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than Twenty-five Dollars (\$25.00) for the first offense, not less than Ten Dollars (\$10.00) nor more Fifty Dollars (\$50.00) for the second offense, and not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for each subsequent offense. Each day the child remains out of school after the written warning has been given or the child ordered to school by the juvenile court may constitute a separate offense. At the trial of any person charged with violating the provisions of this section, the attendance records of the child or ward may be presented in court by any authorized employee of the school district.

CHAPTER 2

FAMILY ADULT EDUCATION UNIT

§ 101. Purpose

The purpose of this act is to establish permanent funding for educational opportunities and learning experiences to enable Cherokee adults to be literate and to obtain the necessary academic skills and knowledge needed to gain meaningful employment and to exercise the rights and responsibilities of tribal and national citizenship.

§ 102. Establishment of the program

Cherokee Nation does hereby officially establish the Family Adult Education Unit as a permanent recurring program to be funded from the General Fund Budget.

§ 103. Education

The Cherokee Nation Family Adult Education Unit promotes lifelong learning which will allow every Cherokee an opportunity to obtain necessary academic skills to achieve meaningful employment, personal development and spiritual growth. It is therefore necessary for Cherokee Nation:

1. To provide community-based Adult Basic Education/GED classes to eligible Indian adults throughout the Nation's jurisdictional boundaries;
2. To provide adult students with instruction which incorporates Cherokee language and culture concepts;

3. To incorporate in all academic adult education programs scheduled sessions that focus on developing or enriching the sense of individual pride and dignity of being a Cherokee, American Indian and citizen of the U.S., utilizing the expertise of tribal elders, Tribal Council Members and local community leaders;
4. To implement curriculum materials that reflect the special cultural and academic needs of Cherokee adult learners and thereby increasing the efficiency and effectiveness of learning;
5. To achieve computer literacy for all Cherokee adults to the level that all Cherokee families may have access to updated computer systems in their homes or in a nearby Cherokee Indian Adult Education Program where adults may continue learning and upgrading their skills, becoming better informed and increasing their employability opportunities.

CHAPTER 3

SCHOLARSHIPS

GENERAL PROVISIONS

CONCURRENT ENROLLMENT

GENERAL PROVISIONS

§ 201. Short title

This act shall be known and may be cited as the Cherokee Nation Higher Education Scholarship Reform Act of 2011.

§ 202. Purpose

The purpose of this act is to increase the amount of scholarships available to Cherokee students: Two Thousand Dollars (\$2,000.00) per semester, up to Four Thousand Dollars (\$4,000.00) per academic year inside the higher education scholarship boundary map and PELL eligible students that are at-large.

§ 203. Definitions

For purposes of this chapter:

1. "**Education Group**" means the Department within the Cherokee Nation Executive Branch that administers educational programs for the Nation.
2. Repealed by LA 03-12B, eff. March 24, 2012.

3. Repealed by LA 03-12B, eff. March 24, 2012.

§ 204. Scholarships for eligible students

Cherokee Nation students who are eligible for PELL and non-PELL grant educational assistance and who are enrolled in a qualified educational facility shall receive a scholarship of Two Thousand Dollars (\$2,000.00) per academic semester, up to Four Thousand Dollars (\$4,000.00) per academic year or equal distribution pending the allocation of the comprehensive budget. Said scholarship shall be automatically renewed for ten (10) semesters provided that the student remains enrolled in good standing at a qualified educational facility. Scholarship awards shall not require demonstration of need.

The funding source for this expenditure shall be the Cherokee Nation General Fund. Scholarship awards shall be contingent upon available funding.

§ 205. Administration of scholarship program

A. Cherokee Nation shall administer, through the Education Group, the Cherokee Nation Higher Education Scholarship Program. The purpose of this program is to provide financial support to qualified Cherokee citizens in order to attend educational institutions beyond the high school level. These institutions include but are not limited to universities, colleges, and junior colleges. The Council of Cherokee Nation shall appropriate funds for this program subject to the availability of resources.

Nothing herein shall impact the administration of funds to assist students attend nursing programs, vocational trade schools or other types of job training administered by the Career Services Group.

B. The Education Group shall promulgate regulations, rules, policies and procedures to administer the scholarship program consistent with this act. Beginning with Fiscal Year (FY) 2012, such rules, policies and procedures and any changes thereto shall be null and void unless they have been provided to the Council of Cherokee Nation, in writing, at least ninety (90) days prior to the effective date of the regulation, rule, policy or procedure, unless such time frame is waived by resolution of the Council.

CONCURRENT ENROLLMENT

§ 251. Short title

This Act shall be known and may be cited as the Concurrent Enrollment Scholarship Act of 2011.

§ 252. Purpose

The purpose of this Act is to create a scholarship program to benefit Cherokee high school students residing in the Cherokee Nation Scholarship Program service area (see map available at Cherokee Nation College Resource Center) who are currently enrolled in an accredited public or private

institution of higher learning.

§ 253. Definitions

"**Concurrent enrollment**" means students who are either a high school junior or senior who are taking college courses through an accredited public or private institution.

§ 254. Scholarships for high school students enrolled in college courses

The Cherokee Nation College Resource Center shall establish a scholarship program to benefit Cherokee high school students residing in the Cherokee Nation Scholarship Program service area (see map available at Cherokee Nation College Resource Center) who are currently enrolled in college courses through an accredited public or private institution of higher learning. The establishment of said program and scholarship awards shall be contingent upon the availability of funding.

TITLE 71

SECURITIES [RESERVED]

Reserved for Future Use

TITLE 72

RESERVED

Reserved for Future Use

TITLE 73

SOVEREIGNTY

CHAPTER 1

SOVEREIGN IMMUNITY

§ 1. Short title

This act shall be known and may be cited as the Sovereign Immunity Act.

§ 2. Purpose

The purpose of this act is to clarify Cherokee Nation sovereign immunity and authorize the Principal Chief to waive sovereign immunity on a limited basis for business transactions of Cherokee Nation-owned business entities in order to better fulfill the duties prescribed by the

Cherokee Nation Constitution.

§ 3. Definitions

For purposes of this chapter:

1. "**Act**" means an enactment of the Council as provided in the Constitution.
2. "**Business entity**" means any business entity in which the Nation is a majority owner.
3. "**Nation**" means Cherokee Nation.
4. "**Resolution**" means an enactment of the Council as provided in the Constitution.
5. "**Sovereign immunity**" means the preclusion of bringing suit against the government without its consent.

§ 4. Sovereign immunity

- A. The Nation is a federally-recognized Indian Nation existing from time immemorial and retains the inherent right to preclude lawsuits under the doctrine of sovereign immunity.
- B. The Nation does not consent to lawsuits in any court except by Legislative Act or Resolution of the Council of Cherokee Nation.
- C. The Nation has the inherent right to waive, and grant authority to waive sovereign immunity with limitations as to time, place, manner, subject, and any other restrictions desired.

§ 5. Delegation of authority as to business entities

The Principal Chief is authorized to execute a waiver of sovereign immunity and/or to agree not to raise the defense of sovereign immunity as to a business entity only as follows:

1. All waivers shall be in writing and signed by the Principal Chief and verified by the Secretary of State. A copy shall be filed and indexed in the Office of the Principal Chief and with the office of the Tribal Council. This signature authority shall not be delegated.
2. A waiver may be included in an agreement or contract containing other terms.
3. Except as provided in subdivision 5, all waivers shall contain provisions limiting:
 - a. Who may bring a claim. Only parties to a contract shall be eligible to bring a claim.
 - b. Type of claims allowed. Any waiver shall be limited to obligations or rights arising under a written contract or agreement in a breach of contract claim.

c. Types of relief or damages. The waiver shall be specifically limited to an award of actual or liquidated damages under the terms of the agreement. The waiver shall not allow recovery from the business entity for punitive or exemplary damages, nor shall the waiver allow recovery from any elected officials, officers or employees of Cherokee Nation for monetary damages, punitive or exemplary damages, court costs or attorney fees.

d. Choice of forum. Preference for jurisdiction of lawsuits pursuant to a waiver shall be filed, subject to a court asserting jurisdiction, first in Cherokee Nation courts, second in federal courts, third in state court.

e. Choice of law. Preference of applicable law shall be prioritized as follows: Nation law first, federal law second, and state law third.

f. Duration of the waiver. Waivers shall be limited to the duration of the contract.

4. Any waiver granted under this section shall not be canceled, terminated, or withdrawn except by agreement of the party entitled to the waiver.

5. A waiver conforming to the minimum "sue and be sued" requirements of the Small Business Administration for participation in the 8(a) Business Development program, 13 C.F.R. § 123.109(c)(1), as amended, is exempt from the limits of subdivision 3.

§ 6. Delegation of authority as to Cherokee Nation

In addition to all provisions in 73 CNCA § 5, any waiver of the sovereign immunity of Cherokee Nation as a government shall be limited to:

1. Actual damages resulting from legislative action which has a material adverse effect on an Business Entity's ability to perform obligations to a party to a contract under the contract.

2. Any contractual obligation of an Business Entity in the event that the Nation terminates or dissolves the Business Entity or materially and unreasonably increases restrictions on the Business Entity's capacity to engage in its operations.

3. Declaratory judgment interpreting the scope and validity of a waiver.

§ 7. Delegation of authority as to Cherokee Nation business entities

The Principal Chief is authorized to grant a waiver of the sovereign immunity of Cherokee Nation Businesses or a business entity in which Cherokee Nation Businesses owns an interest, (i) to a bonding company, surety, or other guarantor for the purpose of securing a contract. Such waiver will be, in the case of Cherokee Nation Businesses, limited to its cash or cash equivalent assets or (ii) to a company in connection with a New Markets Tax Credit transaction. Such waiver will be, in the case of a business entity in which Cherokee Nation Businesses owns an interest, limited to

the assets of that entity. Waivers under this section will not be subject to the limitations of 73 CNCA § 5. This section does not allow the Principal Chief to grant a waiver as to Cherokee Nation or otherwise allow recovery against Cherokee Nation, its assets, or any elected officials, officers or employees of Cherokee Nation.

CHAPTER 2

CONSTITUTION CONVENTION COMMISSION

§ 101. Purpose

This act is adopted for the purpose of establishing a Constitution Convention Commission. The Commission shall oversee the conduct of a constitutional convention as called for by a vote of the Cherokee people in the 1995 election.

§ 102. Definitions

For purposes of this chapter, the following terms shall be defined as follows:

1. "**Appointed official**" shall mean officials appointed by the Principal Chief and confirmed by the Tribal Council to serve for an established or indefinite term, but shall not include officials otherwise appointed and confirmed to serve only in a temporary or interim capacity because of exigent circumstances, provided there are no apparent conflicts of interest with the appointed official's duties or responsibilities.
2. "**Campaign**" means and includes all activities for or against the election of a candidate to a specific office within Cherokee Nation by a Constitution Convention Commissioner during his or her appointed term.
3. "**Citizen of Cherokee Nation**" means a person enrolled as a citizen of Cherokee Nation pursuant to 11 CNCA § 4(J), derived only through proof of Cherokee blood based on the Final Rolls.
4. "**Constitution Commission**" means the Cherokee Nation Constitution Convention Commission established pursuant to this statute.
5. "**Council**" means the Cherokee Nation Council.
6. "**Council Member**" means a member of the Cherokee Nation Council.
7. "**Deputy Principal Chief**" means the Deputy Principal Chief of Cherokee Nation who serves as President of the Council.
8. "**Principal Chief**" means the Principal Chief of Cherokee Nation.

9. **"Supreme Court"** means the Supreme Court of Cherokee Nation.

§ 103. Cherokee Nation Constitution Convention Commission

A. Establishment and appointment. The Commission shall be called the Cherokee Nation Constitution Convention Commission. The Constitution Convention Commission shall be composed of two (2) appointees of each Branch of the Tribal Government; two (2) from the Executive, the Chief and Deputy Chief concurring; two (2) from the Supreme Court, unanimous approval by all three Justices required; and two (2) from the Tribal Council, two-thirds (2/3) vote of approval required. The six (6) appointed members shall select a seventh member. The Constitution Convention Commission shall have the sole responsibility and explicit authority for the conduct of the Constitution Convention, including activities described in subsection (D) of this section, and shall be an independent Commission in the performance of its statutory authority. In the performance of that authority it shall not be subject to direction or supervision by the Executive, Legislative or Judicial Branch of Cherokee Nation Government.

B. Term. The Constitution Convention Commission shall be appointed and take their oath of office when practical. Each Commission member shall serve a term commencing with the day of appointment, and ending six (6) months after the election on proposed amendments, alterations, revisions or a new constitution, or at the discretion of the Commission. In case of vacancy on the Commission, the Commission shall make a new appointment. A person appointed to fill a vacancy on the Constitution Convention Commission shall serve the remaining term of the vacant position.

C. Qualifications. The Commissioners shall be citizens of Cherokee Nation of high stature with excellent reputation, and have ability to comprehend basic legal issues. Elected or appointed officials of Cherokee Nation are specifically disqualified from serving on the Commission or any subcommittees created by the Commission.

D. Duties. The Constitution Convention Commission shall organize and proceed to carry out the process broadly outlined in this statute. That process will ensure citizen participation, on an equal footing, with all others. The Commission shall develop an effective and efficient method of communication with all citizens that will:

1. provide an objective assessment of the current governmental structure;
2. conduct a series of public hearings that provide citizens of each voting district an opportunity to provide both written and oral testimony before the Commission to express their views on constitutional amendments, alterations, revisions or a new constitution;
3. provide a regular progress report, a minimum of four times in a year, to the citizens and to each branch of the government;
4. upon completion of public review and comment, prepare an interim report to the Cherokee people detailing the proposed amendments, alterations, revisions or a new constitution at an at-large Constitution Convention; and

5. develop and present said final proposed amendments, alterations, revisions, or new constitution to a referendum vote by the citizens of the Cherokee Nation.

The Commission shall then work in cooperation with the Election Commission to prepare wording for said ballots for an election. The Constitution Convention Commission shall also engage in the following activities in the performance of its responsibilities:

1. Elect a Chairperson, Vice-Chairperson/Parliamentarian, and a Secretary/Treasurer from its own membership;

2. Publish a schedule for its regular meetings, establish an agenda for each meeting in accordance with Robert's Rules of Order, and approve and maintain correct and accurate minutes of its deliberations;

3. At its discretion, hire independent counsel to advise, who is neither currently employed or engaged in any manner by Cherokee Nation, or any agency or enterprise of Cherokee Nation, nor has been previously employed or engaged in any manner by Cherokee Nation or any agency or enterprise of Cherokee Nation within two (2) years prior to the enactment date of this statute;

4. Develop rules and regulations necessary to conduct the public hearings described above, provided that they shall publish and transmit such rules and regulations.

5. A minimum of three (3) members shall oversee the conduct of each of the public hearings at which citizens of Cherokee Nation will be permitted to provide written and oral testimony on their suggestions for proposed amendments, alterations, revisions, or new constitution.

6. Evaluate and determine the number and location of public hearings within the eleven (11) voting districts of Cherokee Nation. In addition, public hearings will be held in out-of-area major metropolitan centers in which a minimum of five hundred (500) citizens reside.

7. Hire support staff as the Commission deems appropriate for the conduct of business.

8. Establish a process to record and maintain a permanent record of comments taken from the citizens at the public hearings.

9. Engage in any other activities necessary for the performance of its responsibilities as required by provisions of this chapter.

10. Establish advisory committees and seek volunteers to the Commission that may contain citizens of Cherokee Nation who are neither on the Commission, nor employed by the Nation. Provided; that no such advisory committee member or volunteer shall have any voting right on matters before the Commission.

E. Meetings. The Constitution Convention Commission shall conduct business in open meetings at

a location provided by Cherokee Nation or other location designated by the Commission, provided that the Commission may go into executive session for purposes of discussing policy and procedural matters in the initial organization of the Commission or any issues regarding personnel matters. No vote shall be taken in executive session, and all votes shall be public and recorded in the official minutes of the Commission. Meeting minutes shall be prepared by the Secretary/Treasurer setting forth the Commission members present, a summary of items discussed and action taken by vote of the Commission, and said minutes shall be subject to approval of the Commission. Public notice shall be given of all meetings no less than five (5) calendar days prior to meeting date. Special meetings may be called on the written concurrence of the Chairperson, Vice-Chairperson/Parliamentarian, and Secretary/Treasurer with proper notice given.

Public notices shall be filed with the Secretary of State of Cherokee Nation and posted in the lobby by the Council chambers.

F. Quorum. Five (5) of the seven (7) Commission members shall constitute a quorum for all meetings held by the Commission.

G. Voting. Each member of the Commission may cast one (1) vote each on any given item taken to vote. A simple majority of votes cast by attending members will decide the issue. In the event of a tie, the vote shall be retaken with the Chairperson abstaining his or her vote.

H. Compensation. The Commission shall receive stipends or compensation for their services in accordance with their itemized budget as approved by the Council.

I. Immunity. All Commissioners serving on the Constitution Convention Commission shall be afforded qualified immunity from civil prosecution in the courts of Cherokee Nation for acts taken in performance of their statutory authority.

J. Removal of Commission member. Any Constitution Convention Commission member may be removed by a 5/7 vote of the Commission members under the following process:

1. Grounds for removal:

a. Campaigning for any candidate for elected office within Cherokee Nation,

b. Interfering with, or attempting to interfere with the orderly conduct of any public hearing on the Constitution,

c. Committing malfeasance, misfeasance or nonfeasance of duty while in office. For purposes of removal, consecutively failing to attend three or more called meetings of the Commission, without just cause, will constitute nonfeasance of office.

2. A Commissioner removed by the Commission may seek a de novo appeal before the Supreme Court within ten (10) days. A petition for removal of a Commissioner may be brought by a two-thirds (2/3) majority vote of the Tribal Council, a five-sevenths (5/7) majority vote of the

Commission itself or, only with respect to subsections (A) and (B) of this section, a citizen's petition brought by a minimum of twenty (20) citizens which includes the sworn statements of no less than ten (10) persons who witnessed the improper activity by a Commissioner.

CHAPTER 3

CONSENT FOR LITIGATION

§ 201. Short title

This Act shall be known and may be cited as the Consent for Litigation Act of 2011.

§ 202. Purpose

The purpose for this enactment is to require Tribal Council consent prior to filing any litigation that involves the Nation's sovereignty or substantial assets.

§ 203. Definitions

For purposes of this chapter:

1. **"Cherokee Nation"** means the government of Cherokee Nation located at Tahlequah, Oklahoma.
2. **"Filing"** means the initiation of legal action in any court or regulatory body.
3. **"Litigation"** means any proceeding or suit at law.
4. **"Principal Chief"** means the Principal Chief of Cherokee Nation.
5. **"Sovereignty"** means the matters that concern the boundaries, or territory, or the jurisdiction, or treaty rights, or the powers or rights of self-governance of Cherokee Nation.
6. **"Substantial assets"** means litigation that involves an amount in controversy in excess of One Hundred Thousand Dollars (\$100,000.00).
7. **"Tribal Council"** means the Cherokee Nation Council.

§ 204. Authorization, ratification or approval of litigation

Any litigation brought on behalf of Cherokee Nation against any non-Cherokee Nation entity in any court or jurisdiction, must be authorized by the Principal Chief and ratified by the Tribal Council prior to the filing of said litigation, when said suit involves the Sovereignty of Cherokee Nation or substantial assets. If, due to exigent circumstances, litigation must be commenced or filed prior to securing ratification or approval by the Tribal Council, such ratification or approval

must be granted within sixty (60) days or such litigation shall be dismissed. These requirements do not apply to routine civil or criminal litigation carried out by the Justice Department of Cherokee Nation.

CHAPTER 4

CHEROKEE NATION TREATY, COMPACT AND AGREEMENT ACT

§ 301. Short title

This legislative act shall be known and may be cited as the Cherokee Nation Treaty, Compact and Agreement Act.

§ 302. Purpose

The purpose of this Act is to grant to the Principal Chief of the Cherokee Nation the authority to execute treaties, compacts, memorandums of understanding, contracts, and other agreements on behalf of Cherokee Nation between governments, state agencies or other entities; with said approval to be subject to ratification through a majority vote of the Cherokee Nation Tribal Council.

§ 303. Definitions

For the purposes of this chapter:

1. "**Cherokee Nation**" means Cherokee Nation, located in Tahlequah, Oklahoma.
2. "**Compact**" means an agreement usually applied to agreements between nations or sovereign states.
3. "**Comprehensive budget**" means the incomes and expenditures as estimated, balanced, and approved by the Cherokee Nation Tribal Council.
4. "**Contract**" means a promissory agreement, to do or abstain from doing some act, in exchange for sufficient consideration, between two or more parties that creates, modifies or destroys some legal relation.
5. "**Credit of Cherokee Nation**" means obligation of tribal funds, property resources in which Cherokee Nation has an interest.
6. "**Memorandum of Understanding**" means a written document embodying the terms of an agreement that the parties desire to fix by an informal written document, which will serve as the basis for a future formal contract.
7. "**Principal Chief**" means the duly elected and confirmed Principal Chief, Executive Officer of

the Cherokee Nation.

8. **"Property of Cherokee Nation"** means real estate owned or sought to be purchased by Cherokee Nation.

9. **"Rights or privileges"** means liberty, property, monetary, constitutional or legal interest held by citizens of Cherokee Nation.

10. **"Sovereignty"** means the matters that concern the boundaries, or territory, or the jurisdiction, or treaty rights, or the powers or the rights of self-governance of Cherokee Nation.

11. **"Substantial assets"** means litigation that involves an amount in controversy in excess of Twenty-Five Thousand Dollars (\$25,000.00).

12. **"Treaty"** means a compact made between Cherokee Nation and one or more other independent nations or tribes, which if properly authorized and ratified becomes law.

13. **"Tribal Council"** means the duly elected and confirmed person(s) of the Legislative Branch of Cherokee Nation.

§ 304. Authority, procedure, and approval of contracts, compacts and other agreements

A. The Principal Chief shall have the authority to execute treaties, compacts, memorandums of understanding, contracts, and other agreements on behalf of Cherokee Nation between governments, state agencies or other entities regarding the sovereign immunity of Cherokee Nation, substantial assets or credit of Cherokee Nation, or where real property of Cherokee Nation is involved, or where significant rights and privileges of the Cherokee people are involved, such agreements shall be subject to ratification by majority vote of the Cherokee Nation Tribal Council, as provided herein, before they are effective.

B. The above-described contract, compact or other agreement, executed by the Principal Chief on behalf of Cherokee Nation shall be submitted to the Cherokee Nation Tribal Council for a vote on ratification at the next regularly scheduled meeting or special session of the Tribal Council after execution of said agreement by the Principal Chief.

C. Upon receipt of said agreement by the Tribal Council from the Principal Chief, the Tribal Council shall include the vote on ratification in the agenda for the next regularly scheduled meeting or special session as provided by the Tribal Council Rules of Procedure.

D. The provisions of this act shall not apply to agreements necessary to carry out the functions of government as set forth in the annual comprehensive budget approved by the Tribal Council in each fiscal year.

TITLE 74

RESERVED

Reserved for Future Use

TITLE 75

STATUTES AND REPORTS

Reserved for Future Use

TITLE 76

TORTS

Reserved for Future Use

TITLE 77

TOWNS AND COMMUNITIES

Reserved for Future Use

TITLE 78

[RESERVED]

Reserved for Future Use

TITLE 79

TRUST FUNDS AND TRUST AUTHORITIES

CHAPTER 1

ECONOMIC DEVELOPMENT TRUST AUTHORITY

§ 1. Establishment of trust authority

In order to promote economic development projects, the Cherokee Nation Economic Development Trust Authority is established.

§ 2. Trust authority board

A. The Cherokee Nation Economic Development Trust Authority Board shall consist of five (5) members.

B. The members of the Trust Authority Board shall be nominated by the Principal Chief and confirmed, by way of resolution, by the Tribal Council.

C. Notwithstanding the language of subsection (A) of this section, the Trust Authority Board may conduct business even though there be a vacancy on the Board as long as a quorum is present and at least three (3) votes are cast in favor of the pending business by properly seated members of the Board.

CHAPTER 2

ARKANSAS RIVERBED TRUST FUND MANAGEMENT

§ 101. Short title

This act shall be known and may be cited as the Arkansas Riverbed Trust Fund Management Act of 2004.

§ 102. Purpose

The purpose of this act is to establish the policies and procedures for managing Cherokee Nation trust funds and trust assets pursuant to terms and the authority granted under P.L. 107-632, Section 6, "Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act", hereafter referred to as the "Settlement Act". This legislation will govern the use and expenditure of trust funds awarded to Cherokee Nation pursuant to the federal legislation. The funds awarded shall remain in trust for investment on behalf of Cherokee Nation until such time as appropriated by the Council of Cherokee Nation and withdrawn from the federal trust account for the settlement.

§ 103. Definitions

For purposes of this chapter:

"Trust funds" means all monies, interest in the principal from the investment or proceeds derived from the Settlement Act referenced in 79 CNCA § 102.

§ 104. Use and expenditure of trust funds

After the payment of attorney fees, which shall be approved by the Principal Chief and the Council of Cherokee Nation, and not exceed ten percent (10%) according to the Settlement Act, the balance of funds shall be used for the following purposes:

1. The first priority for the use of the settlement trust funds shall be given to the area referred to in LA 05-04, Section 3--Legislative History, to compensate for loss of any lands associated with the Settlement Act.

2. The second priority for the use of settlement trust funds shall be given to other trust land acquisitions based on land management and tenure plans of Cherokee Nation.

3. The remaining balance of the funds shall be reserved to restore the tribal land base based on the future needs of the Nation unless this act is amended.

TITLE 80

UNIFORM COMMERCIAL CODE

ARTICLE 1

GENERAL PROVISIONS

PART 1. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

PART 1. GENERAL PROVISIONS

§ 1–101. Short titles

Short Titles

(a) This Act may be cited as the Uniform Commercial Code.

(b) This article may be cited as Uniform Commercial Code—General Provisions.

§ 1–102. Scope of article

Scope of Article

This article applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

§ 1–103. Construction of Uniform Commercial Code to promote its purposes and policies—Applicability of supplemental principles of law

Construction of Uniform Commercial Code to Promote its Purposes and Policies—Applicability of Supplemental Principles of Law

(a) The Uniform Commercial Code must be liberally construed and applied to promote its

underlying purposes and policies, which are:

- (1) to simplify, clarify, and modernize the law governing commercial transactions;
 - (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
 - (3) to make uniform the law among the various jurisdictions.
- (b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

§ 1–104. Construction against implied repeal

Construction Against Implied Repeal

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§ 1–105. Severability

Severability

If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Uniform Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Commercial Code are severable.

§ 1–106. Use of singular and plural—Gender

Use of Singular and Plural—Gender

In the Uniform Commercial Code, unless the statutory context otherwise requires:

- (1) words in the singular number include the plural, and those in the plural include the singular; and
- (2) words of any gender also refer to any other gender.

§ 1–107. Section captions

Section Captions

Section captions are part of The Uniform Commercial Code.

§ 1–108. Relation to electronic signatures in global and National Commerce Act

Relation to Electronic Signatures in Global and National Commerce Act

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this article modifies, limits, or supersedes § 7001(c) of that Act or authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§ 1–201. General definitions

General Definitions

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof:

(1) "**Action**", in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "**Aggrieved party**" means a party entitled to pursue a remedy.

(3) "**Agreement**", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in 80 CNCA § 1–303.

(4) "**Bank**" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "**Bearer**" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "**Bill of lading**" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

(7) "**Branch**" includes a separately incorporated foreign branch of a bank.

(8) "**Burden of establishing**" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "**Buyer in ordinary course of business**" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead. is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. "**Buyer in ordinary course of business**" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "**Conspicuous**", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "**Consumer**" means an individual who enters into a transaction primarily for personal, family, or household purposes

(12) "**Contract**", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13) "**Creditor**" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "**Defendant**" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "**Delivery**", with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.

(16) "**Document of title**" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(17) "**Fault**" means a default, breach, or wrongful act or omission.

(18) "**Fungible goods**" means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) "**Genuine**" means free of forgery or counterfeiting.

(20) "**Good faith**", except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "**Holder**" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

(22) "**Insolvency proceeding**" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "**Insolvent**" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) "**Money**" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

- (25) "**Organization**" means a person other than an individual.
- (26) "**Party**", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.
- (27) "**Person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (28) "**Present value**" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.
- (29) "**Purchase**" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (30) "**Purchaser**" means a person that takes by purchase.
- (31) "**Record**" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (32) "**Remedy**" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
- (33) "**Representative**" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.
- (34) "**Right**" includes remedy.
- (35) "**Security interest**" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. "**Security interest**" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under 80 CNCA § 2–401, but a buyer may also acquire a "security interest" by complying with Article 9. Except as otherwise provided in 80 CNCA § 2–505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under 80 CNCA § 2–401 is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to 80 CNCA § 1–203.

(36) **"Send"** in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) **"Signed"** includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) **"State"** means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) **"Surety"** includes a guarantor or other secondary obligor.

(40) **"Term"** means a portion of an agreement that relates to a particular matter.

(41) **"Unauthorized signature"** means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) **"Warehouse receipt"** means a receipt issued by a person engaged in the business of storing goods for hire.

(43) **"Writing"** includes printing, typewriting, or any other intentional reduction to tangible form. **"Written"** has a corresponding meaning.

§ 1–202. Notice, knowledge

Notice—Knowledge

(a) Subject to subsection (f), a person has "notice" of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) **"Knowledge"** means actual knowledge. **"Knows"** has a corresponding meaning.

(c) "**Discover**", "**learn**", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "**notifies**" or "**gives**" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person "**receives**" a notice or notification when:

(1) it comes to that person's attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

§ 1–203. Lease distinguished from security interest

Lease Distinguished From Security Interest

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "**remaining economic life of the goods**" and "**reasonably predictable**" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

§ 1–204. Value

Value

Except as otherwise provided in Articles 3, 4, and 5, a person gives value for rights if the person

acquires them:

- (1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) as security for, or in total or partial satisfaction of, a preexisting claim;
- (3) by accepting delivery under a preexisting contract for purchase; or
- (4) in return for any consideration sufficient to support a simple contract.

§ 1–205. Reasonable time—Seasonableness

Reasonable Time—Seasonableness

- (a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.
- (b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

§ 1–206. Presumptions

Presumptions

Whenever the Uniform Commercial Code creates a "**presumption**" with respect to a fact, or provides that a fact is "**presumed**", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

§ 1–301. Territorial applicability—Parties' power to choose applicable law

Territorial Applicability—Parties' Power to Choose Applicable Law

- (a) In this section:
 - (1) "**Domestic transaction**" means a transaction other than an international transaction.
 - (2) "**International transaction**" means a transaction that bears a reasonable relation to a country other than the United States.
- (b) This section applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

(c) Except as otherwise provided in this section:

(1) an agreement by parties to a domestic transaction that any or all of their rights and obligations are to be determined by the law of this Nation or of another state is effective, whether or not the transaction bears a relation to the state designated; and

(2) an agreement by parties to an international transaction that any or all of their rights and obligations are to be determined by the law of this Nation or of another state or country is effective, whether or not the transaction bears a relation to the state or country designated.

(d) In the absence of an agreement effective under subsection (c), and except as provided in subsections (e) and (g), the rights and obligations of the parties are determined by the law that would be selected by application of this Nation's conflict of laws principles.

(e) If one of the parties to a transaction is a consumer, the following rules apply:

(1) An agreement referred to in subsection (c) is not effective unless the transaction bears a reasonable relation to the state or country designated.

(2) Application of the law of the state or country determined pursuant to subsection (c) or (d) may not deprive the consumer of the protection of any rule of law governing a matter within the scope of this section, which both is protective of consumers and may not be varied by agreement:

(A) of the state or country in which the consumer principally resides, unless subparagraph (B) applies; or

(B) if the transaction is a sale of goods, of the state or country in which the consumer both makes the contract and takes delivery of those goods, if such state or country is not the state or country in which the consumer principally resides.

(f) An agreement otherwise effective under subsection (c) is not effective to the extent that application of the law of the state or country designated would be contrary to a fundamental policy of the state or country whose law would govern in the absence of agreement under subsection (d).

(g) To the extent that the Uniform Commercial Code governs a transaction, if one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) 80 CNCA § 2-402;

(2) 80 CNCA §§ 2A-105 and 2A-106;

(3) 80 CNCA § 4-102;

(4) 80 CNCA § 4A–507;

(5) 80 CNCA § 5–116;

[(6) 80 CNCA § 6–103;]

(7) 80 CNCA § 8–110;

(8) 80 CNCA §§ 9–301 through 9–307.

§ 1–302. Variation by agreement

Variation by Agreement

(a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Uniform Commercial Code of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

§ 1–303. Course of performance, course of dealing, and usage of trade

Course of Performance, Course of Dealing, and Usage of Trade

(a) A "**course of performance**" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "**course of dealing**" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "**usage of trade**" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to 80 CNCA § 2–209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

§ 1–304. Obligation of good faith

Obligation of Good Faith

Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

§ 1–305. Remedies to be liberally administered

Remedies to be Liberally Administered

(a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

§ 1–306. Waiver or renunciation of claim or right after breach

Waiver or Renunciation of Claim or Right After Breach

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

§ 1–307. Prima facie evidence by third-party documents

Prima Facie Evidence by Third-Party Documents

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

§ 1–308. Performance or acceptance under reservation of rights

Performance or Acceptance Under Reservation of Rights

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

§ 1–309. Option to accelerate at will

Option to Accelerate at Will

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

§ 1–310. Subordinated obligations

Subordinated Obligations

An obligation may be issued as subordinated to performance of another obligation of the person

obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

ARTICLE 2

SALES

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT

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PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

§ 2–101. Short title

Short Title

This Article shall be known and may be cited as Uniform Commercial Code—Sales.

§ 2–102. Scope; certain security and other transactions excluded from this article

Scope—Certain Security and Other Transactions Excluded From This Article

Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

§ 2–103. Definitions and index of definitions

Definitions and Index of Definitions

(1) In this Article unless the context otherwise requires

- (a) "Buyer" means a person who buys or contracts to buy goods.
 - (b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
 - (c) "Receipt" of goods means taking physical possession of them.
 - (d) "Seller" means a person who sells or contracts to sell goods.
- (2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance". Section 2–606.

"Banker's credit". Section 2–325.

"Between merchants". Section 2–104.

"Cancellation". Section 2–106(4).

"Commercial unit". Section 2–105.

"Confirmed credit". Section 2–325.

"Conforming to contract". Section 2–106.

"Contract for sale". Section 2–106.

"Cover". Section 2–712.

"Entrusting". Section 2–403.

"Financing agency". Section 2–104.

"Future goods". Section 2–105.

"Goods". Section 2–105.

"Identification". Section 2–501.

"Installment contract". Section 2–612.

"Letter of Credit". Section 2–325.

"Lot". Section 2–105.

"Merchant". Section 2–104.

"Overseas". Section 2–323.

"Person in position of seller". Section 2–707.

"Present sale". Section 2–106.

"Sale". Section 2–106.

"Sale on approval". Section 2–326.

"Sale or return". Section 2–326.

"Termination". Section 2–106.

(3) The following definitions in other Articles apply to this Article:

"Check". Section 3–104.

"Consignee". Section 7–102.

"Consignor". Section 7–102.

"Consumer goods". Section 9–109.

"Dishonor". Section 3–502.

"Draft". Section 3–104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

§ 2–104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency"

Definitions: "Merchant"—"Between Merchants"—"Financing Agency"

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course

of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

§ 2-105. Definitions: "Transferability"; "Goods"; "Future" goods; "Lot"; "Commercial unit"

Definitions: "Transferability"—"Goods"—"Future Goods"—"Lot"—"Commercial Unit"

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

§ 2-106. Definitions: "Contract"; "Agreement"; "Contract for sales"; "Sale"; "Present sale"; "Conforming" to contract; "Termination"; "Cancellation"

Definitions: "Contract"—"Agreement"—"Contract for Sales"—"Sale"—"Present Sale"—

"Conforming" to Contract—"Termination"—"Cancellation"

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

§ 2-107. Goods to be severed from realty: Recording

Goods to be Severed From Realty—Recording

(1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT

§ 2-201. Formal requirements; statute of frauds

Formal Requirements—Statute of Frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606).

§ 2-202. Final written expression: parol or extrinsic evidence

Final Written Expression—Parol or Extrinsic Evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (Section 1-205) or by course of performance (Section 2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

§ 2-203. Seals inoperative

Seals Inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

§ 2–204. Formation in general

Formation in General

- (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.
- (2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.
- (3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

§ 2–205. Firm offers

Firm Offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

§ 2–206. Offer and acceptance in formation of contract

Offer and Acceptance in Formation of Contract

- (1) Unless otherwise unambiguously indicated by the language or circumstances
 - (a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
 - (b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

§ 2–207. Additional terms in acceptance or confirmation

Additional Terms in Acceptance or Confirmation

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer,

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act.

§ 2–208. Course of performance or practical construction

Course of Performance or Practical Construction

(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Section 1–205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such

course of performance.

§ 2–209. Modification, rescission and waiver

Modification, Rescission and Waiver

- (1) An agreement modifying a contract within this Article needs no consideration to be binding.
- (2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.
- (3) The requirements of the statute of frauds section of this Article (Section 2–201) must be satisfied if the contract as modified is within its provisions.
- (4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.
- (5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

§ 2–210. Delegation of performance; assignment of rights

Delegation of Performance—Assignment of Rights

- (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.
- (2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.
- (3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.
- (4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those

duties. This promise is enforceable by either the assignor or the other party to the original contract

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2-609).

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 2-301. General obligations of parties

General Obligation of Parties

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

§ 2-302. Unconscionable contract or clause

Unconscionable Contract or Clause

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

§ 2-303. Allocation or division of risks

Allocation or Division of Risks

Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

§ 2-304. Price payable in money, goods, realty, or otherwise

Price Payable in Money, Goods, Realty, or Otherwise

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

§ 2–305. Open price term

Open Price Term

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

§ 2–306. Output, requirements and exclusive dealings

Output, Requirements and Exclusive Dealings

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

§ 2–307. Delivery in single lot or several lots

Delivery in Single Lot or Several Lots

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the

right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot

§ 2–308. Absence of specified place for delivery

Absence of Specified Place for Delivery

Unless otherwise agreed

- (a) the place for delivery of goods is the seller's place of business or if he has none his residence; but
- (b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery, and
- (c) documents of title may be delivered through customary banking channels.

§ 2–309. Absence of specific time provision; notice of termination

Absence of Specific Time Provisions—Notice of Termination

- (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.
- (2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.
- (3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

§ 2–310. Open time for payment or running of credit; authority to ship under reservation

Open Time for Payment or Running of Credit—Authority to Ship Under Reservation

Unless otherwise agreed

- (a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery, and
- (b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2–513); and
- (c) if delivery is authorized and made by way of documents of title otherwise than by subsection

(b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

§ 2–311. Options and cooperation respecting performance

Options and Cooperation Respecting Performance

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of Section 2–204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of Section 2–319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

§ 2–312. Warranty of title and against infringement; buyer's obligation against infringement

Warranty of Title and Against Infringement—Buyer's Obligation Against Infringement

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

§ 2–313. Express warranties by affirmation, promise, description, sample

Express Warranties by Affirmation, Promise, Description, Sample

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

§ 2–314. Implied warranty: merchantability; usage of trade

Implied Warranty: Merchantability—Usage of Trade

(1) Unless excluded or modified (Section 2–316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promise or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2–316) other implied warranties may arise from course of dealing or usage of trade.

§ 2–315. Implied warranty: Fitness for particular purpose

Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

§ 2–316. Exclusion or modification of warranties

Exclusion or Modification of Warranties

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2–202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2-718 and 2-719).

§ 2-317. Cumulation and conflict of warranties express or implied

Cumulation and Conflict of Warranties Express or Implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

- (a) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (b) A sample from an existing bulk displaces inconsistent general language of description.
- (c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

§ 2-318. Third party beneficiaries of warranties express or implied

Third Party Beneficiaries of Warranties Express or Implied

Note: *If this Act is introduced in the Congress of the United States this section should be omitted. (States to select one alternative.)*

Alternative A

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Alternative B

A seller's warranty whether express or implied extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Alternative C

A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of

an individual to whom the warranty extends.

§ 2–319. F.O.B. and F.A.S. terms

F.O.B. and F.A.S. Terms

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (Section 2–504) and bear the expense and risk of putting them into the possession of the carrier, or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (Section 2–503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (Section 2–323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (Section 2–311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

§ 2–320. C.I.F. and C. & F. terms

C.I.F. and C. & F. Terms

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for, and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

§ 2-321. C.I.F. or C. & F.: "Net landed weights"; "Payment on arrival"; Warranty of condition on arrival

C.I.F. or C. & F.: "Net Landed Weights"; "Payment On Arrival"; Warranty of Condition On Arrival

Under a contract containing a term C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must

reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

§ 2-322. Delivery "Ex-ship"

Delivery "Ex-Ship"

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

§ 2-323. Form of bill of lading required in overseas shipment; "Overseas"

Form of Bill of Lading Required in Overseas Shipment; "Overseas"

(1) Where the contract contemplates overseas shipment and contains a term C.I.F or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded in board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set, otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this Article on cure of

improper delivery (subsection (1) of Section 2–508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

§ 2–324. "No arrival, no sale" term

"No Arrival, No Sale" Term

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 2–613).

§ 2–325. "Letter of credit" term; "Confirmed credit"

"Letter of Credit" Term—"Confirmed Credit"

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

§ 2–326. Sale on approval and sale or return; consignment sales and rights of creditors

Sale on Approval and Sale or Return—Consignment Sales and Rights of Creditors

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the Article on Secured Transactions (Article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (Section 2–201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (Section 2–202).

§ 2–327. Special incidents of sale on approval and sale or return

Special Incidents of Sale on Approval and Sale or Return

(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a

merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

§ 2–328. Sale by auction

Sale by Auction

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

§ 2–401. Passing of title; reservation for security; limited application of this section

Passing of Title—Reservation for Security—Limited Application of This Section

Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2–501), and unless otherwise explicitly agreed the buyer acquires by their identification a

special property as limited by this Act Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

§ 2-402. Rights of seller's creditors against sold goods

Rights of Seller's Creditors Against Sold Goods

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (Sections 2-502 and 2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or avoidable preference.

§ 2–403. Power to transfer; good faith purchase of goods; "entrusting"

Power to Transfer—Good Faith Purchase of Goods—"Entrusting"

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9) and Documents of Title (Article 7).

PART 5. PERFORMANCE

§ 2–501. Insurable interest in goods; manner of identification of goods

Insurable Interest in Goods; Manner of Identification of Goods

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are

non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

§ 2-502. Buyer's right to goods on seller's insolvency

Buyer's Right to Goods on Seller's Insolvency

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

§ 2-503. Manner of seller's tender of delivery

Manner of Seller's Tender of Delivery

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of Section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

§ 2-504. Shipment by seller

Shipment by Seller

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

§ 2-505. Seller's shipment under reservation

Seller's Shipment Under Reservation

(1) Where the seller has identified goods to the contract by or before shipment

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

§ 2-506. Rights of financing agency

Rights of Financing Agency

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

§ 2-507. Effect of seller's tender; delivery on condition

Effect of Seller's Tender—Delivery on Condition

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

§ 2-508. Cure by seller of improper tender or delivery; replacement

Cure by Seller of Improper Tender or Delivery—Replacement

(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

§ 2-509. Risk of loss in the absence of breach

Risk of Loss in the Absence of Breach

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of Section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (Section 2–327) and on effect of breach on risk of loss (Section 2–510).

§ 2–510. Effect of breach on risk of loss

Effect of Breach on Risk of Loss

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

§ 2–511. Tender of payment by buyer; payment by check

Tender of Payment by Buyer—Payment by Check

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Act on the effect of an instrument on an obligation (Section 3–310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

§ 2–512. Payment by buyer before inspection

Payment by Buyer before Inspection

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under this Act (Section 5–109(b)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

§ 2–513. Buyer's right to inspection of goods

Buyer's Right to Inspection of Goods

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of Section 2–321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

§ 2–514. When documents deliverable on acceptance; when on payment

When Documents Deliverable on Acceptance—When on Payment

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

PART 6. BREACH, REPUDIATION AND EXCUSE

§ 2–601. Buyer's rights on improper delivery

Buyer's Rights on Improper Delivery

Subject to the provisions of this Article on breach in installment contracts (Section 2–612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2–718 and 2–719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

- (a) reject the whole; or
- (b) accept the whole; or
- (c) accept any commercial unit or units and reject the rest.

§ 2–602. Manner and effect of rightful rejection

Manner and Effect of Rightful Rejection

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (Sections 2–603 and 2–604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller, and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of Section 2–711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on Seller's remedies in general (Section 2–703).

§ 2–603. Merchant buyer's duties as to rightfully rejected goods

Merchant Buyer's Duties as to Rightfully Rejected Goods

(1) Subject to any security interest in the buyer (subsection (3) of Section 2–711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from

the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission men to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

§ 2-604. Buyer's options as to salvage of rightfully rejected goods

Buyer's Options as to Salvage of Rightfully Rejected Goods

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

§ 2-605. Waiver of buyer's objections by failure to particularize

Waiver of Buyer's Objections by Failure to Particularize

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

§ 2-606. What constitutes acceptance of goods

What Constitutes Acceptance of Goods

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of Section 2–602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§ 2–607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over

Effect of Acceptance—Notice of Breach—Burden of Establishing Breach after Acceptance—Notice of Claim or Litigation to Person Answerable Over

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of Section 2–312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after reasonable receipt of the notice does come in and defend he is so bound

(b) if the claim is one for infringement or the like (subsection (3) of Section 2–312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to

satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of Section 2-312).

§ 2-608. Revocation of acceptance in whole or in part

Revocation of Acceptance in Whole or in Part

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

§ 2-609. Right to adequate assurance of performance

Right to Adequate Assurance of Performance

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the

particular case is a repudiation of the contract

§ 2–610. Anticipatory repudiation

Anticipatory Repudiation

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

- (a) for a commercially reasonable time await performance by the repudiating party; or
- (b) resort to any remedy for breach (Section 2–703 or Section 2–711), even though he has notified the repudiating party that he would await the tatter's performance and has urged retraction; and
- (c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2–704).

§ 2–611. Retraction of anticipatory repudiation

Retraction of Anticipatory Repudiation

- (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.
- (2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (Section 2–609).
- (3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

§ 2–612. "Installment contract"; breach

"Installment Contract"—Breach

- (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent
- (2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

§ 2-613. Casualty to identified goods

Casualty to Identified Goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

§ 2-614. Substituted performance

Substituted Performance

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

§ 2-615. Excuse by failure of presupposed conditions

Excuse by Failure of Presupposed Conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs

(b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

§ 2-616. Procedure on notice claiming excuse

Procedure on Notice Claiming Excuse

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (Section 2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

PART 7. REMEDIES

§ 2-701. Remedies for breach of collateral contracts not impaired

Remedies for Breach of Collateral Contracts Not Impaired

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article.

§ 2-702. Seller's remedies on discovery of buyer's insolvency

Seller's Remedies on Discovery of Buyer's Insolvency

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (Section 2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

§ 2-703. Seller's remedies in general

Seller's Remedies in General

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

- (a) withhold delivery of such goods;
- (b) stop delivery by any bailee as hereafter provided (Section 2-705);
- (c) proceed under the next section respecting goods still unidentified to the contract;
- (d) resell and recover damages as hereafter provided (Section 2-706);
- (e) recover damages for non-acceptance (Section 2-708) or in a proper case the price (Section 2-709);
- (f) cancel.

§ 2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods

Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods

(1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

§ 2-705. Seller's stoppage of delivery in transit or otherwise

Seller's Stoppage of Delivery in Transit or Otherwise

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer, or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to

stop received from a person other than the consignor.

§ 2–706. Seller's resale including contract for resale

Seller's Resale Including Contract for Resale

(1) Under the conditions stated in Section 2–703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (Section 2–710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2–707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2–711).

§ 2-707. "Person in the position of a seller"

"Person in the Position of a Seller"

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (Section 2-705) and resell (Section 2-706) and recover incidental damages (Section 2-710).

§ 2-708. Seller's damages for non-acceptance or repudiation

Seller's Damages for Non-Acceptance or Repudiation

(1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (Section 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

§ 2-709. Action for the price

Action for the Price

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer, and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2–610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

§ 2–710. Seller's incidental damages

Seller's Incidental Damages

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyers breach, in connection with return or resale of the goods or otherwise resulting from the breach.

§ 2–711. Buyer's remedies in general—Buyer's security interest in rejected goods

Buyer's Remedies in General—Buyer's Security Interest in Rejected Goods

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2–612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (Section 2–713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (Section 2–502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (Section 2–716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2–706).

§ 2–712. "Cover"; buyer's procurement of substitute goods

"Cover"—Buyer's Procurement of Substitute Goods

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

§ 2-713. Buyer's damages for non-delivery or repudiation

Buyer's Damages for Non-Delivery or Repudiation

(1) Subject to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (Section 2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

§ 2-714. Buyer's damages for breach in regard to accepted goods

Buyer's Damages for Breach in Regard to Accepted Goods

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

§ 2-715. Buyer's incidental and consequential damages

Buyer's Incidental and Consequential Damages

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and

any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

§ 2-716. Buyer's right to specific performance or replevin

Buyer's Right to Specific Performance or Replevin

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

§ 2-717. Deduction of damages from the price

Deduction of Damages from the Price

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

§ 2-718. Liquidation or limitation of damages; deposits

Liquidation or Limitation of Damages—Deposits

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (Section 2-706).

§ 2-719. Contractual modification or limitation of remedy

Contractual Modification or Limitation of Remedy

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

§ 2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach

Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

§ 2-721. Remedies for fraud

Remedies for Fraud

Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

§ 2-722. Who can sue third parties for injury to goods

Who Can Sue Third Parties for Injury to Goods

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

- (a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;
- (b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;
- (c) either party may with the consent of the other sue for the benefit of whom it may concern.

§ 2-723. Proof of market price: Time and place

Proof of Market Price: Time and Place

- (1) If an action based on anticipatory repudiation comes to trial before the time, for performance with respect to some or all of the goods, any damages based on market price (Section 2-708 or Section 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.
- (2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable

substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

§ 2-724. Admissibility of market quotations

Admissibility of Market Quotations

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

§ 2-725. Statute of limitations in contracts for sale

Statute of Limitations in Contracts for Sale

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Act becomes effective.

ARTICLE 3

NEGOTIABLE INSTRUMENTS

PART 1. GENERAL PROVISIONS AND DEFINITIONS

PART 2. NEGOTIATION, TRANSFER, AND INDORSEMENTS

PART 3. ENFORCEMENT OF INSTRUMENTS

PART 4. LIABILITY OF PARTIES

PART 5. DISHONOR

PART 6. DISCHARGE AND PAYMENT

PART 1. GENERAL PROVISIONS AND DEFINITIONS

§ 3–101. Short title

Short Title

This Article may be cited as Uniform Commercial Code—Negotiable Instruments.

§ 3–102. Subject matter

Subject Matter

- (a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.
- (b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.
- (c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

§ 3–103. Definitions

Definitions

(a) In this Article:

- (1) "Acceptor" means a drawee who has accepted a draft.
- (2) "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.
- (3) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.

- (4) "Drawee" means a person ordered in a draft to make payment.
- (5) "Drawer" means a person who signs or is identified in a draft as a person ordering payment
- (6) ["Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.]
- (7) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.
- (8) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
- (9) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage, not disapproved by this Article or Article 4.
- (10) "Party" means a party to an instrument.
- (11) "Principal obligor." with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this article.
- (12) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
- (13) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 1–201(8)).
- (14) ["Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.]
- (15) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.
- (16) "Remotely-created consumer item" means an item drawn on a consumer account which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.

(17) "Secondary obligor." with respect to an instrument means (a) an indorser or an accommodation party, (b) a drawer having the obligation described in Section 3-414(d), or (c) any other party to the instrument that has recourse against another party to the instrument pursuant to Section 3-116(b).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance" Section 3-409

"Accommodated party" Section 3-419

"Accommodation party" Section 3-419

"Account" Section 4-104

"Alteration" Section 3-407

"Anomalous indorsement" Section 3-205

"Blank indorsement" Section 3-205

"Cashier's check" Section 3-104

"Certificate of deposit" Section 3-104

"Certified check" Section 3-409

"Check" Section 3-104

"Consideration" Section 3-303

"Draft" Section 3-104

"Holder in due course" Section 3-302

"Incomplete instrument" Section 3-115

"Indorsement" Section 3-204

"Indorser" Section 3-204

"Instrument" Section 3-104

"Issue" Section 3-105

"Issuer" Section 3–105

"Negotiable instrument" Section 3–104

"Negotiation" Section 3–201

"Note" Section 3–104

"Payable at a definite time" Section 3–108

"Payable on demand" Section 3–108

"Payable to bearer" Section 3–109

"Payable to order" Section 3–109

"Payment" Section 3–602

"Person entitled to enforce" Section 3–301

"Presentment" Section 3–501

"Reacquisition" Section 3–207

"Special indorsement" Section 3–205

"Teller's check" Section 3–104

"Transfer of instrument" Section 3–203

"Traveler's check" Section 3–104

"Value" Section 3–303

(c) The following definitions in other Articles apply to this Article:

"Banking day" Section 4–104

"Clearing house" Section 4–104

"Collecting bank" Section 4–105

"Depositary bank" Section 4–105

"Documentary draft" Section 4–104

"Intermediary bank" Section 4–105

"Item" Section 4–104

"Payor bank" Section 4–105

"Suspend payments" Section 4–104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

§ 3–104. Negotiable instrument

Negotiable Instrument

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder,

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a

bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

§ 3–105. Issue of instrument

Issue of Instrument

(a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

§ 3–106. Unconditional promise or order

Unconditional Promise or Order

(a) Except as provided in this section, for the purposes of Section 3–104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another record, or (iii) that rights or obligations with respect to the promise or order are stated in another record. A reference to another record does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited

to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Section 3–104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of Section 3–104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

§ 3–107. Instrument payable in foreign money

Instrument Payable in Foreign Money

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

§ 3–108. Payable on demand or at definite time

Payable on Demand or at Definite Time

(a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

§ 3–109. Payable to bearer or to order

Payable to Bearer or to Order

(a) A promise or order is payable to bearer if it:

(1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) does not state a payee; or

(3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Section 3–205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3–205(b).

§ 3–110. Identification of person to whom instrument is payable

Identification of Person to Whom Instrument is Payable

(a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply.

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

§ 3–111. Place of payment

Place of Payment

Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

§ 3–112. Interest

Interest

(a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained

in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

§ 3–113. Date of instrument

Date of Instrument

(a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in Section 4–401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

§ 3–114. Contradictory terms of instrument

Contradictory Terms of Instrument

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

§ 3–115. Incomplete instrument

Incomplete Instrument

(a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under Section 3–104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 3–104, but, after completion, the requirements of Section 3–104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 3–407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

§ 3–116. Joint and several liability; contribution

Joint and Several Liability—Contribution

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in Section 3–419(f) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

§ 3–117. Other agreements affecting instrument

Other Agreements Affecting Instrument

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

§ 3–118. Statute of limitations

Statute of Limitations

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the

instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues.

§ 3–119. Notice of right to defend action

Notice of Right to Defend Action

In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

PART 2. NEGOTIATION, TRANSFER, AND INDORSEMENT

§ 3–201. Negotiation

Negotiation

(a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

§ 3–202. Negotiation subject to rescission

Negotiation Subject to Rescission

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of

an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

§ 3–203. Transfer of instrument; rights acquired by transfer

Transfer of Instruments—Rights Acquired by Transfer

(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

§ 3–204. Indorsement

Indorsement

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an

indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

§ 3–205. Special indorsement; blank indorsement; anomalous indorsement

Special Indorsement—Blank Indorsement—Anomalous Indorsement

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3–110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument *becomes* payable to bearer and maybe negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

§ 3–206. Restrictive indorsement

Restrictive Indorsement

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in Section 4–201(b), or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose

of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in paragraph (3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in Section 3–307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

§ 3–207. Reacquisition

Reacquisition

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

PART 3. ENFORCEMENT OF INSTRUMENTS

§ 3–301. Person entitled to enforce instrument

Person Entitled to Enforce Instrument

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in—possession of the instrument who is entitled to enforce the instrument pursuant to Section 3–309 or 3–418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

§ 3–302. Holder in due course

Holder in Due Course

(a) Subject to subsection (c) and Section 3–106(d), "holder in due course" means the holder of an instrument if:

(1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3–306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 3–305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process

or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under Section 3–303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

§ 3–303. Value and consideration

Value and Consideration

(a) An instrument is issued or transferred for value if:

(1) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) instrument is issued or transferred as payment of or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) instrument is issued or transferred in exchange for a negotiable instrument, or

(5) instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent

performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

§ 3–304. Overdue instrument

Overdue Instrument

(a) An instrument payable on demand becomes overdue at the earliest of the following times:

- (1) the day after the day demand for payment is duly made;
- (2) the instrument is a check, 90 days after its date; or
- (3) the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

- (1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.
- (2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.
- (3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

§ 3–305. Defenses and claims in recoupment; claims in consumer transactions

Defenses and Claims in Recoupment—Claims in Consumer Transactions

(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

- (1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(e) In a consumer transaction, if law other than this article requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee, and the instrument does not include such a statement:

(1) the instrument has the same effect as if the instrument included such a statement:

(2) the issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement: and

(3) the extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

(f) This section is subject to law other than this article that establishes a different rule for consumer transactions.

§ 3–306. Claims to an instrument

Claims to an Instrument

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

§ 3–307. Notice of breach of fiduciary duty

Notice of Breach of Fiduciary Duty

(a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

§ 3–308. Proof of signatures and status as holder in due course

Proof of Signatures and Status as Holder in Due Course

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Section 3–402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 3–301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

§ 3–309. Enforcement of lost, destroyed, or stolen instrument

Enforcement of Lost, Destroyed or Stolen Instrument

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1) the person seeking to enforce the instrument:

(A) was entitled to enforce the instrument when loss of possession occurred; or

(B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred:

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3–308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a

claim by another person to enforce the instrument Adequate protection may be provided by any reasonable means.

§ 3–310. Effect of instrument on obligation for which taken

Effect of Instrument on Obligation For Which Taken

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in paragraph (4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case.

§ 3–311. Accord and satisfaction by use of instrument

Accord and Satisfaction by Use of Instrument

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

§ 3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check

Lost, Destroyed, or Stolen Cashier's Check, Teller's Check, or Certified Check

(a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a statement, made in a record under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or

a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to Section 4-302(a)(1), payment to the claimant discharges—all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or Section 3-309.

PART 4. LIABILITY OF PARTIES

§ 3–401. Signature

Signature

- (a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3–402.
- (b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

§ 3–402. Signature by representative

Signature by Representative

- (a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.
- (b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:
- (1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.
- (2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.
- (c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

§ 3–403. Unauthorized signature

Unauthorized Signature

- (a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.
- (b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.
- (c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article.

§ 3–404. Impostors; fictitious payees

Impostors—Fictitious Payees

- (a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.
- (b) If (i) a person whose intent determines to whom an instrument is payable (Section 3–110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement
 - (1) Any person in possession of the instrument is its holder.
 - (2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.
- (c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.
- (d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

§ 3–405. Employer's responsibility for fraudulent indorsement by employee

Employer's Responsibility for Fraudulent Indorsement by Employee

(a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

§ 3–406. Negligence contributing to forged signature or alteration of instrument

Negligence Contributing to Forged Signature or Alteration of Instrument

(a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an

instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded.

§ 3-407. Alteration

Alteration

(a) "**Alteration**" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

§ 3-408. Drawee not liable on unaccepted draft

Drawee Not Liable on Unaccepted Draft

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

§ 3-409. Acceptance of draft; Certified check

Acceptance of Draft—Certified Check

(a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at

any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

§ 3-410. Acceptance varying draft

Acceptance Varying Draft

(a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

§ 3-411. Refusal to pay cashier's checks, teller's checks, and certified checks

Refusal to Pay Cashier's Checks, Teller's Checks, and Certified Checks

(a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt

whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

§ 3-412. Obligation of issuer of note or cashier's check

Obligation of Issuer of Note or Cashier's Check

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under Section 3-415.

§ 3-413. Obligation of acceptor

Obligation of Acceptor

(a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under Section 3-414 or 3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

§ 3-414. Obligation of drawer

Obligation of Drawer

(a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under Section 3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom

acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under Section 3-415(a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depository bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

§ 3-415. Obligation of indorser

Obligation of Indorser

(a) Subject to subsections (b), (c), (d), (e) and to Section 3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by Section 3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged.

§ 3-416. Transfer warranties

Transfer Warranties

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that

(1) the warrantor is a person entitled to enforce the instrument;

(2) all signatures on the instrument are authentic and authorized;

(3) the instrument has not been altered;

(4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer, and

(6) with respect to a remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A [cause of action] for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§ 3-417. Presentment warranties

Presentment Warranties

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized;
and

(4) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 or the drawer is precluded under Section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A [cause of action] for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§ 3–418. Payment or acceptance by mistake

Payment or Acceptance by Mistake

(a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to Section 4–403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 3–417 or 4–407.

(d) Notwithstanding Section 4–215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

§ 3–419. Instruments signed for accommodation

Instruments Signed for Accommodation

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice

that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument Except as provided in Section 3–605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(f) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

§ 3–420. Conversion of instrument

Conversion of Instrument

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

PART 5. DISHONOR

§ 3-501. Presentment

Presentment

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

§ 3-502. Dishonor

Dishonor

(a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and paragraph (2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under Section 4-301 or 4-302, or becomes accountable for the amount of the check under Section 4-302.

(2) If a draft is payable on demand and paragraph (1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b)(2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of

presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under Section 3–504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

§ 3–503. Notice of dishonor

Notice of Dishonor

(a) The obligation of an indorser stated in Section 3–415(a) and the obligation of a drawer stated in Section 3–414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under Section 3–504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to Section 3–504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

§ 3–504. Excused presentment and notice of dishonor

Excused Presentment and Notice of Dishonor

(a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not

necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

§ 3–505. Evidence of dishonor

Evidence of Dishonor

(a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) a document regular in form as provided in subsection (b) which purports to be a protest;

(2) a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

PART 6. DISCHARGE AND PAYMENT

§ 3–601. Discharge and effect of discharge

Discharge and Effect of Discharge

(a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

§ 3–602. Payment

Payment

(a) Subject to subsection (e), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

(b) Subject to subsection (e), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee; reasonably identifies the transferred note; and provides an address at which payments subsequently are to be made. Upon request a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (c) even if the party obliged to pay the note has received a notification under this paragraph.

(c) Subject to subsection (e), to the extent of a payment under subsections (a) and (b), the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 3–306 by another person.

(d) Subject to subsection (e), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (b) after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay the instrument is not discharged under subsections (a) through (d) if:

(1) a claim to the instrument under Section 3–306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument

(f) As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

§ 3–603. Tender of payment

Tender of Payment

- (a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract
- (b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.
- (c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

§ 3-604. Discharge by cancellation or renunciation

Discharge by Cancellation or Renunciation

- (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.
- (b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.
- (c) In this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with fee present intent to adopt or accent the record.

§ 3-605. Discharge of secondary obligors

Discharge of Secondary Obligors

- (a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this article.

(2) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) If the secondary obligor is not discharged under paragraph (2), the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged from any unperformed portion of its obligation to the

extent that the modification would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation on the instrument as having been modified correspondingly.

(d) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under subsections (a)(3), (b), (c), or (d) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under Section 3419(c) that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in subsection (i), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

PART 1. GENERAL PROVISIONS AND DEFINITIONS

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

PART 3. COLLECTION OF ITEMS: PAYOR BANKS

PART 4. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMERS

PART 5. COLLECTION OF DOCUMENTARY DRAFTS

PART 1. GENERAL PROVISIONS AND DEFINITIONS

§ 4-101. Short title

Short Title

This Article may be cited as Uniform Commercial Code—Bank Deposits and Collections.

§ 4-102. Applicability

Applicability

(a) To the extent that items within this Article are also within Articles 3 and 8, they are subject to those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

§ 4-103. Variation by agreement—Measure of damages—Action constituting ordinary care

Variation by Agreement—Measure of Damages—Action Constituting Ordinary Care

(a) The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this Article is not disapproval of other procedures that may be reasonable under the circumstances:

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

§ 4-104. Definitions and index of definitions

Definitions and Index of Definitions

(a) In this Article, unless the context otherwise requires:

(1) "**Account**" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "**Afternoon**" means the period of a day between noon and midnight;

(3) "**Banking day**" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "**Clearing house**" means an association of banks or other payors regularly clearing items;

(5) "**Customer**" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "**Documentary draft**" means a draft to be presented for acceptance or payment if specified

documents, certificated securities (Section 8–102) or instructions for uncertificated securities (Section 8–102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) **"Draft"** means a draft as defined in Section 3–104 or an item, other than an instrument, that is an order,

(8) **"Drawee"** means a person ordered in a draft to make payment;

(9) **"Item"** means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

(10) **"Midnight deadline"** with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) **"Settle"** means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) **"Suspends payments"** with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment" Section 4–110.

"Collecting bank" Section 4–105.

"Depository bank" Section 4–105.

"Intermediary bank" Section 4–105.

"Payor bank" Section 4–105.

"Presenting bank" Section 4–105.

"Presentment notice" Section 4–110.

(c) The following definitions in other Articles apply to this Article:

"Acceptance" Section 3–409.

"Alteration" Section 3–407.

"Cashier's check" Section 3–104.

"Certificate of deposit" Section 3–104.

"Certified check" Section 3–409.

"Check" Section 3–104.

"Good faith" Section 3–103.

"Holder in due course" Section 3–302.

"Instrument" Section 3–104.

"Notice of dishonor" Section 3–503.

"Order" Section 3–103.

"Ordinary care" Section 3–103.

"Person entitled to enforce" Section 3–301.

"Presentment" Section 3–501.

"Promise" Section 3–103.

"Prove" Section 3–103.

"Record" Section 3–103.

"Remotely-created consumer item" Section 3–103.

"Teller's check" Section 3–104.

"Unauthorized signature" Section 3–403.

(d) In addition. Article I contains general definitions and principles of construction and interpretation applicable throughout this Article.

§ 4–105. Definitions of types of banks

Definitions of Types of Banks

In this Article:

- (1) "**Bank**" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;
- (2) "**Depository bank**" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;
- (3) "**Payor bank**" means a bank that is the drawee of a draft;
- (4) "**Intermediary bank**" means a bank to which an item is transferred in course of collection except the depository or payor bank;
- (5) "**Collecting bank**" means a bank handling an item for collection except the payor bank;
- (6) "**Presenting bank**" means a bank presenting an item except a payor bank.

§ 4-106. Payable through or payable at bank: Collecting bank

Payable Through or Payable at Bank: Collecting Bank

- (a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

ALTERNATIVE A

- (b) If an item states that it is "payable at" a bank identified in the item, the item is equivalent to a draft drawn on the bank.

ALTERNATIVE B

- (b) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.
- (c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

§ 4-107. Separate office of bank

Separate Office of Bank

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article and under Article 3.

§ 4-108. Time of receipt of items

Time of Receipt of Items

(a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 P.M. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

§ 4-109. Delays

Delays

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this Act for a period not exceeding two additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Act or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require.

§ 4-110. Electronic presentment

Electronic Presentment

(a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the presentment notice unless the context otherwise indicates.

§ 4–111. Statute of limitations

Statute of Limitations

An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues.

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

§ 4–201. Status of collecting bank as agent and provisional status of credits—Applicability of article—item indorsed "pay any bank"

Status of Collecting Bank as Agent and Provisional Status of Credits—Applicability of Article—Item Indorsed "Pay Any Bank"

(a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to an item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

- (1) returned to the customer initiating collection; or
- (2) specially indorsed by a bank to a person who is not a bank.

§ 4–202. Responsibility for collection or return—When action timely

Responsibility for Collection or Return—When Action Timely

(a) A collecting bank must exercise ordinary care in:

- (1) presenting an item or sending it for presentment;
- (2) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may

be;

(3) settling for an item when the bank receives final settlement; and

(4) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

§ 4–203. Effect of instructions

Effect of Instructions

Subject to Article 3 concerning conversion of instruments (Section 3–420) and restrictive indorsements (Section 3–206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

§ 4–204. Methods of sending and presenting—Sending directly to payor bank

Methods of Sending and Presenting—Sending Directly to Payor Bank

(a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

(1) an item directly to the payor bank;

(2) an item to a nonbank payor if authorized by its transferor; and

(3) an item other than documentary drafts to a nonbank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

§ 4–205. Depository bank holder of unindorsed item

Depository Bank Holder of Unindorsed Item

If a customer delivers an item to a depository bank for collection:

(1) the depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of Section 3–302, it is a holder in due course; and

(2) the depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

§ 4–206. Transfer between banks

Transfer Between Banks

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

§ 4–207. Transfer warranties

Transfer Warranties

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) the warrantor is a person entitled to enforce the item;

(2) all signatures on the item are authentic and authorized;

(3) the item has not been altered;

(4) the item is not subject to a defense or claim in recoupment (Section 3–305(a)) of any party that can be asserted against the warrantor;

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer, and

(6) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the

terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 3–115 and 3–407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§ 4–208. Presentment warranties

Presentment Warranties

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered; and

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise

ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 or the drawer is precluded under Section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§ 4-209. Encoding and retention warranties

Encoding and Retention Warranties

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

§ 4–210. Security interest of collecting bank in items, accompanying documents and proceeds

Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) no security agreement is necessary to make the security interest enforceable (Section 9–203(l)(a));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

§ 4–211. When bank gives value for purposes of holder in due course

When Bank Gives Value for Purposes of Holder in Due Course

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of Section 3–302 on what constitutes a holder in due course.

§ 4–212. Presentment by notice of item not payable by, through, or at bank—Liability of drawer or indorser

Presentment by Notice of Item Not Payable By, Through, or At Bank—Liability of Drawer or Indorser

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3–501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 3–501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

§ 4–213. Medium and time of settlement by bank

Medium and Time of Settlement by Bank

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) the medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) the time of settlement, is:

(i) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) with respect to tender of settlement by credit in an account in a Federal Reserve Bank, when the credit is made;

(iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to Section 4A–406(a) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) presents or forwards the check for collection, settlement is final when the check is finally paid;
or

(2) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

§ 4-214. Right of charge-back or refund—Liability of collecting bank—Return of item

Right of Charge-Back or Refund—Liability of Collecting Bank—Return of Item

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depository bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4-301).

(d) The right to charge back is not affected by:

(1) previous use of a credit given for the item; or

(2) failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

§ 4-215. Final payment of item by payor bank—When provisional debits and credits become final—When certain credits become available for withdrawal

Final Payment of Item by Payor Bank—When Provisional Debits and Credits Become Final—When Certain Credits Become Available for Withdrawal

(a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) paid the item in cash;

(2) settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits *or* credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) if the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) if the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

§ 4-216. Insolvency and preference

Insolvency and Preference

(a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes Final, the owner of the item has a preferred claim against the collecting bank.

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

§ 4-301. Posting—Recovery of payment by return of items—Time of dishonor—Return of items by payor bank

Posting—Recovery of Payment by Return of Items—Time of Dishonor—Return of Items by Payor Bank

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it

(1) returns the item;

(2) returns an image of the item, if the party to which the return is made has entered

(3) into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement; or sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) as to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

§ 4-302. Payor's bank responsibility for late return of item

Payor's Bank Responsibility for Late Return of Item

(a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (Section 4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

§ 4-303. When items subject to notice, stop-payment order, legal process, or setoff—Order in which items may be changed or certified

When Items Subject to Notice, Stop-Payment Order, Legal Process, or Setoff—Order in Which Items May Be Changed or Certified

(a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(1) the bank accepts or certifies the item;

(2) the bank pays the item in cash;

(3) the bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; the bank becomes accountable for the amount of the item under Section 4-302

(4) dealing with the payor bank's responsibility for late return of items; or

(5) with respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a), items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

PART 4. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

§ 4-401. When bank may charge customer's account

When Bank May Charge Customer's Account

(a) A bank may charge against the account of a customer an item that is properly payable from the account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in Section 4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 4-303. If a bank charges against the account of a customer a check before the date stated in

the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under Section 4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) the original terms of the altered item; or

(2) the terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

§ 4-402. Bank's liability to customer for wrongful dishonor, time of determining insufficiency of account

Bank's Liability to Customer for Wrongful Dishonor, Time of Determining Insufficiency of Account

(a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

§ 4-403. Customer's right to stop payment—Burden of proof of loss

Customer's Right to Stop Payment—Burden of Proof of Loss

(a) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in a record within that period. A stop-payment order may be renewed for additional six-month periods by a record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 4-402.

§ 4-404. Bank not obliged to pay check more than six months old

Bank Not Obligated to Pay Check More Than Six Months Old

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

§ 4-405. Death or incompetence of customer

Death or Incompetence of Customer

(a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for 10 days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

§ 4-406. Customer's duty to discover and report unauthorized signature or alteration

Customer's Duty to Discover and Report Unauthorized Signature or Alteration

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain

the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (c), the customer is precluded from asserting against the bank:

(1) the customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one (1) year after the statement or items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.

§ 4-407. Payor bank's right to subrogation on improper payment

Payor Bank's Right to Subrogation On Improper Payment

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an

account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights

(1) of any holder in due course on the item against the drawer or maker;

(2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS

§ 4-501. Handling of documentary drafts—Duty to send for presentment and to notify customer of dishonor

Handling of Documentary Drafts—Duty to Send for Presentment and to Notify Customer of Dishonor

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

§ 4-502. Presentment of "on arrival" drafts

Presentment of "On Arrival" Drafts

If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

§ 4-503. Responsibility of presenting bank for documents and goods—Report of reasons for dishonor—Referee in case of need

Responsibility of Presenting Bank for Documents and Goods—Report of Reasons for Dishonor—Referee in Case of Need

Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

(1) must deliver the documents to the drawee on acceptance of the draft if it is payable more than

three days after presentment; otherwise, only on payment; and

(2) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

However the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

§ 4-504. Privilege of presenting bank to deal with goods—Security interest for expenses

Privilege of Presenting Bank to Deal With Goods—Security Interest for Expenses

(a) A presenting bank that, following the dishonor of a documentary draft, has seasonably "requested instructions" but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

REVISED ARTICLE 5

LETTERS OF CREDIT

§ 5-101. Short title

Short Title

This article may be cited as Uniform Commercial Code—Letters of Credit.

§ 5-102. Definitions

Definitions

(a) In this article:

(1) "**Adviser**" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(2) "**Applicant**" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) "**Beneficiary**" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) "**Confirmer**" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(5) "**Dishonor**" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(6) "**Document**" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in Section 5-108(e) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(7) "**Good faith**" means honesty in fact in the conduct or transaction concerned.

(8) "**Honor**" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs

(i) upon payment,

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment, or

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(9) "**Issuer**" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(10) "**Letter of credit**" means a definite undertaking that satisfies the requirements of Section 5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(11) "**Nominated person**" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement

or custom and practice to reimburse.

(12) **"Presentation"** means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(13) **"Presenter"** means a person making a presentation as or on behalf of a beneficiary or nominated person.

(14) **"Record"** means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) **"Successor of a beneficiary"** means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(b) Definitions in other Articles applying to this article and the sections in which they appear are:

"Accept" or **"Acceptance"** Section 3–409

"Value" Sections 3–303, 4–211

(c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this article.

§ 5–103. Scope

Scope

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d), Sections 5–102(a)(9) and (10), 5–106(d), and 5–114(d), and except to the extent prohibited in Sections 1–102(3) and 5–117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or

arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

§ 5–104. Formal requirements

Formal Requirements

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 5–108(e).

§ 5–105. Consideration

Consideration

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

§ 5–106. Issuance, amendment, cancellation, and duration

Issuance, Amendment, Cancellation, and Duration

(a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that . person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

§ 5–107. Confirmer, nominated person, and adviser

Confirmer, Nominated Person, and Adviser

(a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the

request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

§ 5–108. Issuer's rights and obligations

Issuer's Rights and Obligations

(a) Except as otherwise provided in Section 5–109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 5–113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) to honor,

(2) if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation, or

(3) to give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in Section 5–109(a) or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

(1) the performance or nonperformance of the underlying contract, arrangement, or transaction,

(2) an act or omission of others, or

(3) observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e).

(g) If an undertaking constituting a letter of credit under Section 5–102(a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this article:

(1) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) takes the documents free of claims of the beneficiary or presenter,

(3) is precluded from asserting a right of recourse on a draft under Sections 3–414 and 3–415;

(4) except as otherwise provided in Sections 5–110 and 5–117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

§ 5–109. Fraud and forgery

Fraud and Forgery

(a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or

applicant:

(1) the issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) all of the conditions to entitle a person to the relief under the law of this State have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (a)(1).

§ 5-110. Warranties

Warranties

(a) If its presentation is honored, the beneficiary warrants:

(1) to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in Section 5-109(a); and

(2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) are in addition to warranties arising under Article 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those articles.

§ 5–111. Remedies

Remedies

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (a) or (b), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b).

(d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

§ 5–112. Transfer of letter of credit

Transfer of Letter of Credit

(a) Except as otherwise provided in Section 5–113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of

credit may not be transferred

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) the transfer would violate applicable law; or

(2) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in Section 5–108(e) or is otherwise reasonable under the circumstances.

§ 5–113. Transfer by operation of law

Transfer by Operation of Law

(a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in Section 5–108(e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) has the consequences specified in Section 5–108(i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of Section 5–109.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b).

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

§ 5–114. Assignment of proceeds

Assignment of Proceeds

(a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law.

§ 5–115. Statute of limitations

Statute of Limitations

An action to enforce a right or obligation arising under this article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the [claim for relief] [cause of action] accrues, whichever occurs later. A [claim for relief] [cause of action] accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

§ 5–116. Choice of law and forum

Choice of Law and Forum

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 5–104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5–103(c).

(d) If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

(e) The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

§ 5–117. Subrogation of issuer, applicant, and nominated person

Subrogation of Issuer, Applicant, and Nominated Person

(a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a).

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(1) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) the applicant to same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

ARTICLE 6

[REPEALED]

TITLE 80

UNIFORM COMMERCIAL CODE

ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

PART 1. GENERAL

PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

PART 3. BILLS OF LADING: SPECIAL PROVISIONS

PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

PART 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

PART 7. TRANSITION PROVISIONS

PART 1. GENERAL

§ 7–101. Short title

Short Title

This article may be cited as Uniform Commercial Code—Documents of Title.

§ 7–102. Definitions and index of definitions

Definitions and Index of Definitions

(a) In this article, unless the context otherwise requires:

(1) "**Bailee**" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) "**Carrier**" means a person that issues a bill of lading.

(3) "**Consignee**" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "**Consignor**" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "**Delivery order**" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) "**Good faith**" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "**Goods**" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) "**Issuer**" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(9) "**Person entitled under the document**" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) **"Sign"** means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(12) **"Shipper"** means a person that enters into a contract of transportation with a carrier.

(13) **"Warehouse"** means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

(1) **"Contract for sale"**, Section 2–106.

(2) **"Lessee in ordinary course"**, Section 2A–103.

(3) **"Receipt of goods"**, Section 2–103.

(c) In addition, Article I contains general definitions and principles of construction and interpretation applicable throughout this article.

§ 7–103. Relation of article to treaty or statute

Relation of Article to Treaty or Statute

(a) This article is subject to any treaty or statute of the United States or a regulatory statute of this State to the extent the treaty, statute, or regulatory statute is applicable.

(b) This article does not repeal or modify any law prescribing the form or contents of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's businesses in respects not specifically treated in this article. However, violation of these laws does not affect the status of a document of title that otherwise complies with the definition of a document of title.

§ 7–104. Negotiable and nonnegotiable document of title

Negotiable and Nonnegotiable Document of Title

(a) A document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

§ 7-105. Reissuance in alternative medium

Reissuance in Alternative Medium

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer, and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) the electronic document ceases to have any effect or validity; and

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of the electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

§ 7–106. Control of electronic document of title

Control of Electronic Document of Title

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

§ 7–107. Relation to Electronic Signatures in Global and National Commerce Act

Relation to Electronic Signatures in Global and National Commerce Act

This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. § 7003(b)).

PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

§ 7-201. Person that may issue a warehouse receipt—Storage under bond

Person That May Issue a Warehouse Receipt—Storage Under Bond

- (a) A warehouse receipt may be issued by any warehouse.
- (b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

§ 7-202. Form of warehouse receipt

Form of Warehouse Receipt

- (a) A warehouse receipt need not be in any particular form.
- (b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by the omission:
 - (1) the location of the warehouse facility where the goods are stored;
 - (2) the date of issue of the receipt;
 - (3) the unique identification code of the receipt;
 - (4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;
 - (5) the rate of storage and handling charges, but if goods are stored under a field warehousing arrangement, a statement of that fact is sufficient on a nonnegotiable receipt;
 - (6) a description of the goods or the packages containing them;;
 - (7) the signature of the warehouse or its agent;
 - (8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, the fact of that ownership; and
 - (9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest but if the precise amount of advances made or of liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse or to its agent that issued the receipt, a statement of the fact that advances have been made or liabilities incurred and

the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the provisions of [the Uniform Commercial Code] and do not impair its obligation of delivery under Section 7-403 or its duty of care under Section 7-204. Any contrary provisions are ineffective.

§ 7-203. Liability for nonreceipt or misdescription

Liability for Nonreceipt or Misdescription

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or words of similar import, if the indication is true; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

§ 7-204. Duty of care—Contractual limitation of warehouse's liability

Duty of Care—Contractual Limitation of Warehouse's Liability

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. However, unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. No such limitation is effective with respect to the warehouse's liability for conversion to its own use. The warehouse's liability, on request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(d) This section does not impair or repeal [Insert reference to any statute that imposes a higher responsibility upon the warehouse or invalidates contractual limitations that would be permissible under this Article.]

§ 7–205. Title under warehouse receipt defeated in certain cases

Title Under Warehouse Receipt Defeated in Certain Cases

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

§ 7–206. Termination of storage at warehouse's option

Termination of Storage at Warehouse's Option

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 7–210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and Section 7–210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

§ 7–207. Goods must be kept separate—Fungible goods

Goods Must be Kept Separate—Fungible Goods

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods

covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

§ 7–208. Altered warehouse receipts

Altered Warehouse Receipts

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

§ 7–209. Lien of warehouse

Lien of Warehouse

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) The warehouse may also reserve a security interest under Article 9 against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. A security interest is governed by Article 9.

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of

a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; or with power to obtain delivery under Section 7-403; or with power of disposition under Sections 2-403, 2A-304(2), 2A-305(2) or 9-320 or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

§ 7-210. Enforcement of warehouse's lien

Enforcement of Warehouse's Lien

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse has sold in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse's lien on goods, other than goods stored by a merchant in the course of its business, may be enforced only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

- (3) The sale must conform to the terms of the notification.
- (4) The sale must be held at the nearest suitable place to where the goods are held or stored.
- (5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.
- (c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.
- (d) A warehouse may buy at any public sale held pursuant to this section.
- (e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.
- (f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.
- (g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
- (h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).
- (i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

PART 3. BILLS OF LADING: SPECIAL PROVISIONS

§ 7-301. Liability for nonreceipt or misdescription—"Said to contain"—"Shipper's load and count"—Improper handling

Liability for Nonreceipt or Misdescription—"Said to Contain"—"Shipper's Load and Count"—Improper Handling

- (a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to

which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document of title indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of the bill of lading, the issuer must count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk and words such as "shipper's weight, load and count" or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of the bill of lading adequate facilities for weighing those goods, the issuer must ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer, by including in the bill of lading the words "shipper's weight, load and count" or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of the issuer to that indemnity does not limit its responsibility or liability under the contract of carriage to any person other than the shipper.

§ 7-302. Through bills of lading and similar documents of title

Through Bills of Lading and Similar Documents of Title

(a) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier is liable to any person entitled to recover on the document for any breach by the other person or the performing carrier of its obligation under the document. However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to

the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the document for the breach, as may be evidenced by any receipt, judgment, or transcript, and;

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the document for the breach.

§ 7–303. Diversion—Reconsignment—Change of instructions

Diversion—Reconsignment—Change of Instructions

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

§ 7–304. Tangible bills of lading in a set

Tangible Bills of Lading in a Set

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against

any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee is obliged to deliver in accordance with Part 4 of this article against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

§ 7–305. Destination bills

Destination Bills

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to Section 7–105, may procure a substitute bill to be issued at any place designated in the request.

§ 7–306. Altered bills of lading

Altered Bills of Lading

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

§ 7–307. Lien of carrier

Lien of Carrier

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a

reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

§ 7-308. Enforcement of carrier's lien

Enforcement of Carrier's Lien

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier has sold goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor

against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in subsection Section 7–210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

§ 7–309. Duty of care—Contractual limitation of carrier's liability

Duty of Care—Contractual Limitation of Carrier's Liability

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, must exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading that the carrier's liability may not exceed a value stated in the bill if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading.

PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

§ 7–401. Irregularities in issue of receipt or bill or conduct of issuer

Irregularities in Issue of Receipt or Bill or Conduct of Issuer

The obligations imposed by this article on an issuer apply to a document of title even if:

(1) the document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issue, form, or content;

(2) the issuer violated laws regulating the conduct of its business;

(3) the goods covered by the document were owned by the bailee when the document was issued;
or

(4) the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

§ 7-402. Duplicate document of title—Overissue

Duplicate Document of Title—Overissue

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to Section 7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

§ 7-403. Obligation of warehouse or carrier to deliver—Excuse

Obligation of Warehouse or Carrier to Deliver—Excuse

(a) A bailee shall deliver the goods to a person entitled under a document of title that complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

- (1) delivery of the goods to a person whose receipt was rightful as against the claimant;
- (2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
- (3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;
- (4) the exercise by a seller of its right to stop delivery pursuant to Section 2-705 or by a lessor of its right to stop delivery pursuant to Section 2A-526;
- (5) a diversion, reconsignment, or other disposition pursuant to Section 7-303;
- (6) release, satisfaction, or any other fact affording a personal defense against the claimant; or
- (7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is one against which the document of title does not confer a right under Section 7-503(a):

- (1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or be liable to any person to which the document is duly negotiated.

§ 7-404. No liability for good faith delivery pursuant to document of title

No Liability for Good Faith Delivery Pursuant to Document of Title

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

(1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) the person to which the bailee delivered the goods did not have authority to receive the goods.

PART 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

§ 7-501. Form of negotiation and requirements of due negotiation

Form of Negotiation and Requirements of Due Negotiation

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person as well as delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

§ 7-502. Rights acquired by due negotiation

Rights Acquired by Due Negotiation

(a) Subject to Sections 7-205 and 7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article. In the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to Section 7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person.

§ 7–503. Document of title to goods defeated in certain cases

Document of Title to Goods Defeated in Certain Cases

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; with power to obtain delivery under Section 7–403; or with power of disposition under Section 2–403, 2A–304(2), 2A–305(2), or 9–320 or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under Section 7–504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

§ 7–504. Rights acquired in absence of due negotiation—Effect of diversion—Stoppage of delivery

Rights Acquired in Absence of Due Negotiation—Effect of Diversion—Stoppage of Delivery

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor that could treat the transfer as void under Section 2–402 or 2A–308;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under Section 2-705 or a lessor under Section 2A-526, subject to the requirements of due notification in those sections. A bailee honoring the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

§ 7-505. Indorser not guarantor for other parties

Indorser Not Guarantor for Other Parties

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

§ 7-506. Delivery without indorsement—Right to compel indorsement

Delivery Without Indorsement—Right to Compel Indorsement

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

§ 7-507. Warranties on negotiation or delivery of document of title

Warranties on Negotiation or Delivery of Document of Title

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 7-508, unless otherwise agreed, the transferor warrants to its immediate purchaser only in addition to any warranty made in selling or leasing the goods that:

(1) the document is genuine;

(2) the transferor does not have knowledge of any fact that would impair the document's validity or

worth; and

(3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

§ 7–508. Warranties of collecting bank as to documents of title

Warranties of Collecting Bank as to Documents of Title

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

§ 7–509. Adequate compliance with commercial contract

Adequate Compliance With Commercial Contract

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or 5.

PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

§ 7–601. Lost, stolen, or destroyed documents of title

Lost, Stolen, or Destroyed Documents of Title

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that without court order delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

§ 7–602. Attachment of goods covered by negotiable document of title

Attachment of Goods Covered by Negotiable Document of Title

Unless the document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

§ 7–603. Conflicting claims—Interpleader

Conflicting Claims—Interpleader

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

PART 7. TRANSITION PROVISIONS

§ 7–701. Effective date

Effective Date

This Act takes effect on October 2, 2003.

§ 7–702. Repeals

Repeals

[Existing Article 7] and [Section 10–104 of the Uniform Commercial Code] are repealed.

§ 7–703. Applicability

Applicability

This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act.

§ 7–704. Savings clause

Savings Clause

A document of title issued or a bailment that arises before the effective date of this Act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

ARTICLE 8

INVESTMENT SECURITIES

PART 1. SHORT TITLE AND GENERAL MATTERS

PART 2. ISSUE AND ISSUER

PART 3. TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

PART 4. REGISTRATION

PART 5. REGISTRATION

PART 1. SHORT TITLE AND GENERAL MATTERS

§ 8–101. Short title

Short Title

This article may be cited as Uniform Commercial Code—Investment Securities.

§ 8–102. Definitions

Definitions

(a) In this article:

(1) "**Adverse claim**" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "**Bearer form**," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "**Broker**" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "**Certificated security**" means a security that is represented by a certificate.

(5) "**Clearing corporation**" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "**Communicate**" means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "**Entitlement holder**" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8–501(b)(2) or (3), that person is the entitlement holder.

(8) "**Entitlement order**" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "**Financial asset,**" except as otherwise provided in Section 8–103, means:

(i) a security;

(ii) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the terra means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) "**Good faith**," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(11) "**Indorsement**" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "**Instruction**" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "**Registered form**," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "**Securities intermediary**" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "**Security**," except as otherwise provided in Section 8–103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(16) "**Security certificate**" means a certificate representing a security.

(17) "**Security entitlement**" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(18) "**Uncertificated security**" means a security that is not represented by a certificate.

(b) Other definitions applying to this Article and the sections in which they appear are:

Appropriate person Section 8–107

Control Section 8–106

Delivery Section 8–301

Investment company security Section 8–103

Issuer Section 8–201

Overissue Section 8–210

Protected purchaser Section 8–303

Securities account Section 8–501

(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(d) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

§ 8–103. Rules for determining whether certain obligations and interests are securities or financial assets

Rules for Determining Whether Certain Obligations and Interests Are Securities or Financial Assets

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "**Investment company security**" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so

registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in Section 9–115, is not a security or a financial asset

§ 8–104. Acquisition of security or financial asset or interest therein

Acquisition of Security or Financial Asset or Interest Therein

(a) A person acquires a security or an interest therein, under this Article, if:

(1) the person is a purchaser to whom a security is delivered pursuant to Section 8–301; or

(2) the person acquires a security entitlement to the security pursuant to Section 8–501.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in Section 8–503.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b).

§ 8–105. Notice of adverse claim

Notice of Adverse Claim

(a) A person has notice of an adverse claim if:

- (1) the person knows of the adverse claim;
 - (2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or
 - (3) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.
- (b) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.
- (c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:
- (1) one year after a date set for presentment or surrender for redemption or exchange; or
 - (2) six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.
- (d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:
- (1) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
 - (2) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.
- (e) Filing of a financing statement under Article 9 is not notice of an adverse claim to a financial asset.

§ 8-106. Control

Control

- (a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.
- (b) A purchaser has "control" of a certificated security in registered form if the certificated security

is delivered to the purchaser, and:

- (1) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or
- (2) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

- (1) the uncertificated security is delivered to the purchaser; or
- (2) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if:

- (1) the purchaser becomes the entitlement holder; or
- (2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c)(2) or (d)(2) has control even if the registered owner in the case of subsection (c)(2) or the entitlement holder in the case of subsection (d)(2) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

§ 8-107. Whether indorsement, instruction, or entitlement order is effective

Whether Indorsement, Instruction, or Entitlement Order is Effective

(a) "**Appropriate person**" means:

- (1) with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

- (2) with respect to an instruction, the registered owner of an uncertificated security;
 - (3) with respect to an entitlement order, the entitlement holder;
 - (4) if the person designated in paragraph (1), (2), or (3) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or
 - (5) if the person designated in paragraph (1), (2), or (3) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset
- (b) An indorsement, instruction, or entitlement order is effective if:
- (1) it is made by the appropriate person;
 - (2) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under Section 8–106(c)(2) or (d)(2); or
 - (3) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.
- (c) An indorsement, instruction, or entitlement order made by a representative is effective even if:
- (1) the representative has failed to comply with a controlling instrument or with the law of the State having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or
 - (2) the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.
- (d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.
- (e) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

§ 8–108. Warranties in direct holding

Warranties in Direct Holding

(a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

- (1) the certificate is genuine and has not been materially altered;
- (2) the transferor or indorser does not know of any fact that might impair the validity of the security;
- (3) there is no adverse claim to the security;
- (4) the transfer does not violate any restriction on transfer;
- (5) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
- (6) the transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

- (1) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;
- (2) the security is valid;
- (3) there is no adverse claim to the security; and
- (4) at the time the instruction is presented to the issuer:
 - (i) the purchaser will be entitled to the registration of transfer;
 - (ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;
 - (iii) the transfer will not violate any restriction on transfer; and
 - (iv) the requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

- (1) the uncertificated security is valid;

- (2) there is no adverse claim to the security;
 - (3) the transfer does not violate any restriction on transfer; and
 - (4) the transfer is otherwise effective and rightful.
- (d) A person who indorses a security certificate warrants to the issuer that:
- (1) there is no adverse claim to the security; and
 - (2) the indorsement is effective.
- (e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:
- (1) the instruction is effective; and
 - (2) at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.
- (f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.
- (g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.
- (h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g).
- (i) Except as otherwise provided in subsection (g), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b), and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

§ 8–109. Warranties in indirect holding

Warranties in Indirect Holding

(a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

- (1) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
- (2) there is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in Section 8–108(a) or (b).

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in Section 8–108(a) or (b).

§ 8–110. Applicability—Choice of law

Applicability—Choice of Law

(a) The local law of the issuer's jurisdiction, as specified in subsection (d), governs:

- (1) the validity of a security;
- (2) the rights and duties of the issuer with respect to registration of transfer;
- (3) the effectiveness of registration of transfer by the issuer,
- (4) whether the issuer owes any duties to an adverse claimant to a security; and
- (5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

- (1) acquisition of a security entitlement from the securities intermediary;
- (2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) **"Issuer's jurisdiction"** means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) through (5).

(e) The following rules determine a **"securities intermediary's jurisdiction"** for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (1), but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2), the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (3), the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

§ 8–111. Clearing corporation rules

Clearing Corporation Rules

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Act and affects another party who does not consent to the rule.

§ 8–112. Creditor's legal process

Creditor's Legal Process

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d).

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d).

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

§ 8–113. Statute of Frauds inapplicable

Statute of Frauds Inapplicable

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

§ 8–114. Evidentiary rules concerning certificated securities

Evidentiary Rules Concerning Certificated Securities

The following rules apply in an action on a certificated security against the issuer:

- (1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.
- (2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.
- (3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.
- (4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

§ 8–115. Securities intermediary and others not liable to adverse claimant

Securities Intermediary and Others Not Liable to Adverse Claimant

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

- (1) took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
- (2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or
- (3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

§ 8–116. Securities intermediary as purchaser for value

Securities Intermediary as Purchaser for Value

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary

acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

PART 2. ISSUE AND ISSUER

§ 8–201. Issuer

Issuer

(a) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(1) places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(2) creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(3) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(4) becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

§ 8–202. Issuer's responsibility and defenses—Notice of defect or defense

Issuer's Responsibility and Defenses—Notice of Defect or Defense

(a) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

(1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(2) Paragraph (1) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in Section 8–205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

§ 8–203. Staleness as notice of defect or defense

Staleness as Notice of Defect or Defense

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) is not covered by paragraph (1) and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

§ 8–204. Effect of issuer's restriction on transfer

Effect of Issuer's Restriction On Transfer

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

- (1) the security is certificated and the restriction is noted conspicuously on the security certificate; or
- (2) the security is uncertificated and the registered owner has been notified of the restriction.

§ 8–205. Effect of unauthorized signature on security certificate

Effect of Unauthorized Signature on Security Certificate

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

- (1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or
- (2) an employee of the issuer, or of any of the persons listed in paragraph (1), entrusted with responsible handling of the security certificate.

§ 8–206. Completion or alteration of security certificate

Completion or Alteration of Security Certificate

(a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

- (1) any person may complete it by filling in the blanks as authorized; and
- (2) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

§ 8–207. Rights and duties of issuer with respect to registered owners

Rights and Duties of Issuer With Respect to Registered Owners

(a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This article does not affect the liability of the registered owner of a security for a call, assessment, or the like.

§ 8–208. Effect of signature of authenticating trustee, registrar, or transfer agent

Effect of Signature of Authenticating Trustee, Registrar, or Transfer Agent

(a) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) the certificate is genuine;

(2) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer, and

(3) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person signing under subsection (a) does not assume responsibility for the validity of the security in other respects.

§ 8–209. Issuer's lien

Issuer's Lien

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

§ 8–210. Overissue

Overissue

(a) In this section, "**overissue**" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in subsections (c) and (d), the provisions of this article which

validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

PART 3. TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

§ 8-301. Delivery

Delivery

(a) Delivery of a certificated security to a purchaser occurs when:

(1) the purchaser acquires possession of the security certificate;

(2) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

§ 8-302. Rights of purchaser

Rights of Purchaser

(a) Except as otherwise provided in subsections (b) and (c), upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the

transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

§ 8-303. Protected purchaser

Protected Purchaser

(a) "**Protected purchaser**" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) gives value;

(2) does not have notice of any adverse claim to the security; and

(3) obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

§ 8-304. Indorsement

Indorsement

(a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in Section 8–108 and not an obligation that the security will be honored by the issuer.

§ 8–305. Instruction

Instruction

(a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by Section 8–108 and not an obligation that the security will be honored by the issuer.

§ 8–306. Effect of guaranteeing signature, indorsement, or instruction

Effect of Guaranteeing Signature, Indorsement, or Instruction

(a) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(3) the signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty, and

(3) the signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (b) and also warrants that at the time the instruction is presented to the issuer:

(1) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) or a special guarantor under subsection (c) does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

§ 8-307. Purchaser's right to requisites for registration of transfer

Purchaser's Right to Requisites for Registration of Transfer

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

PART 4. REGISTRATION

§ 8-401. Duty of issuer to register transfer

Duty of Issuer to Register Transfer

(a) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an

uncertificated security, the issuer shall register the transfer as requested if:

- (1) under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;
- (2) the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;
- (3) reasonable assurance is given that the indorsement or instruction is genuine and authorized (Section 8-402);
- (4) any applicable law relating to the collection of taxes has been complied with;
- (5) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with Section 8-204;
- (6) a demand that the issuer not register transfer has not become effective under Section 8-403, or the issuer has complied with Section 8-403(b) but no legal process or indemnity bond is obtained as provided in Section 8-403(d); and
- (7) the transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

§ 8-402. Assurance that indorsement or instruction is effective

Assurance That Indorsement or Instruction is Effective

- (a) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:
- (1) in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;
 - (2) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;
 - (3) if the indorsement is made or the instruction is originated by a fiduciary pursuant to Section 8-107(a)(4) or (a)(5), appropriate evidence of appointment or incumbency;
 - (4) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) In this section:

(1) "**Guaranty of the signature**" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(2) "**Appropriate evidence of appointment or incumbency**" means:

(i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(ii) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

§ 8-403. Demand that issuer not register transfer

Demand That Issuer Not Register Transfer

(a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (i) the person who initiated the demand at the address provided in the demand and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) the certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

(2) a demand that the issuer not register transfer had previously been received; and

(3) the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in subsection (b)(3) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

§ 8-404. Wrongful registration

Wrongful Registration

(a) Except as otherwise provided in Section 8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) pursuant to an ineffective indorsement or instruction;

(2) after a demand that the issuer not register transfer became effective under section 8-403(a) and the issuer did not comply with Section 8-403(b);

(3) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) by an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under subsection (a) on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful

registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by Section 8–210.

(c) Except as otherwise provided in subsection (a) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

§ 8–405. Replacement of lost, destroyed, or wrongfully taken security certificate

Replacement of Lost, Destroyed, or Wrongfully Taken Security Certificate

(a) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner.

(1) so requests before the issuer has notice that the certificate has been acquired by a protected purchaser,

(2) files with the issuer a sufficient indemnity bond; and

(3) satisfies other reasonable requirements imposed by the issuer.

(b) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by 80 CNCA § 8–210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

§ 8–406. Obligation to notify issuer or lost, destroyed, or wrongfully taken security certificate

Obligation to Notify Issuer or Lost, Destroyed, or Wrongfully Taken Security Certificate

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under 80 CNCA § 8–404 or a claim to a new security certificate under 80 CNCA § 8–405.

§ 8–407. Authenticating trustee, transfer agent, and registrar

Authenticating Trustee, Transfer Agent, and Registrar

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the

holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

PART 5. SECURITY ENTITLEMENTS

§ 8–501. Securities account—Acquisition of security entitlement from securities intermediary

Securities Account—Acquisition of Security Entitlement From Securities Intermediary

(a) **"Securities account"** means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e), a person acquires a security entitlement if a securities intermediary:

(1) indicates by book entry that a financial asset has been credited to the person's securities account;

(2) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of subsection (b) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement.

§ 8–502. Assertion of adverse claim against entitlement holder

Assertion of Adverse Claim Against Entitlement Holder

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under 80 CNCA § 8–501 for value and without notice of the adverse claim.

§ 8–503. Property interest of entitlement holder in financial asset held by securities intermediary

Property Interest of Entitlement Holder in Financial Asset Held by Securities Intermediary

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8–511.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under 80 CNCA §§ 8–505 through 8–508.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against a purchaser of the financial asset or interest therein only if:

(1) insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) the securities intermediary violated its obligations under 80 CNCA § 8–504 by transferring the financial asset or interest therein to the purchaser, and

(4) the purchaser is not protected under subsection (e). The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under 80 CNCA § 8–504.

§ 8–504. Duty of securities intermediary to maintain financial asset

Duty of Securities Intermediary to Maintain Financial Asset

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a).

(c) A securities intermediary satisfies the duty in subsection (a) if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

§ 8-505. Duty of securities intermediary with respect to payments and distributions

Duty of Securities Intermediary With Respect to Payments and Distributions

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

§ 8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder

Duty of Securities Intermediary to Exercise Rights as Directed by Entitlement Holder

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so

by an entitlement holder. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§ 8-507. Duty of securities intermediary to comply with entitlement order

Duty of Securities Intermediary to Comply With Entitlement Order

(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

§ 8-508. Duty of securities intermediary to change entitlement holder's position to other form of security holding

Duty of Securities Intermediary to Change Entitlement Holder's Position to Other Form of Security Holding

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§ 8–509. Specification of duties of securities intermediary by other statute or regulation—Manner of performance of duties of securities intermediary and exercise of rights of entitlement holder

Specification of Duties of Securities Intermediary by Other Statute or Regulation—Manner of Performance of Duties of Securities Intermediary and Exercise of Rights of Entitlement Holder

(a) If the substance of a duty imposed upon a securities intermediary by Sections 8–504 through 8–508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by 80 CNCA §§ 8–504 through 8–508 is subject to:

(1) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) 80 CNCA §§ 8–504 through 8–508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

§ 8–510. Rights of purchaser of security entitlement from entitlement holder

Rights of Purchaser of Security Entitlement From Entitlement Holder

(a) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under 80 CNCA § 8–502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

§ 8-511. Priority among security interests and entitlement holders

Priority Among Security Interests and Entitlement Holders

(a) Except as otherwise provided in subsections (b) and (c), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

REVISED ARTICLE 9

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SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

§ 9–101. Short title

Short Title

This article may be cited as Uniform Commercial Code—Secured Transactions.

§ 9–102. Definitions and index of definitions

Definitions and Index of Definitions

(a) Article 9 definitions. In this article:

(1) "**Accession**" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "**Account**", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "**Account debtor**" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "**Accounting**", except as used in "accounting for", means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "**Agricultural lien**" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "**As-extracted collateral**" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "**Authenticate**" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "**Bank**" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "**Cash proceeds**" means proceeds that are money, checks, deposit accounts, or the like.

(10) "**Certificate of title**" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "**Chattel paper**" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "**monetary obligation**" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "**Collateral**" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

- (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) goods that are the subject of a consignment.

(13) "**Commercial tort claim**" means a claim arising in tort with respect to which:

- (A) the claimant is an organization; or
- (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "**Commodity account**" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "**Commodity contract**" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "**Commodity customer**" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "**Commodity intermediary**" means a person that:

- (A) is registered as a futures commission merchant under federal commodities law; or
- (B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "**Communicate**" means:

- (A) to send a written or other tangible record;
- (B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
- (C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "**Consignee**" means a merchant to which goods are delivered in a consignment.

(20) "**Consignment**" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is One Thousand Dollars (\$1,000.00) or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "**Consignor**" means a person that delivers goods to a consignee in a consignment.

(22) "**Consumer debtor**" means a debtor in a consumer transaction.

(23) "**Consumer goods**" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "**Consumer-goods transaction**" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "**Consumer obligor**" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "**Consumer transaction**" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "**Continuation statement**" means an amendment of a financing statement which:

- (A) identifies, by its file number, the initial financing statement to which it relates; and
- (B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
- (28) "**Debtor**" means:
- (A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
- (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (C) a consignee.
- (29) "**Deposit account**" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.
- (30) "**Document**" means a document of title or a receipt of the type described in 80 CNCA § 7–201(2).
- (31) "**Electronic chattel paper**" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.
- (32) "**Encumbrance**" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.
- (33) "**Equipment**" means goods other than inventory, farm products/or consumer goods.
- (34) "**Farm products**" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
- (A) crops grown, growing, or to be grown, including:
- (i) crops produced on trees, vines, and bushes; and
- (ii) aquatic goods produced in aquacultural operations;
- (B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
- (C) supplies used or produced in a farming operation; or
- (D) products of crops or livestock in their unmanufactured states.
- (35) "**Farming operation**" means raising, cultivating, propagating, fattening, grazing, or any

other farming, livestock, or aquacultural operation.

(36) "**File number**" means the number assigned to an initial financing statement pursuant to 80 CNCA § 9–519(a).

(37) "**Filing office**" means an office designated in 80 CNCA § 9–501 as the place to file a financing statement.

(38) "**Filing-office rule**" means a rule adopted pursuant to 80 CNCA § 9–526.

(39) "**Financing statement**" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "**Fixture filing**" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying 80 CNCA § 9–502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "**Fixtures**" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "**General intangible**" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "**Good faith**" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "**Goods**" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "**Governmental unit**" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to

issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "**Health-care-insurance receivable**" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "**Instrument**" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "**Inventory**" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "**Investment property**" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "**Jurisdiction of organization**", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "**Letter-of-credit right**" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "**Lien creditor**" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "**Manufactured home**" means a structure, transportable in one or more sections, which, in

the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "**Manufactured-home transaction**" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory, or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "**Mortgage**" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "**New debtor**" means a person that becomes bound as debtor under 80 CNCA § 9–203(d) by a security agreement previously entered into by another person.

(57) "**New value**" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "**Noncash proceeds**" means proceeds other than cash proceeds.

(59) "**Obligor**" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "**Original debtor**", except as used in 80 CNCA § 9–310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 80 CNCA § 9–203(d).

(61) "**Payment intangible**" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "**Person related to**", with respect to an individual, means:

- (A) the spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "**Person related to**", with respect to an organization, means:

- (A) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) an officer or director of, or a person performing similar functions with respect to, the organization;
- (C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
- (D) the spouse of an individual described in subparagraph (A), (B), or (C); or
- (E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "**Proceeds**", except as used in 80 CNCA § 9–609(b), means the following property:

- (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) whatever is collected on, or distributed on account of, collateral;
- (C) rights arising out of collateral;
- (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "**Promissory note**" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "**Proposal**" means a record authenticated by a secured party which includes the terms on

which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to 80 CNCA §§ 9–620, 9–621, and 9–622.

(67) "**Public-finance transaction**" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a State or a governmental unit of a state.

(68) "**Pursuant to commitment**", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "**Record**", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "**Registered organization**" means an organization organized solely under the law of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized.

(71) "**Secondary obligor**" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "**Secured party**" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor,

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under 80 CNCA § 2–401, 2–505, 2–711(3), 2A–508(5), 4–210, or 5–118.

(73) "**Security agreement**" means an agreement that creates or provides for a security interest.

(74) "**Send**", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(75) "**Software**" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "**State**" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "**Supporting obligation**" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "**Tangible chattel paper**" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "**Termination statement**" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "**Transmitting utility**" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water,

(b) Definitions in other articles. The following definitions in other articles apply to this article;

"Applicant" Section 5–102.

"Beneficiary" Section 5–102.

"Broker" Section 8–102.

"Certificated security" Section 8–102.

"Check" Section 3–104.

"Clearing corporation" Section 8–102.

"Contract for sale" Section 2–106.

"Customer" Section 4–104.

"Entitlement holder" Section 8–102.

"Financial asset" Section 8–102.

"Holder in due course" Section 3–302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5–102.

"Issuer" (with respect to a security) Section 8–201.

"Lease" Section 2A–103.

"Lease agreement" Section 2A–103.

"Lease contract" Section 2A–103.

"Leasehold interest" Section 2A–103.

"Lessee" Section 2A–103.

"Lessee in ordinary course of business" Section 2A–103.

"Lessor" Section 2A–103.

"Lessor's residual interest" Section 2A–103.

"Letter of credit" Section 5–102.

"Merchant" Section 2–104.

"Negotiable instrument" Section 3–104.

"Nominated person" Section 5–102.

"Note" Section 3–104.

"Proceeds of a letter of credit" Section 5–114.

"Prove" Section 3–103.

"Sale" Section 2–106.

"Securities account" Section 8–501.

"Securities intermediary" Section 8–102.

"Security" Section 8–102.

"Security certificate" Section 8–102.

"Security entitlement" Section 8–102.

"Uncertificated security" Section 8–102.

(c) Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§ 9–103. Purchase-money security interest—Application of payments—Burden of establishing

Purchase-Money Security Interest—Application of Payments—Burden of Establishing

(a) Definitions. In this section:

(1) **"Purchase-money collateral"** means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "**Purchase-money obligation**" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods. A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) Purchase-money security interest in software. A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) Consignor's inventory purchase-money security interest. The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) Application of payment in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred,

(f) No loss of status of purchase-money security interest in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) Burden of proof in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) Non-consumer-goods transactions; no inference. The limitation of the rules in subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

§ 9–104. Control of deposit account

Control of Deposit Account

(a) Requirements for control. A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) the secured party becomes the bank's customer with respect to the deposit account,

(b) Debtor's right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

§ 9–105. Control of electronic chattel paper

Control of Electronic Chattel Paper

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) the authoritative copy identifies the secured party as the assignee of the record or records;
- (3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
- (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

§ 9–106. Control of investment property

Control of Investment Property

- (a) Control under 80 CNCA § 8–106. A person has control of a certificated security, uncertificated security, or security entitlement as provided in 80 CNCA § 8–106.
- (b) Control of commodity contract. A secured party has control of a commodity contract if:
 - (1) the secured party is the commodity intermediary with which the commodity contract is carried;
or
 - (2) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.
- (c) Effect of control of securities account or commodity account. A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

§ 9–107. Control of letter-of-credit right

Control of Letter-of-Credit Right

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under 80 CNCA § 5-114(c) or otherwise applicable law or practice.

§ 9-108. Sufficiency of description

Sufficiency of Description

(a) Sufficiency of description. Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Examples of reasonable identification. Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) specific listing;

(2) category;

(3) except as otherwise provided in subsection (e), a type of collateral defined in the Uniform Commercial Code;

(4) quantity;

(5) computational or allocational formula or procedure; or

(6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient. A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) Investment property. Except as otherwise provided in subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes;

(1) the collateral by those terms or as investment property; or

(2) the underlying financial asset or commodity contract,

(e) When description by type insufficient. A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) a commercial tort claim; or

(2) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

SUBPART 2. APPLICABILITY OF ARTICLE

§ 9–109. Scope

Scope

(a) General scope of article. Except as otherwise provided in subsections (c) and (d), this article applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under 80 CNCA § 2–401, 2–505, 2–711(3), or 2A–508(5), as provided in 80 CNCA § 9–110; and

(6) a security interest arising under 80 CNCA § 4–210 or 5–118.

(b) Security interest in secured obligation. The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) Extent to which article does not apply. This article does not apply to the extent that:

(1) a statute, regulation, or treaty of the United States preempts this article;

(2) another statute of this Nation expressly governs the creation, perfection, priority, or enforcement of a security interest created by this Nation or a governmental unit of this Nation;

(3) a statute of a state, a foreign country, or a governmental unit of another nation or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the nation, country, or governmental unit; or

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 80 CNCA § 5–114,

(d) Inapplicability of article. This article does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 80 CNCA § 9–333 applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 80 CNCA §§ 9–315 and 9–322 apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) a right of recoupment or set-off, but;

(A) 80 CNCA § 9–340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) 80 CNCA § 9–404 applies with respect to defenses or claims of an account debtor;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) liens on real property in 80 CNCA §§ 9–203 and 9–308;

(B) fixtures in 80 CNCA § 9–334;

(C) fixture filings in 80 CNCA §§ 9–501, 9–502, 9–512, 9–516, and 9–519; and

(D) security agreements covering personal and real property in 80 CNCA § 9–604;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but 80 CNCA §§ 9–315 and 9–322 apply with respect to proceeds and priorities in proceeds; or

(13) an assignment of a deposit account in a consumer transaction, but 80 CNCA §§ 9–315 and 9–322 apply with respect to proceeds and priorities in proceeds.

§ 9–110. Security interests arising under Article 2 or 2A

Security Interests Arising Under Article 2 or 2A

A security interest arising under 80 CNCA § 2–401, 2–505, 2–711(3), or 2A–508(5) is subject to this article. However, until the debtor obtains possession of the goods:

(1) the security interest is enforceable, even if 80 CNCA § 9–203(b)(3) has not been satisfied;

(2) filing is not required to perfect the security interest;

(3) the rights of the secured party after default by the debtor are governed by Article 2 or 2A; and

(4) the security interest has priority over a conflicting security interest created by the debtor.

PART 2. EFFECTIVENESS OF SECURITY AGREEMENT, ATTACHMENT OF SECURITY INTEREST, RIGHTS OF PARTIES TO SECURITY AGREEMENT

SUBPART 1. EFFECTIVENESS AND ATTACHMENT

§ 9–201. General effectiveness of security agreement

General Effectiveness of Security Agreement

(a) General effectiveness. Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) Applicable consumer laws and other law. A transaction subject to this article is subject to any applicable rule of law which establishes a different rule for consumers.

(c) Other applicable law controls. In case of conflict between this article and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute or regulation specifies.

(d) Further deference to other applicable law. This article does not:

(1) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b); or

(2) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

§ 9–202. Title to collateral immaterial

Title to Collateral Immaterial

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

§ 9–203. Attachment and enforceability of security interest—Proceeds—Supporting obligations—Formal requisites

Attachment and Enforceability of Security Interest—Proceeds—Supporting Obligations—Formal Requisites

(a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under 80 CNCA § 9–313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under 80 CNCA § 8–301 pursuant to the debtor's security agreement;
or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under 80 CNCA § 9–104, 9–105, 9–106, or 9–107 pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) is subject to 80 CNCA § 4–210 on the security interest of a collecting bank, 80 CNCA § 5–118 on the security interest of a letter-of-credit issuer or nominated person, 80 CNCA § 9–110 on a security interest arising under Article 2 or 2A, and 80 CNCA 9–206 on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property, or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9–315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

§ 9–204. After-acquired property—Future advances

After-Acquired Property—Future Advances

- (a) After-acquired collateral. Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.
- (b) When after-acquired property clause not effective. A security interest does not attach under a term constituting an after-acquired property clause to:
- (1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or
 - (2) a commercial tort claim.
- (c) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

§ 9–205. Use or disposition of collateral permissible

Use or Disposition of Collateral Permissible

- (a) When security interest not invalid or fraudulent. A security interest is not invalid or fraudulent against creditors solely because:
- (1) the debtor has the right or ability to:
 - (A) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;
 - (B) collect, compromise, enforce, or otherwise deal with collateral;
 - (C) accept the return of collateral or make repossessions; or
 - (D) use, commingle, or dispose of proceeds; or
 - (2) the secured party fails to require the debtor to account for proceeds or replace collateral.
- (b) Requirements of possession not relaxed. This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

§ 9–206. Security interest arising in purchase or delivery of financial asset

Security Interest Arising in Purchase or Delivery of Financial Asset

(a) Security interest when person buys through securities intermediary. A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) Security interest secures obligation to pay for financial asset. The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) Security interest in payment against delivery transaction. A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) the security or other financial asset:

(A) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) the agreement calls for delivery against payment.

(d) Security Interest secures obligation to pay for delivery. The security interest described in subsection (c) secures the obligation to make payment for the delivery.

SUBPART 2. RIGHTS AND DUTIES

§ 9–207. Rights and duties of secured party having possession or control of collateral

Rights and Duties of Secured Party Having Possession or Control of Collateral

(a) Duty of care when secured party In possession. Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties, and rights when secured party in possession. Except as otherwise

provided in subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral;

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under 80 CNCA § 9–104, 9–105, 9–106, or 9–107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) Buyer of certain rights to payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

§ 9–208. Additional duties of secured party having control of collateral

Additional Duties of Secured Party Having Control of Collateral

(a) Applicability of section. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within ten (10) days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under 80 CNCA § 9–104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under 80 CNCA § 9–104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under 80 CNCA § 9–105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under 80 CNCA § 8–106(d)(2) or 9–106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party, and

(5) a secured party having control of a letter-of-credit right under 80 CNCA § 9–107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the

letter of credit to the secured party.

§ 9–209. Duties of secured party if account debtor has been notified of assignment

Duties of Secured Party if Account Debtor Has Been Notified of Assignment

(a) Applicability of section. Except as otherwise provided in subsection (c), this section applies if:

(1) there is no outstanding secured obligation; and

(2) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within ten (10) days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under 80 CNCA § 9–406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) Inapplicability to sales. This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

§ 9–210. Request for accounting—Request regarding list of collateral or statement of account

Request for Accounting—Request Regarding List of Collateral or Statement of Account

(a) Definitions. In this section:

(1) "**Request**" means a record of a type described in paragraph (2), (3) or (4).

(2) "**Request for an accounting**" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "**Request regarding a list of collateral**" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "**Request regarding a statement of account**" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. Subject to subsections (c), (d), (e), and (f), a secured party, other

than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen (14) days after receipt:

(1) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen (14) days after receipt.

(d) Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. A debtor is entitled without charge to one (1) response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding Twenty-Five Dollars (\$25.00) for each additional response.

PART 3. PERFECTION AND PRIORITY

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

§ 9-301. Law governing perfection and priority of security interests

Law Governing Perfection and Priority of Security Interests

Except as otherwise provided in 80 CNCA §§ 9–303 through 9–306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

§ 9–302. Law governing perfection and priority of agricultural liens

Law Governing Perfection and Priority of Agricultural Liens

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

§ 9–303. Law governing perfection and priority of security interests in goods covered by a certificate of title

Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title

(a) Applicability of section. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are

covered and the goods or the debtor.

(b) When goods covered by certificate of title. Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

§ 9–304. Law governing perfection and priority of security interests in deposit accounts

Law Governing Perfection and Priority of Security Interests in Deposit Accounts

(a) Law of bank's jurisdiction governs. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) Bank's jurisdiction. The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

§ 9–305. Law governing perfection and priority of security interests in investment property

Law Governing Perfection and Priority of Security Interests in Investment Property

(a) Governing law: general rules. Except as otherwise provided in subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in 80 CNCA § 8–110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in 80 CNCA § 8–110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) Commodity intermediary's jurisdiction. The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) When perfection governed by law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in investment property by filing;

(2) automatic perfection of a security interest in investment property created by a broker or securities intermediary, and

(3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

§ 9–306. Law governing perfection and priority of security interests in letter-of-credit rights

Law Governing Perfection and Priority of Security Interests in Letter-of-Credit Rights

(a) Governing law: issuer's or nominated person's jurisdiction. Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) Issuer's or nominated person's jurisdiction. For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in 80 CNCA § 5–116.

(c) When section not applicable. This section does not apply to a security interest that is perfected only under 80 CNCA § 9–308(d).

§ 9–307. Location of debtor

Location of Debtor

(a) "**Place of business**". In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Debtor's location: general rules. Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Limitation of applicability of subsection (b). Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) Continuation of location: cessation of existence, etc. A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) Location of registered organization organized under state law. A registered organization that is organized under the law of a State is located in that state.

(f) Location of registered organization organized under federal law; bank branches and agencies. Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) in the state that the law of the United States designates, if the law designates a state of location;

(2) in the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) Continuation of location: change in status of registered organization. A registered organization continues to be located in the jurisdiction specified by subsection (c) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) Location of United States. The United States is located in the District of Columbia.

(i) Location of foreign bank branch or agency if licensed in only one state. A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) Location of foreign air carrier. A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be

made on behalf of the carrier.

(k) **Section applies only to this part.** This section applies only for purposes of this part.

SUBPART 2. PERFECTION

§ 9–308. When security interest or agricultural lien is perfected—Continuity of perfection

When Security Interest or Agricultural Lien is Perfected—Continuity of Perfection

(a) Perfection of security interest. Except as otherwise provided in this section and 80 CNCA § 9–309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in 80 CNCA §§ 9–310 through 9–316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) Perfection of agricultural lien. An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in 80 CNCA § 9–310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) Continuous perfection; perfection by different methods. A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) Supporting obligation. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Lien securing right to payment. Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Security entitlement carried in securities account. Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Commodity contract carried in commodity account. Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

§ 9–309. Security interest perfected upon attachment

Security Interest Perfected Upon Attachment

The following security interests are perfected when they attach:

- (1) a purchase-money security interest in consumer goods, except as otherwise provided in 80 CNCA § 9–311(b) with respect to consumer goods that are subject to a statute or treaty described in 80 CNCA § 9–311(a);
- (2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
- (3) a sale of a payment intangible;
- (4) a sale of a promissory note;
- (5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) a security interest arising under 80 CNCA § 2–401, 2–505, 2–711(3), or 2A–508(5), until the debtor obtains possession of the collateral;
- (7) a security interest of a collecting bank arising under 80 CNCA § 4–210;
- (8) a security interest of an issuer or nominated person arising under 80 CNCA § 5–118;
- (9) a security interest arising in the delivery of a financial asset under 80 CNCA § 9–206(c);
- (10) a security interest in investment property created by a broker or securities intermediary;
- (11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) a security interest created by an assignment of a beneficial interest in a decedent's estate.

§ 9–310. When filing required to perfect security interest or agricultural lien—Security interests and agricultural liens to which filing provisions do not apply

When Filing Required to Perfect Security Interest or Agricultural Lien—Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply

(a) General rule: perfection by filing. Except as otherwise provided in subsection (b) and 80 CNCA § 9–312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) Exceptions: filing not necessary. The filing of a financing statement is not necessary to perfect a security interest

(1) that is perfected under 80 CNCA § 9–308(d), (e), (f), or (g);

(2) that is perfected under 80 CNCA § 9–309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in 80 CNCA § 9–311(a);

(4) in goods in possession of a bailee which is perfected under 80 CNCA § 9–312(d)(1) or (2);

(5) in certificated securities, documents, goods, or instruments which is perfected without filing or possession under 80 CNCA § 9–312(e), (f), or (g);

(6) in collateral in the secured party's possession under 80 CNCA § 9–313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under 80 CNCA § 9–313;

(8) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under 80 CNCA § 9–314;

(9) in proceeds which is perfected under 80 CNCA § 9–315; or

(10) that is perfected under 80 CNCA § 9–316.

(c) Assignment of perfected security interest. If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

§ 9–311. Perfection of security interests in property subject to certain statutes, regulations, and treaties

Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties

(a) Security interest subject to other law. Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 80 CNCA § 9–310(a);

(2) Cherokee Nation Motor Vehicle Code; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law. Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and 80 CNCA §§ 9–313 and 9–316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Duration and renewal of perfection. Except as otherwise provided in subsection (d) and 80 CNCA § 9–316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) Inapplicability to certain inventory. During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

§ 9–312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money—Perfection by permissive filing—Temporary perfection without filing or transfer of possession

Perfection of Security Interests in Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money—Perfection by Permissive Filing—Temporary Perfection Without Filing or Transfer of Possession

(a) Perfection by filing permitted. A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in 80 CNCA § 9–315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under 80 CNCA § 9–314;

(2) and except as otherwise provided in 80 CNCA § 9–308(d), a security interest in a letter-of-credit right may be perfected only by control under 80 CNCA § 9–314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under 80 CNCA § 9–313.

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) Temporary perfection: new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. After the twenty- (20) day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

§ 9–313. When possession by or delivery to secured party perfects security interest without filing

When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under 80 CNCA § 8–301.

(b) Goods covered by certificate of title. With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in 80 CNCA § 9–316(d).

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) Time of perfection by possession; continuation of perfection. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) Time of perfection by delivery; continuation of perfection. A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under 80 CNCA § 8–301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) Acknowledgment not required. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it

holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or 80 CNCA § 8–301(8), even if the acknowledgment violates the rights of a debtor, and

(2) unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) Secured party's delivery to person other than debtor. A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) Effect of delivery under subsection (h); no duties or confirmation. A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

§ 9–314. Perfection by control

Perfection by Control

(a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under 80 CNCA § 9–104, 9–105, 9–106, or 9–107.

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under 80 CNCA § 9–104, 9–105, or 9–107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under 80 CNCA § 9–106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

§ 9–315. Secured party's rights on disposition of collateral and in proceeds

Secured Party's Rights on Disposition of Collateral and in Proceeds

(a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds. Except as otherwise provided in this article and in 80 CNCA § 2–403(2):

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by 80 CNCA § 9–336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) Perfection of security interest in proceeds. A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) Continuation of perfection. A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty (20) days thereafter.

(e) When perfected security interest in proceeds becomes unperfected. If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under 80 CNCA § 9–515 or is terminated under 80 CNCA § 9–513; or

(2) the 21st day after the security interest attaches to the proceeds.

§ 9–316. Continued perfection of security interest following change in governing law

Continued Perfection of Security Interest Following Change in Governing Law

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in 80 CNCA § 9–301(1) or 9–305(c) remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) Security Interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction. A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) hereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from this state. Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interest becomes unperfected against purchasers. A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under 80 CNCA § 9–311(b) or 9–313 are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) the expiration of four (4) months after the goods had become so covered.

(f) Change In jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity Intermediary. A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.

(g) Subsection (f) security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

SUBPART 3. PRIORITY

§ 9–317. Interests that take priority over or take free of security interest or agricultural lien

Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under 80 CNCA § 9–322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in 80 CNCA § 9–203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in 80 CNCA §§ 9–320 and 9–321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

§ 9–318. No interest retained in right to payment that is sold—Rights and title of seller of account or chattel paper with respect to creditors and purchasers

No Interest Retained in Right to Payment That is Sold—Rights and Title of Seller of Account or Chattel Paper With Respect to Creditors and Purchasers

(a) Seller retains no interest. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected. For purposes of determining

the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

§ 9–319. Rights and title of consignee with respect to creditors and purchasers

Rights and Title of Consignee With Respect to Creditors and Purchasers

(a) Consignee has consignor's rights. Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) Applicability of other law. For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

§ 9–320. Buyer of goods

Buyer of Goods

(a) Buyer in ordinary course of business. Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Buyer of consumer goods. Except as otherwise provided in subsection (c), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer's personal, family, or household purposes; and
- (4) before the filing of a financing statement covering the goods.

(c) Effectiveness of filing for subsection (b). To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by 80 CNCA § 9–316(a) and (b).

(d) Buyer in ordinary course of business at wellhead or minehead. A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes

free of an interest arising out of an encumbrance.

(e) Possessory security interest not affected. Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under 80 CNCA § 9–313.

§ 9–321. Licensee of general intangible and lessee of goods in ordinary course of business

Licensee of General Intangible and Lessee of Goods in Ordinary Course of Business

(a) Licensee in ordinary course of business. In this section, "**licensee in ordinary course of business**" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) Rights of licensee in ordinary course of business. A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) Rights of lessee in ordinary course of business. A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

§ 9–322. Priorities among conflicting security interests in and agricultural liens on same collateral

Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral

(a) General priority rules. Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection: proceeds and supporting obligations. For the purposes of subsection (a)(1):

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules: proceeds and supporting obligations. Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under 80 CNCA § 9–327, 9–328, 9–329, 9–330, or 9–331 also has priority over a conflicting security interest in:

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are cash proceeds or of the same type as the collateral; and

(C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. Subject to subsection (c) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d). Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Limitations on subsections (a) through (e). Subsections (a) through (e) are subject to:

(1) subsection (g) and the other provisions of this part;

(2) 80 CNCA § 4–210 with respect to a security interest of a collecting bank;

(3) 80 CNCA § 5–118 with respect to a security interest of an issuer or nominated person; and

(4) 80 CNCA § 9–110 with respect to a security interest arising under Article 2 or 2A.

(g) Priority under agricultural lien statute. A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

§ 9–323. Future advances

Future Advances

(a) When priority based on time of advance. Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under 80 CNCA § 9–322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) is made while the security interest is perfected only:

(A) under 80 CNCA § 9–309 when it attaches; or

(B) temporarily under 80 CNCA § 9–312(c), (f), or (g); and

(2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under 80 CNCA § 9–309 or 9–312(e), (f), or (g).

(b) Lien creditor. Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five (45) days after the person becomes a lien creditor unless the advance is made:

(1) without knowledge of the lien; or

(2) pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables. Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Buyer of goods. Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the buyer's purchase; or

(2) forty-five (45) days after the purchase.

(e) Advances made pursuant to commitment: priority of buyer of goods. Subsection (d) does not

apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five (45) -day period.

(f) Lessee of goods. Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

- (1) the time the secured party acquires knowledge of the lease; or
- (2) forty-five (45) days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment: priority of lessee of goods. Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five (45) -day period.

§ 9–324. Priority of purchase-money security interests

Priority of Purchase-Money Security Interests

(a) General rule: purchase-money priority. Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in 80 CNCA § 9–327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter.

(b) Inventory purchase-money priority. Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in 80 CNCA § 9–330, and, except as otherwise provided in 80 CNCA § 9–327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Holders of conflicting inventory security interests to be notified. Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under 80 CNCA § 9–312(f) before the beginning of the twenty (20) -day period thereunder.

(d) Livestock purchase-money priority. Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in 80 CNCA § 9–327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within six (6) months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(c) Holders of conflicting livestock security interests to be notified. Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under 80 CNCA § 9–312(f) before the beginning of the twenty (20) -day period thereunder.

(f) Software purchase-money priority. Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in 80 CNCA § 9–327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. If more than one security interest qualifies for

priority in the same collateral under subsection (a), (b), (d), or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, 80 CNCA § 9–322(a) applies to the qualifying security interests.

§ 9–325. Priority of security interests in transferred collateral

Priority of Security Interests in Transferred Collateral

(a) Subordination of security interest in transferred collateral. Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) the debtor acquired the collateral subject to the security interest created by the other person;

(2) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) there is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination. Subsection (a) subordinates a security interest only if the security interest:

(1) otherwise would have priority solely under 80 CNCA § 9–322(a) or 9–324; or

(2) arose solely under 80 CNCA § 2–711(3) or 2A–508(5).

§ 9–326. Priority of security interests created by new debtor

Priority of Security Interests Created by New Debtor

(a) Subordination of security interest created by new debtor. Subject to subsection (b), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under 80 CNCA § 9–508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under 80 CNCA § 9–508.

(b) Priority under other provisions; multiple original debtors. The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under 80 CNCA § 9–508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new

debtor's having become bound.

§ 9–327. Priority of security interests in deposit account

Priority of Security Interests in Deposit Account

The following rules govern priority among conflicting security interests in the same deposit account:

- (1) A security interest held by a secured party having control of the deposit account under 80 CNCA § 9–104 has priority over a conflicting security interest held by a secured party that does not have control.
- (2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under 80 CNCA § 9–314 rank according to priority in time of obtaining control.
- (3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.
- (4) A security interest perfected by control under 80 CNCA § 9–104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

§ 9–328. Priority of security interests in investment property

Priority of Security Interests in Investment Property

The following rules govern priority among conflicting security interests in the same investment property:

- (1) A security interest held by a secured party having control of investment property under 80 CNCA § 9–106 has priority over a security interest held by a secured party that does not have control of the investment property.
- (2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under 80 CNCA § 9–106 rank according to priority in time of:
 - (A) if the collateral is a security, obtaining control;
 - (B) if the collateral is a security entitlement carried in a securities account and:
 - (i) if the secured party obtained control under 80 CNCA § 8–106(d)(1), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under 80 CNCA § 8–106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under 80 CNCA § 8–106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in 80 CNCA § 9–106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under 80 CNCA § 9–313(a) and not by control under 80 CNCA § 9–314 has priority over a conflicting security interest perfected by a method other than control

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under 80 CNCA § 9–106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by 80 CNCA §§ 9–322 and 9–323.

§ 9–329. Priority of security interests in letter-of-credit right

Priority of Security Interests in Letter-of-Credit Right

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under 80 CNCA § 9–107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under 80 CNCA § 9–314 rank according to priority in time of obtaining control.

§ 9–330. Priority of purchaser of chattel paper or instrument

Priority of Purchaser of Chattel Paper or Instrument

(a) Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under 80 CNCA § 9–105; and

(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under 80 CNCA § 9–105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Chattel paper purchaser's priority in proceeds. Except as otherwise provided in 80 CNCA § 9–327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) 80 CNCA § 9–322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. Except as otherwise provided in 80 CNCA § 9–331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

§ 9–331. Priority of rights of purchasers of instruments, documents, and securities under

other articles—Priority of interests in financial assets and security entitlements under Article 8

Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Articles—
Priority of Interests in Financial Assets and Security Entitlements Under Article 8

(a) Rights under Articles 3, 7, and 8 not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

(b) Protection under Article 8. This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

§ 9–332. Transfer of money—Transfer of funds from deposit account

Transfer of Money—Transfer of Funds from Deposit Account

(a) Transferee of money. A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

§ 9–333. Priority of certain liens arising by operation of law

Priority of Certain Liens Arising by Operation of Law

(a) Possessory lien. In this section, "**possessory lien**" means an interest, other than a security interest or an agricultural lien:

(1) which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) which is created by statute or rule of law in favor of the person; and

(3) whose effectiveness depends on the person's possession of the goods.

(b) Priority of possessory lien. A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

§ 9–334. Priority of security interests in fixtures and crops

Priority of Security Interests in Fixtures and Crops

(a) Security interest in fixtures under this article. A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real property law. This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures. In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within twenty (20) days thereafter.

(e) Priority of security interest in fixtures over interests in real property. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner,

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in 80 CNCA § 9–311(a)(2).

(f) Priority based on consent, disclaimer, or right to remove. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of paragraph (f)(2) priority. The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (c) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. A perfected security interest in crops growing on real property, has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

§ 9–335. Accessions

Accessions

(a) Creation of security interest in accession. A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Priority of security interest. Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) Compliance with certificate-of-title statute. A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under 80 CNCA § 9–311(b).

(e) Removal of accession after default. After default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) Reimbursement following removal. A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

§ 9–336. **Commingled goods**

Commingled Goods

(a) Commingled goods. In this section, "**commingled goods**" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) No security interest in commingled goods as such. A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) Attachment of security interest to product or mass. If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Priority of security interest. Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) Conflicting security interests in product or mass. If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

§ 9–337. Priority of security interests in goods covered by certificate of title

Priority of Security Interests in Goods Covered by Certificate of Title

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this Nation issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under 80 CNCA § 9–311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

§ 9–338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information

Priority of Security Interest or Agricultural Lien Perfected by Filed Financing Statement Providing Certain Incorrect Information

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in 80 CNCA § 9–516(b)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

§ 9–339. Priority subject to subordination

Priority Subject to Subordination

This article does not preclude subordination by agreement by a person entitled to priority.

SUBPART 4. RIGHTS OF BANK

§ 9–340. Effectiveness of right of recoupment or set-off against deposit account

Effectiveness of Right of Recoupment or Set-Off Against Deposit Account

(a) Exercise of recoupment or set-off. Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Recoupment or set-off not affected by security interest. Except as otherwise provided in subsection (c), the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) When set-off ineffective. The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under 80 CNCA § 9–104(a)(3), if the set-off is based on a claim against the debtor.

§ 9–341. Bank's rights and duties with respect to deposit account

Bank's Rights and Duties With Respect to Deposit Account

Except as otherwise provided in 80 CNCA § 9–340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

- (1) the creation, attachment, or perfection of a security interest in the deposit account;
- (2) the bank's knowledge of the security interest; or
- (3) the bank's receipt of instructions from the secured party.

§ 9–342. Bank's right to refuse to enter into or disclose existence of control agreement

Bank's Right to Refuse to Enter into or Disclose Existence of Control Agreement

This article does not require a bank to enter into an agreement of the kind described in 80 CNCA §

9–104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

PART 4. RIGHTS OF THIRD PARTIES

§ 9–401. Alienability of debtor's rights

Alienability of Debtor's Rights

(a) Other law governs alienability; exceptions. Except as otherwise provided in subsection (b) and 80 CNCA §§ 9–406, 9–407, 9–408, and 9–409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(b) Agreement does not prevent transfer. An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

§ 9–402. Secured party not obligated on contract of debtor or in tort

Secured Party Not Obligated on Contract of Debtor or in Tort

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

§ 9–403. Agreement not to assert defenses against assignee

Agreement Not to Assert Defenses Against Assignee

(a) Value. In this section, "**value**" has the meaning provided in 80 CNCA § 3–303(a).

(b) Agreement not to assert claim or defense. Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) for value;

(2) in good faith;

(3) without notice of a claim of a property or possessory right to the property assigned; and

(4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under 80 CNCA § 3–305(a).

(c) When subsection (b) not applicable. Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under 80 CNCA § 3–305(b).

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) the record has the same effect as if the record included such a statement; and

(2) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Other law not displaced. Except as otherwise provided in subsection (d), this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

§ 9–404. Rights acquired by assignee—Claims and defenses against assignee

Rights Acquired by Assignee—Claims and Defenses Against Assignee

(a) Assignee's rights subject to terms, claims, and defenses; exceptions. Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Account debtor's claim reduces amount owed to assignee. Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) Rule for individual under other law. This section is subject to law other than this article which

establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

§ 9–405. Modification of assigned contract

Modification of Assigned Contract

(a) Effect of modification on assignee. A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) Applicability of subsection (a). Subsection (a) applies to the extent that;

(1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under 80 CNCA § 9–406(a).

(c) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

§ 9–406. Discharge of account debtor—Notification of assignment—Identification and proof of assignment—Restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective

Discharge of Account Debtor—Notification of Assignment—Identification and Proof of Assignment—Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and

Promissory Notes Ineffective

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) and 80 CNCA §§ 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement

of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in 80 CNCA §§ 2A–303 and 9–407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

§ 9–407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest

Restrictions on Creation or Enforcement of Security Interest in Leasehold Interest or in Lessor's Residual Interest

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement

of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Effectiveness of certain terms. Except as otherwise provided in 80 CNCA § 2A–303(7), a term described in subsection (a)(2) is effective to the extent that there is:

(1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) a delegation of a material performance of either party to the lease contract in violation of the term.

(c) Security interest not material impairment. The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of 80 CNCA § 2A–303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

§ 9–408. Restrictions on assignment of promissory note, health-care-insurance receivables, and certain general intangibles ineffective

Restrictions on Assignment of Promissory Note, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) Legal restrictions on assignment generally ineffective. A rule of law, statute, or regulation that

prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor,

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

§ 9-409. Restrictions on assignment of letter-of-credit rights ineffective

Restrictions on Assignment of Letter-of-Credit Rights Ineffective

(a) Term or law restricting assignment generally ineffective. A term in a letter of credit or a rule of

law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) Limitation on ineffectiveness under subsection (a). To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

PART 5. FILING

SUBPART 1. FILING OFFICE—CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

§ 9–501. Filing office

Filing Office

(a) Filing offices. Except as otherwise provided in subsection (b), if the local law of this Nation governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) the office of the Principal Chief or any office duly authorized by the Principal Chief, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Principal Chief. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

**§ 9–502. Contents of financing statement—Record of mortgage as financing statement—
Time of filing of financing statement**

Contents of Financing Statement—Record of Mortgage as Financing Statement—Time of Filing of Financing Statement

(a) Sufficiency of financing statement. Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Real-property-related financing statements. Except as otherwise provided in 80 CNCA § 9–501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed for record in the real property records;

(3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this Nation if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement. A record of a mortgage is effective, from the date

of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) the record indicates the goods or accounts that it covers;
 - (2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
 - (3) the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
 - (4) the record is duly recorded.
- (d) Filing before security agreement or attachment. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

§ 9-503. Name of debtor and secured party

Name of Debtor and Secured Party

(a) Sufficiency of debtor's name. A financing statement sufficiently provides the name of the debtor:

(1) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) in other cases:

(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor, and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) Additional debtor-related information. A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor, or

(2) unless required under subsection (a)(4)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) Debtor's trade name insufficient. A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Representative capacity. Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) Multiple debtors and secured parties. A financing statement may provide the name of more than one debtor and the name of more than one secured party.

§ 9–504. Indication of collateral

Indication of Collateral

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) a description of the collateral pursuant to 80 CNCA § 9–108; or

(2) an indication that the financing statement covers all assets or all personal property.

§ 9–505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions

Filing and Compliance With Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions

(a) Use of terms other than "debtor" and "secured party." A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in 80 CNCA § 9–311(a), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

(b) Effect of financing statement under subsection (a). This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under 80 CNCA § 9–311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

§ 9–506. Effect of errors or omissions

Effect of Errors or Omissions

(a) Minor errors and omissions. A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Financing statement seriously misleading. Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with 80 CNCA § 9–503(a) is seriously misleading.

(c) Financing statement not seriously misleading. If a search of the records of the filing-office under the debtor's correct name, using the filing-office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with 80 CNCA § 9–503(a), the name provided does not make the financing statement seriously misleading.

(d) Debtor's correct name. For purposes of 80 CNCA § 9–508(b), the "**debtor's correct name**" in subsection (c) means the correct name of the new debtor.

§ 9–507. Effect of certain events on effectiveness of financing statement

Effect of Certain Events on Effectiveness of Financing Statement

(a) Disposition. A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. Except as otherwise provided in subsection (c) and 80 CNCA § 9–508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under 80 CNCA § 9–506.

(c) Change in debtor's name. If a debtor so changes its name that a filed financing statement becomes seriously misleading under 80 CNCA § 9–506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four (4) months after, the change; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four (4) months after the change.

§ 9–508. Effectiveness of financing statement if new debtor becomes bound by security agreement

Effectiveness of Financing Statement if New Debtor Becomes Bound by Security Agreement

(a) Financing statement naming original debtor. Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) Financing statement becoming seriously misleading. If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under 80 CNCA § 9–506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four (4) months after, the new debtor becomes bound under 80 CNCA § 9–203 (d); and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four (4) months after the new debtor becomes bound under 80 CNCA § 9–203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) When section not applicable. This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under 80 CNCA § 9–507(a).

§ 9–509. Persons entitled to file a record

Persons Entitled to File a Record

(a) Persons entitled to file record. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the

financing statement covers only collateral in which the person holds an agricultural lien.

(b) Security agreement as authorization. By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) the collateral described in the security agreement; and

(2) property that becomes collateral under 80 CNCA § 9–315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. By acquiring collateral in which a security interest or agricultural lien continues under 80 CNCA § 9–315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under 80 CNCA § 9–315(a)(2).

(d) Person entitled to file certain amendments. A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) the secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by 80 CNCA § 9–513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

§ 9–510. Effectiveness of filed record

Effectiveness of Filed Record

(a) Filed record effective if authorized. A filed record is effective only to the extent that it was filed by a person that may file it under 80 CNCA § 9–509.

(b) Authorization by one secured party of record. A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. A continuation statement that is not filed within the six (6) month period prescribed by 80 CNCA § 9–515(d) is ineffective.

§ 9–511. Secured party of record

Secured Party of Record

(a) Secured party of record. A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under 80 CNCA § 9–514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) Amendment naming secured party of record. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under 80 CNCA § 9–514(b), the assignee named in the amendment is a secured party of record.

(c) Amendment deleting secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

§ 9–512. Amendment of financing statement

Amendment of Financing Statement

(a) Amendment of information in financing statement. Subject to 80 CNCA § 9–509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) if the amendment relates to an initial financing statement filed or recorded in a filing office described in 80 CNCA § 9–501(a)(1), provides the information specified in 80 CNCA § 9–502(b).

(b) Period of effectiveness not affected. Except as otherwise provided in 80 CNCA § 9–515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) Effectiveness of amendment adding collateral. A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) Effectiveness of amendment adding debtor. A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) Certain amendments ineffective. An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

§ 9–513. Termination statement

Termination Statement

(a) Consumer goods. A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a). To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one (1) month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within twenty (20) days after the secured party receives an authenticated demand from a debtor.

(c) Other collateral. In cases not governed by subsection (a), within twenty (20) days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. Except as otherwise provided in 80 CNCA § 9–510, upon the filing of a termination statement with the filing-office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in 80 CNCA § 9–510, for purposes of 80 CNCA §§ 9–519(g), 9–522(a), and 9–523(c), the filing with the filing-office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

§ 9–514. Assignment of powers of secured party of record

Assignment of Powers of Secured Party of Record

(a) Assignment reflected on initial financing statement. Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement. Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing-office an amendment of the financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates;

(2) provides the name of the assignor; and

(3) provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage. An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under 80 CNCA § 9–502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this Nation other than the Uniform Commercial Code.

§ 9–515. Duration and effectiveness of financing statement—Effect of lapsed financing statement

Duration and Effectiveness of Financing Statement—Effect of Lapsed Financing Statement

(a) Five-year effectiveness. Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five (5) years after the date of filing.

(b) Public-finance or manufactured-home transaction. Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or

manufactured-home transaction.

(c) Lapse and continuation of financing statement. The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) When continuation statement may be filed. A continuation statement may be filed only within six (6) months before the expiration of the five (5) year period specified in subsection (a) or the thirty (30) year period specified in subsection (b), whichever is applicable.

(e) Effect of filing continuation statement. Except as otherwise provided in 80 CNCA § 9–510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five (5) year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) Transmitting utility financing statement. If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) Record of mortgage as financing statement. A record of a mortgage that is effective as a financing statement filed as a fixture filing under 80 CNCA § 9–502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

§ 9–516. What constitutes filing—Effectiveness of filing

What Constitutes Filing—Effectiveness of Filing

(a) What constitutes filing. Except as otherwise provided in subsection (b), communication of a record to a filing-office and tender of the filing fee or acceptance of the record by the filing-office constitutes filing.

(b) Refusal to accept record; filing does not occur. Filing does not occur with respect to a record that a filing-office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing-office;

- (2) an amount equal to or greater than the applicable filing fee is not tendered;
- (3) the filing-office is unable to index the record because:
 - (A) in the case of an initial financing statement, the record does not provide a name for the debtor;
 - (B) in the case of an amendment or correction statement, the record:
 - (i) does not identify the initial financing statement as required by 80 CNCA § 9–512 or 9–518, as applicable; or
 - (ii) identifies an initial financing statement whose effectiveness has lapsed under 80 CNCA § 9–515;
 - (C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or
 - (D) in the case of a record filed in the filing-office described in 80 CNCA § 9–501(a)(1), the record does not provide a sufficient description of the real property to which it relates;
- (4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
 - (A) provide a mailing address for the debtor;
 - (B) indicate whether the debtor is an individual or an organization; or
 - (C) if the financing statement indicates that the debtor is an organization, provide:
 - (i) a type of organization for the debtor;
 - (ii) a jurisdiction of organization for the debtor; or
 - (iii) an organizational identification number for the debtor or indicate that the debtor has none;
- (6) in the case of an assignment reflected in an initial financing statement under 80 CNCA § 9–514(a) or an amendment filed under 80 CNCA § 9–514(b), the record does not provide a name and mailing address for the assignee; or

(7) in the case of a continuation statement, the record is not filed within the six (6) month period prescribed by 80 CNCA § 9–515(d).

(c) Rules applicable to subsection (b). For purposes of subsection (b):

(1) a record does not provide information if the filing-office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by 80 CNCA § 9–512, 9–514, or 9–518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. A record that is communicated to the filing-office with tender of the filing fee, but which the filing-office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

§ 9–517. Effect of indexing errors

Effect of Indexing Errors

The failure of the filing-office to index a record correctly does not affect the effectiveness of the filed record.

§ 9–518. Claim concerning inaccurate or wrongfully filed record

Claim Concerning Inaccurate or Wrongfully Filed Record

(a) Correction statement. A person may file in the filing-office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) Sufficiency of correction statement. A correction statement must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is a correction statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) Record not affected by correction statement. The filing of a correction statement does not affect

the effectiveness of an initial financing statement or other filed record.

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

§ 9–519. Numbering, maintaining, and indexing records—Communicating information provided in records

Numbering, Maintaining, and Indexing Records—Communicating Information Provided in Records

(a) Filing-office duties. For each record filed in a filing-office, the filing-office shall:

- (1) assign a unique number to the filed record;
- (2) create a record that bears the number assigned to the filed record and the date and time of filing;
- (3) maintain the filed record for public inspection; and
- (4) index the filed record in accordance with subsections (c), (d), and (e).

(b) File number. A file number assigned after January 1, 2002, must include a digit that:

- (1) is mathematically derived from or related to the other digits of the file number, and
- (2) aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Indexing: general. Except as otherwise provided in subsections (d) and (e), the filing office shall:

- (1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and
- (2) index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) Indexing: real-property-related financing statement. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing-office shall index it:

- (1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) to the extent that the law of this Nation provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) Indexing: real-property-related assignment. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing-office shall index an assignment filed under 80 CNCA § 9–514(a) or an amendment filed under 80 CNCA § 9–514(b):

(1) under the name of the assignor as grantor; and

(2) to the extent that the law of this Nation provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) Retrieval and association capability. The filing-office shall maintain a capability:

(1) to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) Removal of debtor's name. The filing-office may not remove a debtor's name from the index until one (1) year after the effectiveness of a financing statement naming the debtor lapses under 80 CNCA § 9–515 with respect to all secured parties of record.

(h) Timeliness of filing-office performance. The filing-office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule, but not later than two (2) business days after the filing-office receives the record in question.

(i) Inapplicability to real-property-related filing-office. Subsections (b) and (h) do not apply to a filing-office described in 80 CNCA § 9–501(a)(1).

§ 9–520. Acceptance and refusal to accept record

Acceptance and Refusal to Accept Record

(a) Mandatory refusal to accept record. A filing-office shall refuse to accept a record for filing for a reason set forth in 80 CNCA § 9–516(b) and may refuse to accept a record for filing only for a reason set forth in 80 CNCA § 9–516(b).

(b) Communication concerning refusal. If a filing-office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in

no event more than two (2) business days after the filing-office receives the record.

(c) When filed financing statement effective. A filed financing statement satisfying 80 CNCA § 9–502(a) and (b) is effective, even if the filing-office is required to refuse to accept it for filing under subsection (a). However, 80 CNCA § 9–338 applies to a filed financing statement providing information described in 80 CNCA § 9–516(b)(5) which is incorrect at the time the financing statement is filed.

(d) Separate application to multiple debtors. If a record communicated to a filing-office provides information that relates to more than one debtor, this part applies as to each debtor separately.

§ 9–521. Uniform form of written financing statement and amendment

Uniform Form of Written Financing Statement and Amendment

(a) Initial financing statement form. A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in 80 CNCA § 9–516(b):

T80UCC1, size-44 picas, type-DPI

T80UCC1Ad, size-44 picas, type-DPI

(b) Amendment form. A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in 80 CNCA § 9–516(b):

T80UCC3Ad, size-44 picas, type-DPI

T80UCC3, size-44 picas, type-DPI

§ 9–522. Maintenance and destruction of records

Maintenance and Destruction of Records

(a) Post-lapse maintenance and retrieval of information. The filing-office shall maintain a record of the information provided in a filed financing statement for at least one (1) year after the effectiveness of the financing statement has lapsed under 80 CNCA § 9–515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records. Except to the extent that a statute governing disposition of public records provides otherwise, the filing-office immediately may destroy any written record evidencing a financing statement. However, if the filing-office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

§ 9–523. Information from filing-office—Sale or license of records

Information From Filing-Office—Sale or License of Records

(a) Acknowledgment of filing written record. If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to 80 CNCA § 9–519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) note upon the copy the number assigned to the record pursuant to 80 CNCA § 9–519(a)(1) and the date and time of the filing of the record; and

(2) send the copy to the person.

(b) Acknowledgment of filing other record. If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

(2) the number assigned to the record pursuant to 80 CNCA § 9–519(a)(1); and

(3) the date and time of the filing of the record.

(c) Communication of requested information. The filing-office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) whether there is on file on a date and time specified by the filing-office, but not a date earlier than three (3) business days before the filing-office receives the request, any financing statement that:

(A) designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) has not lapsed under 80 CNCA § 9–515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under 80 CNCA § 9–515 and a record of which is maintained by the filing-office under 80 CNCA § 9–522(a);

(2) the date and time of filing of each financing statement; and

(3) the information provided in each financing statement.

(d) Medium for communicating information. In complying with its duty under subsection (c), the filing-office may communicate information in any medium. However, if requested, the

filing-office shall communicate information by issuing a record that can be admitted into evidence in the courts of this Nation without extrinsic evidence of its authenticity.

(e) Timeliness of filing office performance. The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but not later than two (2) business days after the filing office receives the request.

(f) Public availability of records. At least weekly, the Office of the Principal Chief shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing-office.

§ 9–524. Delay by filing-office

Delay by Filing-Office

Delay by the filing-office beyond a time limit prescribed by this part is excused if:

- (1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing-office; and
- (2) the filing-office exercises reasonable diligence under the circumstances.

§ 9–525. Fees

Fees

(a) Initial financing statement or other record: general rule. Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b), is:

- (1) \$ X if the record is communicated in writing and consists of one (1) or two (2) pages;
- (2) \$ 2X if the record is communicated in writing and consists of more than two (2) pages;
and
- (3) \$ 1/2X if the record is communicated by another medium authorized by filing-office rule.

(b) Initial financing statement: public-finance and manufactured-housing transactions. Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the following kind is:

- (1) \$ if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) \$_____ if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) Number of names. The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b).

(d) Response to information request. The fee for responding to a request for information from the filing-office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(1) \$_____ if the request is communicated in writing; and

(2) \$_____ if the request is communicated by another medium authorized by filing-office rule.

(e) Record of mortgage. This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 80 CNCA § 9–502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

§ 9–526. Filing-office rules

Filing-Office Rules

(a) Adoption of filing-office rules. The Office of the Principal Chief shall adopt and publish rules to implement this article. The filing-office rules must be:

(1) consistent with this article; and

(2) adopted and published in accordance with the Administrative Procedures Act, 1 CNCA § 1 et seq.

(b) Harmonization of rules. To keep the filing-office rules and practices of the filing-office in harmony with the rules and practices of filing-offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing-office compatible with the technology used by filing-offices in other jurisdictions that enact substantially this part, the Office of the Principal Chief, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing-office rules, shall:

(1) consult with filing-offices in other jurisdictions that enact substantially this part; and

(2) consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) take into consideration the rules and practices of, and the technology used by, filing-offices in

other jurisdictions that enact substantially this part.

§ 9–527. Duty to report

Duty to Report

The Principal Chief shall report annually on or before November 1 to the Cherokee Nation Council on the operation of the filing office. The report must contain a statement of the extent to which:

(1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(2) the filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

PART 6. DEFAULT

SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

§ 9–601. Rights after default—Judicial enforcement—Consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes

Rights After Default—Judicial Enforcement—Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part and, except as otherwise provided in 80 CNCA § 9–602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under 80 CNCA § 9–104, 9–105, 9–106, or 9–107 has the rights and duties provided in 80 CNCA § 9–207.

(c) Rights cumulative; simultaneous exercise. The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. Except as otherwise provided in subsection (g) and 80 CNCA § 9–60S, after default, a debtor and an obligor have the rights provided in this part and by agreement

of the parties.

(e) Lien of levy after judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) the date of perfection of the security interest or agricultural lien in the collateral;
- (2) the date of filing a financing statement covering the collateral; or
- (3) any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Consignor or buyer of certain rights to payment. Except as otherwise provided in 80 CNCA § 9–607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

§ 9–602. Waiver and variance of rights and duties

Waiver and Variance of Rights and Duties

Except as otherwise provided in 80 CNCA § 9–624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) 80 CNCA § 9–207(b)(4)(C), which deals with use and operation of the collateral by the secured party;
- (2) 80 CNCA § 9–210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
- (3) 80 CNCA § 9–607(c), which deals with collection and enforcement of collateral;
- (4) 80 CNCA §§ 9–608(a) and 9–615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
- (5) 80 CNCA §§ 9–608(a) and 9–615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) 80 CNCA § 9–609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) 80 CNCA §§ 9–610(b), 9–611, 9–613, and 9–614, which deal with disposition of collateral;

(8) 80 CNCA § 9–615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) 80 CNCA § 9–616, which deals with explanation of the calculation of a surplus or deficiency;

(10) 80 CNCA §§ 9–620, 9–621, and 9–622, which deal with acceptance of collateral in satisfaction of obligation;

(11) 80 CNCA § 9–623, which deals with redemption of collateral;

(12) 80 CNCA § 9–624, which deals with permissible waivers; and

(13) 80 CNCA §§ 9–625 and 9–626, which deal with the secured party's liability for failure to comply with this article.

§ 9–603. Agreement on standards concerning rights and duties

Agreement on Standards Concerning Rights and Duties

(a) Agreed standards. The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in 80 CNCA § 9–602 if the standards are not manifestly unreasonable.

(b) Agreed standards inapplicable to breach of peace. Subsection (a) does not apply to the duty under 80 CNCA § 9–609 to refrain from breaching the peace.

§ 9–604. Procedure if security agreement covers real property or fixtures

Procedure if Security Agreement Covers Real Property or Fixtures

(a) Enforcement: personal and real property. If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Enforcement: fixtures. Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) under this part; or

(2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Removal of fixtures. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

§ 9–605. Unknown debtor or secondary obligor

Unknown Debtor or Secondary Obligor

A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor,

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor, and

(B) the identity of the person.

§ 9–606. Time of default for agricultural lien

Time of Default for Agricultural Lien

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

§ 9–607. Collection and enforcement by secured party

Collection and Enforcement by Secured Party

(a) Collection and enforcement generally. If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under 80 CNCA § 9–315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under 80 CNCA § 9–104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under 80 CNCA § 9–104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) Nonjudicial enforcement of mortgage. If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement. A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) Expenses of collection and enforcement. A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

§ 9–608. Application of proceeds of collection or enforcement—Liability for deficiency and right to surplus

Application of Proceeds of Collection or Enforcement—Liability for Deficiency and Right to Surplus

(a) Application of proceeds, surplus, and deficiency if obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under 80 CNCA § 9–607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under 80 CNCA § 9–607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for

any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

§ 9–609. Secured party's right to take possession after default

Secured Party's Right to Take Possession After Default

(a) Possession; rendering equipment unusable; disposition on debtor's premises. After default, a secured party:

(1) may take possession of the collateral; and

(2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under 80 CNCA § 9–610.

(b) Judicial and nonjudicial process. A secured party may proceed under subsection (a):

(1) pursuant to judicial process; or

(2) without judicial process, if it proceeds without breach of the peace,

(c) Assembly of collateral. If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

§ 9–610. Disposition of collateral after default

Disposition of Collateral After Default

(a) Disposition after default. After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Commercially reasonable disposition. Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) Purchase by secured party. A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) Warranties on disposition. A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) Disclaimer of warranties. A secured party may disclaim or modify warranties under subsection (d):

(1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) Record sufficient to disclaim warranties. A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

§ 9–611. Notification before disposition of collateral

Notification Before Disposition of Collateral

(a) "Notification date." In this section, "**notification date**" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under 80 CNCA § 9–610 shall send to the person specified in subsection (c) a reasonable authenticated notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an

authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, ten (10) days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, ten (10) days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 80 CNCA § 9-311(a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) not later than twenty (20) days or earlier than thirty (30) days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

§ 9-612. Timeliness of notification before disposition of collateral

Timeliness of Notification Before Disposition of Collateral

(a) Reasonable time is question of fact. Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) Ten (10)-day period sufficient in non-consumer transaction. In a transaction other than a consumer transaction, a notification of disposition sent after default and ten (10) days or more

before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

§ 9–613. Contents and form of notification before disposition of collateral: General

Contents and Form of Notification Before Disposition of Collateral: General

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in 80 CNCA § 9–614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: Name of debtor, obligor, or other person to which the notification is sent

From: Name, address, and telephone number of secured

Name of Debtor(s): Include only if debtor(s) are not an addressee

For a public disposition:

We will sell or lease or license, *as applicable* the describe collateral to the highest qualified bidder in public as follows:

Day and Date: _____

Time: _____

Place: _____

For a private disposition:

We will sell or lease or license, *as applicable* the describe collateral privately sometime after day and date.

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or lease or license, *as applicable* for a charge of \$_____. You may request an accounting by calling us at telephone number

End of Form

§ 9–614. Contents and form of notification before disposition of collateral: Consumer-goods transaction

Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in 80 CNCA § 9–613(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under 80 CNCA § 9–623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

Name and address of secured party

Date

NOTICE OF OUR PLAN TO SELL PROPERTY

Name and address of any obligor who is also a debtor

Subject; Identification of Transaction

We have your describe collateral, because you broke promises in our agreement.

For a public disposition:

We will sell describe collateral at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

For a private disposition:

We will sell describe collateral at private sale sometime after date. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you will or will not as applicable still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at telephone number.

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at telephone number or write us at secured party's address and request a written explanation. We will charge you \$_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six (6) months.

If you need more information about the sale call us at telephone number or write us at secured party's address.

We are sending this notice to the following other people who have an interest in describe collateral or who owe money under your agreement:

Names of all other debtors and obligors, if any

End of Form

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

§ 9–615. Application of proceeds of disposition—Liability for deficiency and right to surplus

Application of Proceeds of Disposition—Liability for Deficiency and Right to Surplus

(a) Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under 80 CNCA § 9–610 in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party,

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor, and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) Application of noncash proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under 80 CNCA § 9–610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) Calculation of surplus or deficiency in disposition to person related to secured party. The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) Cash proceeds received by junior secured party. A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

§ 9–616. Explanation of calculation of surplus or deficiency

Explanation of Calculation of Surplus or Deficiency

(a) Definitions. In this section:

(1) "**Explanation**" means a writing that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "**Request**" means a record:

(A) authenticated by a debtor or consumer obligor,

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under 80 CNCA § 9–610.

(b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under 80 CNCA § 9–615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) within fourteen (14) days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within fourteen (14) days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required information. To comply with subsection (a)(1)(B), a writing must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than thirty-five (35) days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five (35) days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

(d) Substantial compliance. A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) Charges for responses. A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six (6) -month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding Twenty-Five Dollars (\$25.00) for each additional response.

§ 9–617. Right of transferee of collateral

Right of Transferee of Collateral

(a) Effects of disposition. A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien other than liens created under cite acts or statutes providing for liens, if any, that are not to be discharged.

(b) Rights of good-faith transferee. A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) Rights of other transferee. If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) the debtor's rights in the collateral;

(2) the security interest or agricultural lien under which the disposition is made; and

(3) any other security interest or other lien.

§ 9–618. Rights and duties of certain secondary obligors

Rights and Duties of Certain Secondary Obligor

(a) Rights and duties of secondary obligor. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) receives an assignment of a secured obligation from the secured party;

(2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer, or subrogation. An assignment, transfer, or subrogation described in subsection (a):

(1) is not a disposition of collateral under 80 CNCA § 9–610; and

(2) relieves the secured party of further duties under this article.

§ 9–619. Transfer of record or legal title

Transfer of Record or Legal Title

(a) Transfer statement. In this section, "**transfer statement**" means a record authenticated by a secured party stating:

- (1) that the debtor has defaulted in connection with an obligation secured by specified collateral;
- (2) that the secured party has exercised its post-default remedies with respect to the collateral;
- (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
- (4) the name and mailing address of the secured party, debtor, and transferee.

(b) Effect of transfer statement. A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- (1) accept the transfer statement;
- (2) promptly amend its records to reflect the transfer, and
- (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party's duties. A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

§ 9–620. Acceptance of collateral in full or partial satisfaction of obligation—Compulsory disposition of collateral

Acceptance of Collateral in Full or Partial Satisfaction of Obligation—Compulsory Disposition of Collateral

(a) Conditions to acceptance in satisfaction. Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

- (1) the debtor consents to the acceptance under subsection (c);
- (2) the secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:

(A) a person to which the secured party was required to send a proposal under 80 CNCA § 9–621; or

(B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to 80 CNCA § 9–624.

(b) Purported acceptance ineffective. A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) the conditions of subsection (a) are met.

(c) Debtor's consent. For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection authenticated by the debtor within twenty (20) days after the proposal is sent.

(d) Effectiveness of notification. To be effective under subsection (a)(2), a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to 80 CNCA § 9–621, within twenty (20) days after notification was sent to that person; and

(2) in other cases:

(A) within twenty (20) days after the last notification was sent pursuant to 80 CNCA § 9–621; or

(B) if a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) Mandatory disposition of consumer goods. A secured party that has taken possession of collateral shall dispose of the collateral pursuant to 80 CNCA § 9–610 within the time specified in subsection (f) if:

(1) Sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) Compliance with mandatory disposition requirement. To comply with subsection (e), the secured party shall dispose of the collateral:

(1) within ninety (90) days after taking possession; or

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) No partial satisfaction in consumer transaction. In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

§ 9–621. Notification of proposal to accept collateral

Notification of Proposal to Accept Collateral

(a) Persons to whom proposal to be sent. A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) any person from whom the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, ten (10) days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, ten (10) days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 80 CNCA § 9–311(a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

§ 9–622. Effect of acceptance of collateral

Effect of Acceptance of Collateral

(a) Effect of acceptance. A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) discharges the obligation to the extent consented to by the debtor,

(2) transfers to the secured party all of a debtor's rights in the collateral;

(3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) terminates any other subordinate interest.

(b) Discharge of subordinate interest notwithstanding noncompliance. A subordinate interest is discharged or terminated under subsection (a), even if the secured party fails to comply with this article.

§ 9–623. Right to redeem collateral

Right to Redeem Collateral

(a) Persons that may redeem. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) Requirements for redemption. To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorney's fees described in 80 CNCA § 9–615(a)(1).

(c) When redemption may occur. A redemption may occur at any time before a secured party:

(1) has collected collateral under 80 CNCA § 9–607;

(2) has disposed of collateral or entered into a contract for its disposition under 80 CNCA § 9–610; or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under 80 CNCA § 9–622.

§ 9–624. Waiver

Waiver

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under 80 CNCA § 9–611 only by an agreement to that effect entered into and authenticated after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under 80 CNCA § 9–620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Waiver of redemption right. Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under 80 CNCA § 9–623 only by an agreement to that effect entered into and authenticated after default.

SUBPART 2. NONCOMPLIANCE WITH ARTICLE

§ 9–625. Remedies for secured party's failure to comply with article

Remedies for Secured Party's Failure to Comply With Article

(a) Judicial orders concerning noncompliance. If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages in consumer-goods transaction. Except as otherwise provided in 80 CNCA § 9–628:

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time

a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

(d) Recovery when deficiency eliminated or reduced. A debtor whose deficiency is eliminated under 80 CNCA § 9–626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under 80 CNCA § 9–626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) Statutory damages: noncompliance with specified provisions. In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover Five Hundred Dollars (\$500.00) in each case from a person that:

(1) fails to comply with 80 CNCA § 9–208;

(2) fails to comply with 80 CNCA § 9–209;

(3) files a record that the person is not entitled to file under 80 CNCA § 9–509(a);

(4) fails to cause the secured party of record to file or send a termination statement as required by 80 CNCA § 9–513(a) or (c);

(5) fails to comply with 80 CNCA § 9–616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with 80 CNCA § 9–616(b)(2).

(f) Statutory damages: noncompliance with 80 CNCA § 9–210. A debtor or consumer obligor may recover damages under subsection (b) and, in addition, Five Hundred Dollars (\$500.00) in each case from a person that, without reasonable cause, fails to comply with a request under 80 CNCA § 9–210. A recipient of a request under 80 CNCA § 9–210 who never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) Limitation of security interest: noncompliance with 80 CNCA § 9–210. If a secured party fails to comply with a request regarding a list of collateral or a statement of account under 80 CNCA § 9–210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

§ 9–626. Action in which deficiency or surplus is in issue

Action in Which Deficiency or Surplus is in Issue

(a) Applicable rules if amount of deficiency or surplus in issue. In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in 80 CNCA § 9–628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) the proceeds of the collection, enforcement, disposition, or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of paragraph (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under 80 CNCA § 9–615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) Non-consumer transactions; no inference. The limitation of the rules in subsection (a) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

§ 9–627. Determination of whether conduct was commercially reasonable

Determination of Whether Conduct Was Commercially Reasonable

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that

selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) Dispositions that are commercially reasonable. A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) in the usual manner on any recognized market;

(2) at the price current in any recognized market at the time of the disposition; or

(3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) Approval by court or on behalf of creditors. A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) in a judicial proceeding;

(2) by a bona fide creditors' committee;

(3) by a representative of creditors; or

(4) by an assignee for the benefit of creditors.

(d) Approval under subsection (c) not necessary; absence of approval has no effect. Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

§ 9–628. Nonliability and limitation on liability of secured party—Liability of secondary obligor

Nonliability and Limitation on Liability of Secured Party—Liability of Secondary Obligor

(a) Limitation of liability of secured party for noncompliance with article. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. A secured party is not liable because of

its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor, and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under 80 CNCA § 9–625(c)(2) for its failure to comply with 80 CNCA § 9–616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under 80 CNCA § 9–625(c)(2) more than once with respect to any one (1) secured obligation.

PART 7. TRANSITION

§ 9–701. Effective date

Effective Date

This act takes effect on enactment.

§ 9–702. Savings clause

Savings Clause

(a) Pre-effective-date transactions or liens. Except as otherwise provided in this part, this Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) Continuing validity. Except as otherwise provided in subsection (c) and 80 CNCA §§ 9–703 through 9–709:

(1) transactions and liens that were not governed by former Article 9, were validly entered into or created before this act takes effect, and would be subject to this act if they had been entered into or created after this act takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this act takes effect; and

(2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. This act does not affect an action, case, or proceeding commenced before this act takes effect.

§ 9–703. Security interest perfected before effective date

Security Interest Perfected Before Effective Date

(a) Continuing priority over lien creditor: perfection requirements satisfied. A security interest that is enforceable immediately before this act takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act if, when this act takes effect, the applicable requirements for enforceability and perfection under this act are satisfied without further action.

(b) Continuing priority over lien creditor: perfection requirements not satisfied. Except as otherwise provided in 80 CNCA § 9–705, if, immediately before this act takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this act are not satisfied when this act takes effect, the security interest:

(1) is a perfected security interest for one (1) year after this act takes effect;

(2) remains enforceable thereafter only if the security interest becomes enforceable under 80 CNCA § 9–203 before the year expires; and

(3) remains perfected thereafter only if the applicable requirements for perfection under this act are satisfied before the year expires.

§ 9–704. Security interest unperfected before effective date

Security Interest Unperfected Before Effective Date

A security interest that is enforceable immediately before this act takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

- (1) remains an enforceable security interest for one (1) year after this act takes effect;
- (2) remains enforceable thereafter if the security interest becomes enforceable under 80 CNCA § 9–203 when this act takes effect or within one (1) year thereafter, and
- (3) becomes perfected:
 - (A) without further action, when this act takes effect if the applicable requirements for perfection under this act are satisfied before or at that time; or
 - (B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

§ 9–705. Effectiveness of action taken before effective date

Effectiveness of Action Taken Before Effective Date

- (a) Pre-effective-date action; one-year perfection period unless reperfected. If action, other than the filing of a financing statement, is taken before this act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect, the action is effective to perfect a security interest that attaches under this act within one (1) year after this act takes effect. An attached security interest becomes unperfected one (1) year after this act takes effect unless the security interest becomes a perfected security interest under this act before the expiration of that period.
- (b) Pre-effective-date filing. The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.
- (c) Pre-effective-date filing in jurisdiction formerly governing perfection. This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former 80 CNCA § 9–103. However, except as otherwise provided in subsections (d) and (e) and 80 CNCA § 9–706, the financing statement ceases to be effective at the earlier of:
 - (1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) Continuation statement. The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(e) Application of subsection (c)(2) to transmitting utility financing statement. Subsection (c)(2) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former 80 CNCA § 9–103 only to the extent that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Application of Part 5. A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement.

§ 9–706. When initial financing statement suffices to continue effectiveness of financing statement

When Initial Financing Statement Suffices to Continue Effectiveness of Financing Statement

(a) Initial financing statement in lieu of continuation statement. The filing of an initial financing statement in the office specified in 80 CNCA § 9–501 continues the effectiveness of a financing statement filed before this act takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this act;

(2) the pre-effective-date financing statement was filed in an office in a state or another office in this Nation; and

(3) the initial financing statement satisfies subsection (c).

(b) Period of continued effectiveness. The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before this act takes effect, for the period provided in former Section 9–403 with respect to a financing statement; and

(2) if the initial financing statement is filed after this act takes effect, for the period provided in 80

CNCA § 9–515 with respect to an initial financing statement.

(c) Requirements for initial financing statement under subsection (a). To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of Part 5 for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

§ 9–707. Amendment of pre-effective-date financing statement

Amendment of Pre-Effective-Date Financing Statement

(a) Pre-effective-date financing statement. In this section, "**pre-effective-date financing statement**" means a financing statement filed before this act takes effect.

(b) Applicable law. After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. Except as otherwise provided in subsection (d), if the law of this Nation governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this act takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in 80 CNCA § 9–501;

(2) an amendment is filed in the office specified in 80 CNCA § 9–501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies 80 CNCA § 9–706(c); or

(3) an initial financing statement that provides the information as amended and satisfies 80 CNCA § 9–706(c) is filed in the office specified in 80 CNCA § 9–501.

(d) Method of amending: continuation. If the law of this Nation governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under 80 CNCA § 9–705(d) and (f) or 9–706.

(e) Method of amending: additional termination rule. Whether or not the law of this Nation governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this Nation may be terminated after this act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies 80 CNCA § 9–706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

§ 9–708. Persons entitled to file initial financing statement or continuation statement

Persons Entitled to File Initial Financing Statement or Continuation Statement

A person may file an initial financing statement or a continuation statement under this part if:

- (1) the secured party of record authorizes the filing; and
- (2) the filing is necessary under this part:
 - (A) to continue the effectiveness of a financing statement filed before this act takes effect; or
 - (B) to perfect or continue the perfection of a security interest.

§ 9–709. Priority

Priority

(a) Law governing priority. This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this act takes effect, former Article 9 determines priority.

(b) Priority if security interest becomes enforceable under 80 CNCA § 9–203. For purposes of 80 CNCA § 9–322(a), the priority of a security interest that becomes enforceable under 80 CNCA § 9–203 dates from the time this act takes effect if the security interest is perfected under this act by the filing of a financing statement before this act takes effect which would not have been effective to perfect the security interest under former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

TITLE 81

UNITED STATES

CHAPTER 1

SELF–GOVERNANCE COMPACT

§ 1. Self-governance compact

The Compact of Self-Governance, authorized by Resolution #21-9 on February 10, 1990, and the Annual Funding Agreement between the Cherokee Nation and the United States of America and subsequent amendments is approved for implementation.

TITLE 82

WATERS AND WATER RIGHTS

Reserved for Future Use

TITLE 83

RESERVED

Reserved for Future Use

TITLE 84

WILLS AND SUCCESSION

Reserved for Future Use

TITLE 85

WORKERS' COMPENSATION

CHAPTER 1

GENERAL PROVISIONS

§ 1. Short title

This Act shall be known and may be cited as the Cherokee Nation Workers' Compensation Act Amendments of 2010.

§ 2. Definitions

In this Title, unless the context otherwise requires:

1. "**Accident**" means an unforeseen event occurring without the will or design of the person whose mere act causes it; a sudden, unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known, an unprecedented consequence of it, provided, however, that no incident shall be considered an accident that does not involve a sudden and

discernable physical trauma or event, and provided that the accident must occur during the course and scope of employment.

2. **"Acting in the course of employment"** means:

a. **"Acting in the course of employment"** means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.

b. **"Acting in the course of employment"** does not include:

i. Time spent going to or coming from the employer's place of business in an alternative commute mode, notwithstanding that the employer (i) paid directly or indirectly, in whole or in part, the cost of a fare, pass, or other expense associated with the alternative commute mode; (ii) promoted and encouraged employee use of one or more alternative commute modes; or (iii) otherwise participated in the provision of the alternative commute mode.

ii. An employee's participation in social activities, recreational or athletic activities, events, or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate.

3. **"Alternative commute mode"** means (a) a carpool or vanpool arrangement whereby a group of at least two but not more than fifteen persons including passengers and driver, is transported between their places of abode or termini near those places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution; (b) a bus, ferry, or other public transportation service; or (c) a nonmotorized means of commuting such as bicycling or walking.

4. **"Artificial member"** means a fabricated substitute replacing or enhancing a diseased or missing part of the body, to include eye(s) and/or teeth.

5. **"Average weekly wage"** means the earnings of the claimant in the employment in which he or she was working at the time of the injury during the period ninety-one (91) days immediately preceding the date of the injury, divided by thirteen (13) weeks. If the claimant has been employed for less than ninety-one (91) days, then the "average weekly wage" shall mean the actual earnings of the claimant in the employment in which he or she was working at the time of the injury divided by the actual number of weeks the employee worked. Volunteers shall be paid medical benefits only.

6. "**Award**" means the administrative or arbitration finding or decision determining the amount of compensation due a claimant.

7. "**Claimant**" means a person who claims benefits pursuant to the provisions of the Workers' Compensation Act.

8. "**Compensation**" means indemnity benefits, payments for medical expenses, mileage and other expenses associated with medical treatment, and death benefits paid pursuant to this Title.

9. "**Controlled substance**" means any drug so designated or defined by Cherokee Nation, federal, and/or other applicable laws where availability or possession of such substance is restricted or prohibited.

10. "**Employee**" means every person in the service of an employer as defined herein, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. In the event of the death of an employee the legal heirs or representatives may be deemed to be the employee for purposes of this Title.

a. Subject to paragraph (b) of this subdivision, the following persons may be excluded from the definition of employee:

i. any person who would be an independent contractor under Internal Revenue Service law and regulations.

ii. any person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of less than Ten Thousand Dollars (\$10,000.00) for such workers.

iii. any person for whom an employer is liable under any Act of Congress for providing compensation to employees for injuries, disease or death arising out of and in the course of employment including, but not limited to, the Federal Employees' Compensation Act, the Federal Employers' Liability Act, the Longshoremen's and Harbor Workers' Act and the Jones Act, to the extent his employees are subject to such Acts.

iv. any person who is employed in agriculture or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) cash wages for agricultural or horticultural workers.

v. any person who is a licensed real estate sales associate or broker, paid on a commission basis.

vi. agricultural employees who are not engaged in operation of motorized machines shall be exempt from coverage of workers' compensation.

vii. an employer with five or less total employees, all of whom are related by blood or marriage to

the employer, will be exempt from the Workers' Compensation Act.

viii. any person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses.

b. Employees eligible to be excluded under paragraph (a) of this subdivision may be covered by this Title if the employer elects coverage as to the employee or as to the class of employees of that employer pursuant to this chapter by purchasing and accepting a valid workers' compensation insurance policy or endorsement, or by written notice to the group self-insurer of which the employer is a member.

11. "**Cumulative trauma**" means an injury resulting from employment activities which are repetitive in nature and engaged in over a period of time and which is supported by objective medical evidence. This term shall not include stress-related and mental health issues unless accompanied by injury.

12. "**Earnings**" means money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer.

13. "**Employer**" means Cherokee Nation, its agencies, commissions, subsidiaries, and any business entity wholly-owned by Cherokee Nation regardless of where the entities are located, or where the employees are located, within or without the territorial limits of Cherokee Nation, any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in Cherokee Nation in any work covered by the provisions of this Title, by way of trade or business, or who contracts with one or more employees, the essence of which is the personal labor of such employee or employees.

14. "**Health care provider**" means a person licensed to practice medicine by any state within the United States, or foreign country if the injury occurs outside of the United States, including a pharmacy dispensing prescribed medication.

15. "Human Resources Department" shall mean the department or office responsible for administration of personnel, human resources, and benefits for the applicable, respective employer of the employee.

16. "**Impairment**" means an anatomical or functional abnormality, as determined by the health-care provider approved by the employer existing after the date of maximum medical improvement based on objective medical evidence evaluated in accordance with the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment or comparable publications of the American Medical Association existing at the time of the healthcare providers' determination. This term shall not include stress-related and mental health issues unless accompanied by injury.

17. "**Indemnity benefits**" means payments awarded pursuant to 85 CNCA § 46.

18. a. "**Injury**" means physical damage to the body or part of the body resulting from an accident, occupational disease or cumulative trauma sustained or incurred while acting in the course and scope of employment.

b. An injury other than cumulative trauma is compensable only if it is caused by a specific incident that is identifiable by time, place, and occurrence.

c. Injury includes heart-related or vascular injury, illness or death only if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment. Such injury shall be compensable only if it is demonstrated that the exertion necessary to produce the harm was extraordinary and unusual in comparison to other occupations and that the occupation was the major cause of the harm.

d. Injury shall not include stress-related or mental health issues or mental injury that is unaccompanied by physical injury, except in the case of rape which arises out of and in the course of employment.

e. Injury shall not include the ordinary, gradual deterioration or progressive degeneration caused by the aging process, unless the employment is the cause of the deterioration or degeneration and is supported by objective medical evidence; nor shall it include injury incurred while engaging in, performing or as the result of engaging in or performing any recreational or social activities.

f. An injury must be supported by objective medical evidence.

19. "**Maximum medical improvement**" means the medical status after which further recovery from or lasting improvement to an injury can no longer be reasonably anticipated based upon reasonable medical probability as determined by the health care provider selected by the employer.

20. "**Minor employee**" shall mean an individual aged seventeen (17) or younger working at an occupation legally permitted. Such minor shall be deemed at the age of majority for the purpose of this Title.

21. "**Objective medical evidence**" means evidence which meets the criteria of Federal Rule of Evidence 702, Testimony by Experts, and all U.S. Supreme Court case law applicable thereto.

22. "**Occupational disease**" means only that disease or illness which is due to causes and conditions characteristic of or peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease. An occupational disease arises out of the employment only if the employment was the cause of the resulting occupational disease and such is supported by objective medical evidence, as defined in this section. This term shall not include stress-related and mental health issues unless accompanied by injury.

23. "**Permanent total disability**" means incapacity, because of accidental injury or occupational

disease, to earn any wages in any employment for which the employee may become physically suited and reasonably fitted by education, training or experience including vocational rehabilitation, loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof.

24. **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

25. **"Preexisting condition"** means anatomical or functional abnormality, or impairment whether physical or mental, which existed prior to the events giving rise to a claim.

26. **"Settlement"** means the execution of a release of all claims and an agreement concerning compensation.

27. **"Temporary total disability"** means the inability of the claimant, by reason of an injury, to perform his or her duties prior to the date of his or her maximum medical improvement, as determined by the health-care provider selected by the employer.

28. **"Temporary partial disability"** means the limited ability of the claimant who is back at work, but by reason of an injury, unable to perform the amount or type of work he or she previously engaged in, prior to the date of his or her maximum medical improvement, as determined by the health-care provider selected by the employer.

29. **"Week"** means seven (7) calendar days.

§ 3. Acknowledgment of Title

A. All employees shall be conclusively presumed to have acknowledged the exclusive applicability of the terms, conditions and provisions of this Title, and that Cherokee Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws set forth by the Council of Cherokee Nation and that no other workers' compensation law, including but not limited to that of the State of Oklahoma, is applicable to injuries or death sustained by them.

B. The employer, including human resources offices of the respective employers, shall be responsible for explaining the provisions of this Title to their workers and shall post in a conspicuous location a notice as follows:

NOTICE TO WORKERS

All employees are hereby notified that Cherokee Nation is a sovereign Nation for purposes of workers' compensation, governed by the laws set forth by the Tribal Council of Cherokee Nation and that no other workers' compensation law, including that of the State of Oklahoma, is applicable to injuries or death sustained by an employee. If you do not fully understand the terms, conditions, and provisions of the Cherokee Nation Workers' Compensation Act, contact your

supervisor or the human resources office for further details. The right to receive workers' compensation pursuant to the provisions of the Act for injuries or death sustained by a claimant shall be the exclusive remedy against the employer. The employer shall not be required to pay for an injury, death, or disability if (1) an injury is occasioned by the willful intention of the injured employee to bring about injury to himself or herself or another; or (2) if an injury results directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use by the employer; or (3) such claim is otherwise excluded by the Act.

§ 4. Insurance—Sovereign immunity

The employer may provide insurance for any or all of the benefits provided herein. To the extent no coverage is provided, the employer shall be deemed to be self-insured and therefore responsible for payment of those benefits. Nothing herein shall be deemed to be an acknowledgment of jurisdiction of a court or a waiver of sovereign immunity in any proceeding of any state, tribe, the United States or any other jurisdiction. Provided further, the sovereign immunity of Cherokee Nation or other employer shall not be raised as a defense when a claim is brought properly under the provisions of this Title.

§ 5. Payment of benefits

The employer shall administer this Title in accordance with the terms and conditions as described herein, and shall process properly approved payments of compensation as provided for in this Title. All compensation and benefits payable under this Title shall not exceed Five Million Dollars and Zero Cents (\$5,000,000.00) per claim including all expenses associated with the claim, including defense costs.

§ 6. Employer—Power and duties—Joint agreements

A. Each employer may adopt additional standard operating procedures for the orderly administration of its respective workers' compensation program. Standard operating procedures adopted by one employer shall not be applied to the workers' compensation program of other employers.

B. The employer shall be empowered to request medical reports, records and notes, police reports, autopsy reports and special investigations, engage the services of adjusters, third party administrators and/or consultants, and perform other activities as may be needed to process any claim for compensation or to further the intent of this Title. Payments for expenses associated with these activities shall be made at the direction of the employer through its workers' compensation program.

C. Complete and accurate administrative records and claim files shall be maintained on all activities relating to any workers' compensation program. All closed files shall be preserved for five (5) years from the date of closure.

D. The employer shall make a final decision on claims filed under this Title within a reasonable

time.

E. If the claimant agrees with the final decision of the employer, a memorandum of such agreement signed by both the employer and the employee shall be placed in the workers' compensation case file. This agreement shall be deemed binding upon the parties thereto. Such joint agreements may be made during any phase of a workers' compensation claim.

§ 7. Compensation as exclusive remedy

The right to receive workers' compensation pursuant to the provisions of this Title for injuries or death sustained by a claimant shall be the exclusive remedy against the employer.

§ 8. Limitations

A. The employer shall not be required to pay for an injury, death, or disability in the following circumstances:

1. An injury is occasioned by the willful intention of the injured employee to bring about injury to himself or herself or another; or
2. An injury results directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use by the employer; or
3. an injury results directly from unsanitary or injurious practices;
4. the refusal of a claimant to submit to any reasonable surgical treatment or medical aid;
5. the employee is acting outside any restriction dictated by a health care provider;
6. an injury or death caused by a prank, horseplay or similar willful, reckless, or intentional behavior, except for injury or death to innocent victims;
7. stress-related or mental health issues except when accompanied by physical injury or resulting from a case of rape which arises out of and in the course of employment;
8. injury or death deemed an "Act of God" which arises within the course and scope of employment shall be considered compensable only if the employment puts the employee at a greater risk of injury or death by "Act of God" than is the risk to the general population. **"Act of God"** means an act occasioned exclusively by forces of nature without the interference of human agency.
9. injury or death that results from natural causes, i.e., heart attack, stroke, or other natural body function failures which are not work-related.
10. the injury is otherwise excluded by this Title.

B. The employer may reduce or suspend the compensation of a claimant who persists in unsanitary or injurious practices tending to imperil or retard his or her recovery or who refuses to submit to medical or surgical treatment reasonably necessary to promote his or her recovery.

C. Substance-abuse-related injury or death.

1. No compensation of any kind shall be paid for any injury or death substantially related to the intentional use or abuse, by the employee, of alcohol, controlled substances or chemicals, which shall include the use or abuse of prescription drugs where the employee does not have a valid prescription or where the employee was not properly taking prescription drugs as prescribed;

2. The use or abuse of alcohol, controlled substances or chemicals shall be deemed substantially related to an injury or death if:

a. Objective testing of the breath, blood, saliva, hair, or urine or testing by other federally-accepted means, of the employee demonstrates the use or abuse of alcohol, controlled substances or chemicals and any competent evidence establishes that it is more probable than not that the use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the employee; or

b. Subjective observations of the employee, by co-workers, supervisors, medical or emergency personnel or other witnesses, the statements, behavior or actions of the employee or other direct or circumstantial evidence establishes by clear and convincing evidence that the employee's use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the employee; or

c. Such use or abuse of alcohol, controlled substances or chemicals, by the employee resulted in a criminal conviction by any lawful jurisdiction.

§ 9. False statement or representation

If, in order to obtain any compensation under the provisions of this Title, any claimant knowingly makes a false statement or representation, including any material omission, such claimant shall forfeit all rights to such compensation and will be liable for restitution upon proof that the offense was committed, and may be referred to the appropriate law enforcement agency. A violation under this section shall be a crime. Further, any such claimant may be immediately dismissed from employment without progressive discipline.

§ 10. Medical information

A. Information obtained by the attending physician, surgeon, hospital or other medical facility or personnel while in attendance of an injured worker shall not be a privileged communication if such information is determined by the employer to be necessary for a proper understanding and evaluation of the claim.

B. The employer shall have the right to request a full and complete report and any and all records from the physician, surgeon, hospital or other medical facility or personnel at times and in the form and details as deemed necessary and shall have a right to present specific questions required to evaluate the claim.

C. By the employee's election to make a claim under this Title, the employee acknowledges the right of the employer to obtain such information. Each employee shall sign any and all releases and waivers as needed to enable the employer to obtain any and all related medical records. Receipt of benefits shall be denied until the employee signs the necessary paperwork.

D. The employer shall maintain all information obtained pursuant to this section as confidential information, except that the employer may release information to the claimant, the employer's insurance provider, a third-party administrator working on the case, the attorneys representing either the employer or any of the entities stated in this subsection, and any arbitrator reviewing the claim.

§ 11. Filing of claim

A. All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced within two (2) years from the date of the injury, and shall commence upon the filing of a notice of injury with the human resources office of the respective employer. The employer shall publish a form that must be used when filing.

B. All parties to a claim shall cooperate with any applicable loss-control program.

§ 12. Retaliation

In no event will an employer retaliate against an employee for reporting an accident or injury or giving notice of such an occurrence. For the purposes of this Title, retaliation shall be defined as taking the following actions against the claimant without good cause and based on the employee's reporting of the accident, injury, or occurrence: any form of formal discipline; dismissal; demotion; suspension; reprimand; warning of possible dismissal; refusal to hire; reduction in rank; a decision reducing pay, benefits, or awards; or a less-than-satisfactory performance evaluation.

§ 13. Right to compensation and medical treatment benefits

A. Except as provided in 85 CNCA § 9, every claimant coming within the provisions of this Title who is killed or injured while in the course and scope of his or her employment, wherever the injury or death occurred shall be entitled to receive, and shall be paid compensation as provided in this Title.

B. Unless prohibited by other law, the employer shall pay for treatment by a health-care provider reasonably required at the time of the injury, and during any period of disability attributable thereto, provided that such treatment is medically necessary and reasonable.

C. Employers may agree to a traditional Indian healer for supplementary treatment but not medical determinations.

§ 14. Time limit for filing of claims

A. No claims for injury or death shall be allowed unless notice of the claim is filed with the department so designated per the Human Resource policy, for receiving such claims by the employer within thirty (30) days from the date of occurrence.

B. Claims for occupational disease shall be made within ninety (90) days from date of diagnosis by a physician.

C. All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced within two (2) years from the filing of a notice of injury with the human resources office of the respective employer. The employer shall publish a form that must be used when filing.

D. All claims for any compensation or benefits under the Workers' Compensation Act shall be deemed closed upon a decree of final order issued by an arbitrator, or upon agreed settlement on a full and final release, or in the alternative, two (2) years from the date the notice of injury was given if the employee thereafter fails to seek medical treatment of the injury complained of in the notice of injury.

E. A claim may be reopened upon an application based upon a change in condition for the worse only if filed within three (3) years from the date of the last determination of maximum medical improvement or forever be barred.

F. Post-termination injury claims shall be filed within sixty (60) days of termination of employment, provided that nothing herein shall extend any limitation period set forth in this section.

G. The claim shall be deemed filed when it is actually received by the human resources office of the respective employer.

§ 15. Burden of proof

A. Except as set forth in subsection (B), the claimant shall have the burden to prove by a preponderance of the evidence:

1. that an injury exists or that a death has occurred; and
2. that the injury complained of was the result of a work-related accident or occupational disease; and
3. that it arose in the course and scope of his or her employment.

B. Unless the employer presents clear and convincing evidence in rebuttal, when an employee is killed under circumstances indicating that the death took place within time and place limits of employment it shall be presumed that death arose out of employment and compensation shall be paid pursuant to 85 CNCA § 32.

§ 16. Acting under employer's directions

Any employee who is injured or killed while following the directions of his or her employer shall be considered to have been in the course and scope of his or her employment and in furtherance of the employer's interests and shall be entitled to compensation.

§ 17. Going to and returning from work

An accident or injury occurring to a employee while on the way to or from work shall not be covered unless (1) the employer pays travel expenses as permitted by the employer's travel policies and procedures or (2) the employee is assigned a special task outside regular working hours.

§ 18. Injuries occurring outside Cherokee Nation

From and after the passage and effective date of this act, all the provisions of this act shall apply to employers and to employees, irrespective of where the accident resulting in injury may occur, whether within or without the territorial limits of Cherokee Nation. In the event that an injury occurs outside the territorial limits of Cherokee Nation, the injured employee may commence and maintain his or her action for benefits and compensation in Cherokee Nation as provided in this act, and Cherokee Nation courts are hereby vested with jurisdiction thereof as fully as if such injury or accident had occurred within Cherokee Nation. This section shall preclude the injured employee from recovering any benefits or compensation provided under any workers' compensation law or similar law, no matter how titled, of the state, territory, country, or other jurisdiction where the injury occurred, and if such action be so commenced in such other jurisdiction, Cherokee Nation may raise the defense of sovereign immunity.

§ 19. Preexisting condition

A. All covered workers shall disclose at the request of the employer any preexisting condition at the time of hire and before commencing employment.

B. Any claim for aggravation of a preexisting condition which was not disclosed may be denied by the employer under this Title if that person had knowledge of the preexisting condition and failed to disclose the preexisting condition.

C. If an employee is suffering from a preexisting condition at the time an accident occurs and the preexisting condition is aggravated, the worker is eligible for compensation to the extent of the aggravation only, subject to the provisions of subsections B and D.

D. For the purpose of settlement for permanent partial or permanent total disability, the amount of the award for that disability as set forth in 85 CNCA § 46 may be reduced or denied in its entirety by the employer in consideration of the following:

1. a prior settlement or award from any source for the same preexisting condition;
2. the difference between the degree of disability of the employee before the accident or occupational disease and the worker's present degree of disability.

§ 20. Occupational disease

An occupational disease, as defined in 85 CNCA § 2 shall be eligible for compensation only if there is a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause.

§§ 21 thru 24. Reserved

§ 25. Periodic medical examination of claimant—Effect of refusal or obstruction of examination or treatment

A. A claimant entitled to compensation shall submit to medical examination selected and paid for by the employer from time to time at a place reasonably convenient for the worker, if and when requested by the employer. The worker shall be required to submit to continuing medical treatment by health care providers selected by the claimant or employer and approved by the employer. The employer shall not be liable for treatment provided by non-approved providers or providers not selected by the employer.

B. The request for the medical examination shall fix a time and place having regard for the convenience of the claimant, his or her physical condition and ability to attend. The claimant may have a health care provider present at the examination if procured and paid for by the claimant.

C. If the claimant refuses to submit to the medical examination or obstructs the examination, his or her right to compensation shall be suspended until the examination has been made, and no compensation shall be payable during or for such period. If the claimant refuses to submit to the medical examination or obstructs the examination within ninety (90) days, all benefits shall be permanently forfeited.

D. Any health care provider who conducts or is present at the medical examination may be requested by the employer to testify as to the result thereof, and the reasonable cost of this appearance shall be at the expense of the employer. Should a health care provider be called to testify by the claimant, the costs of the appearance of such health care provider shall be at the expense of the claimant.

E. A claimant must have prior approval from the employer in order for claimant to change health care provider.

§ 26. Claims against third persons

A. Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employee against such third party to the extent of the compensation payable under this act by the employer;

B. Reasonable attorney fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employee. The employer shall pay that proportion of the attorney fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement.

C. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employee, and, adding reasonable interest, shall be treated as an advance payment by the employer on account of any future installments of compensation.

D. If the claimant entitled to compensation under this Title does not pursue a remedy against such other person by instituting an action within six (6) months after the cause of action accrues, the employer shall be subrogated to the rights of the employee to maintain the action against such third party, and may recover damages for the injury to the same extent that the employee might.

E. Compromise of any claim by the claimant at an amount less than the compensation paid shall be made only with written approval of the employer.

F. The employee, employer, and carrier have a duty to cooperate with each other in investigating and prosecuting claims and potential claims against third-party tortfeasors by producing nonprivileged evidence and allowing inspection of premises, but only to the extent necessary for such purpose. Unless previously public information, such documents and the results of such inspections are confidential and exempt from the provisions of the Freedom of Information Act and shall not be used or disclosed for any other purpose.

§ 27. Waiting period—Overpayments—Paid leave—Absence

A. Benefits shall be paid under the provisions of this Title only for an injury which results in a claimant's disability for more than three (3) consecutive days. No benefits shall be paid for the first three (3) consecutive days of disability. A claimant may not recover indemnity benefits for the period of time that he or she is compensated by paid leave. No employer shall allow a claimant to collect more than one-hundred percent (100%) of his or her regular earnings. Paid leave time taken shall apply against any waiting period for indemnity payments. Whether or not paid leave may be used to supplement or in lieu of workers' compensation leave and benefits shall be determined by the policies and procedures of the applicable employer.

B. Overpayments can be deducted from future benefit payments if the employee remains off work. At the employer's option, the employee may present a check to the employer for any overpaid amount within five (5) days of returning to work, or the employer shall recover overpayment of benefits by deducting the amount from the employee's paycheck.

C. While on workers' compensation leave, the employee shall not accrue annual or sick leave unless required by the employment contract or specifically allowed by employer in this circumstance.

D. While on a leave-of-absence for a work-related injury, an employee may not be separated from employment as a result of the employer's no-fault absence policy during the first eighteen (18) months absence from work.

§ 28. Temporary total disability

A. Payment. Temporary total disability shall be paid at seventy-two percent (72%) of the "average weekly wage" which shall in no case exceed Seven Hundred Seventeen Dollars and Zero Cents (\$717.00). Temporary total disability shall in no case be paid in excess of one-hundred fifty-six (156) weeks.

B. Notice. Any person receiving temporary total disability benefits must report in writing to the employer any change in a material fact or the amount of income he or she is receiving or any changes in his or her employment status or medical status occurring during the period of such receipts. Benefits shall cease if an employee participates in any employment while receiving temporary total disability benefits.

§ 29. Temporary partial disability

A. Payment. Except for particular cases mentioned in 85 CNCA v35, an injured worker shall be paid at seventy-two percent (72%) of the difference between the employee's average weekly wage and the employee's wage-earning capacity thereafter in the same employment or otherwise, if less than before the injury, during continuance of such partial disability, but not to exceed one-hundred fifty-six (156) weeks. In the case of soft tissue injuries entitlement to temporary partial benefits is limited to twelve (12) weeks.

B. Notice. Any person receiving temporary partial disability benefits must report in writing to the employer any change in a material fact or the amount of income he or she is receiving or any changes in his or her employment status or medical status occurring during the period of such receipts.

§ 30. Condition permanent—Termination of benefits

When a claimant's injury reaches maximum medical improvement as defined in subdivision 1:

1. The claimant's injury shall be considered permanent and stationary;

2. Once the claimant is notified that he or she has reached maximum medical improvement, the claimant shall provide notice to the employer within twenty-four (24) hours of receipt of documentation that he or she has reached maximum medical improvement. The employee shall inform the employer after receiving said documentation, and benefits shall cease said following business day. Should the employee fail to report to the employer on the next business day, the employee shall be deemed to be absent without leave, and should the employee, once released to return to work, fail to report to the employer within twenty-four (24) consecutive working hours, the employee may be terminated for job abandonment.

3. The employer shall issue a close claim letter or respective payment to close the claim after receiving documentation that the claimant has reached maximum medical improvement or after receiving a signed settlement.

§ 31. Notice by claimant of absence from locality

Any claimant leaving the locality in which he or she is receiving medical treatment, without prior written approval from the employer, may forfeit his or her right to compensation during such time.

§ 32. Death benefits

A. If an injury or occupational disease sustained by an employee proximately results in his or her death following his or her injury or diagnosis of occupational disease, compensation shall be paid as follows:

1. If there are eligible dependents at the time of the employee's death, payment shall consist of weekly death benefits computed as seventy-two percent (72%) of the deceased's average weekly wage, but the gross average weekly wage shall in no case exceed Seven Hundred Seventeen Dollars (\$717.00). The maximum weekly income benefits payable to all beneficiaries varies depending upon the deceased's average weekly wage. If the deceased's average weekly wage is less than Seven Hundred Seventeen Dollars (\$717.00), the aggregate weekly income benefits payable to all beneficiaries shall not exceed one-hundred percent (100%) of the deceased's average weekly wage. If the deceased's average weekly wage is equal to or greater than Seven Hundred Seventeen Dollars (\$717.00), the aggregate weekly income benefits payable to all beneficiaries shall not exceed Seven Hundred Seventeen Dollars (\$717.00). Such benefits may be paid through a structured settlement or lump sum as agreed by the employer and beneficiaries.

2. Payments of death benefits to an employee's spouse shall continue until the death of the spouse.

3. If there are no eligible dependents, compensation shall be limited to direct payment of funeral expenses, not to exceed Eight Thousand Dollars (\$8,000.00), and compensation benefits due up to the time of his or her death, payable to the estate of the deceased.

4. In no case shall death benefits exceed Two Hundred Thousand Dollars (\$200,000.00).

B. If an employee dies as a result of a compensable injury or occupational disease, any unapproved portion of an award or order shall abate.

C. The line of dependency for payment of death benefits shall be in the order set out below; provided each qualifies as a dependent under the terms and conditions as defined in subsection G.

1. First to the surviving widow or widower, if there are no children. If dependent children exist at time of employee's death, payment is to widow or widower, subject to the provisions of this section.

2. If no surviving widow or widower, to a dependent child, fifty percent (50%) of the deceased's average weekly wage not to exceed Seven Hundred Seventeen Dollars (\$717.00), or if two (2) dependent children, seventy percent (70%) of the average weekly wage not to exceed Seven Hundred Seventeen Dollars (\$717.00), or if three (3) children, ninety percent (90%) of the average weekly wage not to exceed Seven Hundred Seventeen Dollars (\$717.00) or if four (4) or more children, a weekly benefit of Seven Hundred Seventeen Dollars (\$717.00) to be equally distributed among such dependent children;

3. To a parent or parents, if dependent upon the deceased employee and if there are no surviving widow or widower or eligible children, twenty-five percent (25%) of the deceased's average weekly wage not to exceed Seven Hundred Seventeen Dollars (\$717.00) if only one (1) parent; or fifty percent (50%) of the deceased's average weekly wage not to exceed Seven Hundred Seventeen Dollars (\$717.00) to be divided equally between both parents if both are dependent upon the deceased covered worker;

4. If there is no eligible dependent widow or widower, children or parents, the death benefit shall be equally distributed among all other eligible dependents at twenty-five percent (25%) of the deceased workers' average weekly wage, subject to the maximum of Seven Hundred Seventeen Dollars (\$717.00).

D. If a deceased minor employee has no other dependents, his or her parent(s), guardian(s), or adoptive parent(s) are entitled to death benefits as defined in subsection G.

E. In no case shall death benefits exceed Two Hundred Thousand Dollars (\$200,000.00).

F. Compensation to a dependent widow or widower shall be for the use and benefit of the widow or widower and the dependent children; and the employer may, at the time of award, apportion the compensation between them in such a way as it deems best for the interest of all dependents.

G. In respect to death benefits under this section, the following definitions shall apply:

1. "**Child**" means a natural or adopted son or daughter of the employee under eighteen (18) years of age; or a natural or adopted son or daughter of an employee eighteen (18) years of age or over and physically or mentally incapable of self-support; or any natural or adopted son or daughter of an employee eighteen (18) years of age or over who is actually dependent; or any natural or

adopted son or daughter of an employee between eighteen (18) and twenty-three (23) years of age who is enrolled as a full-time student in any accredited educational institution. The term "child" includes a posthumous child, a child legally adopted or one for whom adoption proceedings are pending at the time of death, an actually dependent stepchild or an actually dependent acknowledged child born out of wedlock.

2. **"Dependent"** means:

a. a surviving spouse as defined in this section;

b. a child as defined in this section; or

c. any other person dependent in fact upon the employee and refers only to a person who receives one-half (1/2) or more of his support from the employee.

3. **"Parent"** means a mother or father, a stepparent, a parent by adoption and a parent-in-law, if actually dependent in each case except as provided in paragraph (1) of this subsection.

4. **"Surviving spouse"** means only the employee's spouse living with or actually dependent upon the employee at the time of his injury or death, or living apart for justifiable cause or by reason of desertion by the employee;

H. All questions of relationship and dependency shall be determined as of the time of injury for purposes of income benefits for injury, and as of the time of death for purposes of income benefits for death.

I. A person ceases to be dependent when the person's income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time the original determination of actual dependency was made, it would not have supported a finding of dependency. If the present annual income of a dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be dependent shall be presumed to be no longer dependent three (3) years after the time as of which the person was found to be dependent. This presumption may be overcome by proof of continued dependency as defined in this section.

J. Change in dependents. Upon the cessation of income benefits under this section to or for the benefit of any person, the income benefits payable to the remaining persons who continue to be entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

§ 33. Reserved

§ 34. Artificial members

A. In all cases where the injury is such as to permit, pursuant to this section, the use of artificial members, including teeth and eyes, the employer shall pay all reasonable expenses connected with the artificial member.

B. Where an injury results in a loss of one or more eyes, teeth, or limbs of the body, the employer shall furnish such prosthetic devices as may be necessary, as determined by the employer in the treatment and rehabilitation of the injured worker.

C. Where a worker sustains an injury which results in damage to a prosthetic device with which such worker is equipped, the employer shall be responsible for repair or replacement of such device.

§ 35. Soft tissue injuries

A. Nonsurgical—In case of a nonsurgical soft tissue injury, neither temporary total compensation, nor temporary partial compensation shall not exceed twelve (12) weeks.

B. Surgical—A claimant who has been recommended by a treating physician for surgery for a soft tissue injury may petition the employer for an extension of temporary total compensation and the employer may authorize such an extension if the treating physician indicates that such an extension is appropriate and as agreed to by all parties. In the event the surgery is not performed, the benefits for the extension period shall be terminated as of the date of cancellation of the surgery.

C. For purposes of this section, "**soft tissue injury**" means damage to one or more of the tissues that surround bones and joints. "**Soft tissue injury**" includes, but is not limited to: sprains, strains, contusions, tendonitis, and muscle tears. Cumulative trauma is to be considered a soft tissue injury.

D. "**Soft tissue injury**" does not include any of the following:

1. injury to or disease of the spine, spinal disks, spinal nerves or spinal cord, where corrective surgery is performed;

2. brain or closed-head injury as evidenced by:

a. sensory or motor disturbances,

b. communication disturbances,

c. complex integrated disturbances of cerebral function,

d. episodic neurological disorders, or

e. other brain and closed-head injury conditions at least as severe in nature as any condition

provided in paragraphs a through d of this subdivision; or

3. Total knee replacement.

E. In all cases of soft tissue injury, the employee shall only be entitled to appropriate and necessary medical care and temporary total disability, unless there is objective medical evidence of a permanent anatomical abnormality.

F. If claimant returns to work at the same job the claimant is not entitled to permanent partial disability.

§ 36. Hernia—Operations

A. A claimant, in order to be entitled to compensation for a hernia, must prove by a preponderance of the evidence:

1. that the hernia is of recent origin;
2. that this appearance was accompanied by pain;
3. that this was immediately preceded by some accident suffered in the course and scope of employment; and
4. that it did not exist prior to the date of the alleged injury.

B. If the claimant, after establishing his or her right to compensation for a hernia, as provided above, elects to be operated upon, the operating fee and reasonable hospital expenses shall be paid by the employer.

C. If the claimant elects not to be operated upon and the hernia becomes strangulated, the results of the strangulation shall not be compensable.

D. Benefits for a hernia shall be limited to nine (9) weeks of temporary total disability, and should the claimant be released to return to work prior to the end of the nine (9) weeks, the claimant shall be compensated only for the number of weeks during which the physician restricted the claimant from work.

§ 37. Disfigurement benefits

An additional sum not to exceed Twenty Thousand Dollars (\$20,000.00) may be paid to a claimant for serious permanent disfigurement resulting from an injury. The application of the claimant will be reviewed by the employer or third party administrator and an award made as the employer or third party administrator deems just. Disfigurement benefits shall not be paid in the event of the claimant's death.

§ 38. Fee schedule

- A. Health providers may submit such charges and duration of treatment to the employer for review.
- B. Such charges and duration of treatment shall be limited to the usual, customary, and reasonable charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment.
- C. Usual, customary, and reasonable charges shall be presumed to be that of the workers' compensation fee schedule applied in the jurisdiction where treatment is provided.

§ 39. Vocational rehabilitation services

- A. In addition to the compensation provided, a claimant who is unable to return to his or her former job because of his or her injury may receive reasonable vocational rehabilitation services, including counseling and training, as the employer deems necessary to restore him or her to suitable employment. Such additional benefits shall not exceed Ten Thousand Dollars (\$10,000.00).
- B. Where an employee agrees to accept or is ordered to receive vocational rehabilitation services, the covered person admits that he or she is incapable of performing the job duties of his or her former position. Upon written agreement accepting vocational rehabilitation services or upon the filing of an order to enter vocational rehabilitation services, whichever comes first, the employee shall be deemed to have voluntarily resigned his or her job position.

§ 40. Modified duty

The employer may offer an employee a temporary modified duty position on a case-by-case basis. If the employee refuses the modified duty assignment, then the temporary total disability benefits may be terminated immediately.

§ 41. Eyewear

The employer shall pay for frames and/or lenses of a like kind and quality which were damaged as a result of an injury to the claimant, but shall not pay for vision correction examinations unless an injury to the claimant's eye(s) caused a change in vision.

§ 42. Clothing

A claimant who incurs damage to an article of clothing worn during an accident which results in an injury shall be paid the replacement value for clothing of a like kind and quality.

§ 43. Travel for treatment

- A. A claimant shall be compensated for travel from his or her home address, as designated on the claim form, to a treatment facility at a rate consistent with the travel allowance authorized by the

employer which shall in no case be higher nor more than twenty-five percent (25%) lower than the prevailing federal reimbursement rate. Provided that the employer shall not be liable for travel which is wholly within the limits of the city or town of claimant's residence.

B. A claimant shall be compensated for meals and lodging when required to travel more than one hundred (100) miles from his or her home address, as designated on the claim form, to a treatment facility at a rate consistent with the per diem allowance authorized by the employer which shall in no case be higher nor more than twenty-five percent (25%) lower than the prevailing federal reimbursement rate.

C. All claims for payment or reimbursement must be supported by documentation.

D. In order to be reimbursed for such travel expenses, the claimant must provide the supporting documentation to the employer within ten (10) days after the date on which the travel occurred.

§ 44. Indemnity benefits exempt from creditors and writs

A. Except for amounts due pursuant to a court of competent jurisdiction for the payment of child support, indemnity benefits shall be exempt from claims of creditors and from any writs of attachment, garnishment or execution.

B. Indemnity benefits shall be paid only to a claimant or his or her personal representative or such other person(s) as the employer may, under the terms of this Title, appoint to receive or collect the same, or an individual designated by an order of a court of competent jurisdiction.

C. Indemnity benefits shall be diverted for payment of child support only pursuant to an order of a court of competent jurisdiction.

§ 45. Reserved

§ 46. Permanent partial disability—Permanent total disability

A. Scheduled benefits.

1. A schedule of benefits is hereby established.

2. A total loss of use of a member exists whenever, by reason of injury, such member no longer possesses any substantial utility as a member of the body as determined by a medical provider chosen by the employer.

3. Permanent partial disability benefits are measured by multiplying the gross average weekly wage times the number of weeks reflected as in the benefits for total loss of use in subdivision 4 of this subsection times the percentage of permanent impairment. The gross average weekly wage shall in no case exceed Five Hundred Thirteen Dollars and Twelve Cents (\$513.12).

4. Benefits for total loss of use.

a. ARM	196.5 weeks
b. HAND	157.2 weeks
c. THUMB	47.15 weeks
d. FIRST FINGER (Index finger)	27.87 weeks
e. SECOND FINGER	23.58 weeks
f. THIRD FINGER	15.72 weeks
g. FOURTH FINGER	12.15 weeks
h. LEG	196.5 weeks
i. FOOT	157.2 weeks
j. GREAT TOE	23.58 weeks
k. ONE TOE	7.86 weeks
l. EYE—ONE	
(1) Total blindness	196.5 weeks
m. EAR	
(1) Total deafness, one ear	78.6 weeks
(2) Total deafness, both ears	235.8 weeks
n. BODY AS A WHOLE	357.3 weeks

B. Permanent partial disability.

1. Upon the establishment of the percentage of permanent partial disability in accordance with this Title, such evaluation of the permanent partial disability shall be binding for any and all proceedings occurring under this Title. This evaluation of the percentage of permanent partial disability shall be made by a physician selected by the designated Third Party Administrator or the physician of the employer's choice.

2. If an injury has left a claimant with a non-scheduled permanent bodily impairment, indemnity benefits for a specified number of weeks is payable, without regard to presence or absence of wage loss in the future, and such benefits shall be paid weekly or bi-weekly or through a structured settlement or, at the employer's election, as a lump sum. For other non-scheduled permanent impairments, a calculation of percentage of permanent partial disability shall be made by a physician selected by the Third Party Administrator or the physician of the employer's choice.

3. Permanent partial disability benefits, for an injury to a scheduled member, are calculated by multiplying the gross average weekly wage times the number of weeks provided for in the Benefits for Total Loss of Use times the percentage of permanent impairment, but the gross average weekly wage shall in no case exceed Five Hundred Thirteen Dollars and Twelve Cents (\$513.12).

4. Permanent partial disability benefits for injury to the body as a whole are calculated by multiplying the gross average weekly wage times the number of weeks provided in the Benefits for Total Loss of Use times the percentage of permanent impairment. The gross average weekly wage shall in no case exceed Five Hundred Thirteen Dollars and Twelve Cents (\$513.12).

C. Permanent total disability.

An award of permanent total disability shall be in lieu of all lesser indemnity benefits that may be applicable to the injury that created the condition of permanent total disability. Permanent total disability shall be paid at seventy-two percent (72%) of the "average weekly wage" but shall in no case exceed Seven Hundred Seventeen Dollars (\$717.00) per week. Permanent total disability benefits shall be paid only during the period of continuous total disability and shall end upon the claimant's ability to resume gainful employment or death.

CHAPTER 2

DISPUTE RESOLUTION

§ 47. Arbitration

A. A final decision made pursuant to 85 CNCA § 6 may be reviewed through arbitration pursuant to this section and the Cherokee Nation Arbitration Act, 12 CNCA § 1301 et seq.

1. An employee disputing a final decision rendered by the employer may within twenty (20) calendar days after the issuance of the written decision by the employer request, in writing, that arbitration be scheduled between the employee and the applicable employer. The request for arbitration shall be sent to the employer's Director of Human Resources or his or her designee.

2. The employee's request for arbitration must include:

a. The name and mailing address of the employee;

b. A brief summary of the relevant facts;

c. A brief statement of the disputed issues;

d. A brief statement of the relief sought; and

e. A copy of the final written decision the employee seeks to have reviewed.

f. A signed declaration that the information submitted is true and correct to the best of the claimant's knowledge.

B. Request for arbitration.

1. A single arbitrator from a list of qualified arbitrators maintained by the Supreme Court may be mutually agreed upon by the claimant and the employer. If an arbitrator cannot be selected from the list the parties may agree on any other arbitrator. If the parties cannot select an arbitrator, then the Clerk of the Supreme Court shall randomly select an arbitrator from the list pursuant to procedures adopted by the Supreme Court.

2. The employee's right to be heard is contingent upon compliance with all requirements, including filing deadlines provided herein.

3. In furtherance of Cherokee Nation's policy to simplify and expedite claims under this Title, arbitrators and Courts shall give deference to unrepresented employees by excusing honest, non-material or correctable mistakes. Filing deadlines are deemed to be material and non-correctable for purposes of this paragraph.

C. Arbitration costs.

1. The employee shall be required to pay, and submit with the request for arbitration, a One Hundred Dollar (\$100.00) filing fee in order to obtain arbitration; provided that said One Hundred Dollar (\$100.00) fee shall be refunded to the employee if said person prevails at arbitration.

2. Cost of arbitration shall be paid by the employer.

3. If the arbitrator determines that the request for arbitration is frivolous, some or all of the prevailing party's attorney fees and costs of arbitration may be borne by the non-prevailing party as determined by the arbitrator.

§ 48. Administrative record

A. The right to file an appeal of the arbitration award shall be forever barred unless the appeal is filed within thirty (30) days of the date of the award. All awards of arbitration will be deemed final upon the expiration of thirty (30) days from the date the award is issued.

B. The administrative record in an appeal of an arbitration award to the District Court shall include:

1. The administrative case file, including all documents, pleadings, motions, and intermediate rulings made in the administrative decision and the arbitration review;

2. Evidence received or considered at the arbitration proceeding;

3. A statement of matters officially noticed;

4. Questions and offers of proof, objections, and rulings thereon;

5. Proposed findings and exceptions;

6. The final arbitration decision appealed, and any other decision, opinion, or report entered by the arbitrator presiding over the hearing; and

7. All other evidence or data submitted to the arbitrator in connection with consideration of the case, provided all parties have had access to such evidence.

C. Arbitration proceedings shall be recorded by audio and may also be recorded by video at the option of the arbitrator. Such recordings shall be maintained for such time so as to protect the record through judicial review. Copies of the recordings shall be provided by the arbitrator at the request of any party to the proceeding. Costs of copying the recordings shall be borne by the party requesting the copy. For judicial review, recordings of an individual proceeding, as certified by the arbitrator, may be submitted to the District Court by the arbitrator as part of the record of the proceedings under review without transcription unless otherwise required to be transcribed by the Court.

§ 49. Transmission of record to reviewing court—Stipulations

Within thirty (30) days of the filing of the arbitration appeal, the employer or arbitrator shall compile and transmit to the District Court the original or a certified copy of the record, as specified by 85 CNCA § 49, of the proceeding under review. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the Court for the additional costs resulting therefrom. The Court may require or permit subsequent corrections or additions to the record when deemed desirable.

§ 50. Review without jury—Additional testimony

The review shall be conducted by the District Court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the arbitrator pursuant to 12 CNCA § 1323 or 1324 which are not shown in the record, testimony thereon may be taken by the Court.

§ 51. Time computations

In computing any period of time prescribed or allowed by this Title, the day of the act, default, or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by Cherokee Nation, or any other day, when the receiving office does not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays as defined by the Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., shall be excluded in the computation.