

Includes: LA 28-21

TITLE 12

CIVIL PROCEDURE

Chapter

1. Civil Procedure
2. Unfair and Deceptive Practices
3. Interest on Judgments
5. Civil Protective Orders
9. Cherokee Nation Judgment Fund Act
10. Harassment

Oklahoma Statutes

Civil procedure, generally, see 12 O.S. § 1 et seq.

Code of Federal Regulations

Courts of Indian Offenses and Law and Order Code,

Appellate proceedings, see 25 C.F.R. § 11.800 et seq.

Application and jurisdiction, see 25 C.F.R. § 11.100 et seq.

Civil actions, see 25 C.F.R. § 11.500 et seq.

Domestic relations, see 25 C.F.R. § 11.600 et seq.

Probate proceedings, see 25 C.F.R. § 11.700 et seq.

Tribal reassumption of jurisdiction over child custody proceedings, see 25 C.F.R. § 13.1 et seq.

CHAPTER 1

CIVIL PROCEDURE

Section

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Historical and Statutory Notes

2018 Legislation

LA 07–18, Section 2, provides:

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“Section 2. Purpose. The purpose of this Act is to make technical amendments to Chapters 1, 2 and 3 of Title 12 of the Cherokee Nation Code Annotated as found in Legislative Act 16–16.”

§ 1. Title of Chapter

This chapter shall be known as the Code of Civil Procedure of the Cherokee Nation.

LA 16–16, eff. April 21, 2016. Amended LA 07–18, eff. May 18, 2018.

§ 2. Jurisdiction—General

The Courts of the Cherokee Nation may exercise jurisdiction on any basis consistent with the Cherokee Nation Constitution.

LA 16–16, eff. April 21, 2016. Amended LA 07–18, eff. May 18, 2018.

Cross References

Jurisdiction of District Court. see Const. Art. VIII, § 6; 20 CNCA § 24.

Jurisdiction of Supreme Court, see Const. Art. VIII, § 4; 20 CNCA § 51.

§ 3. Law to be applied

The courts shall apply the laws of the Cherokee Nation. The laws of the Cherokee Nation shall include the Constitution of the Cherokee Nation, all statutes heretofore and hereafter enacted by the Tribal Council and the Cherokee common law. The Cherokee common law consists of the traditional customs and usages of the Cherokee people since time immemorial. In matters arising under the common law, the courts may request the advice of tribal elders, scholars and counselors familiar with the same. No state or federal law, including any state or federal regulations, shall be binding upon the courts unless specifically incorporated into statute by the Tribal Council or adopted as common law by a decision of the court. Notwithstanding, in matters which cannot be resolved through the application of Cherokee law, the courts may apply any federal or state law, including any regulation promulgated by the United States Department of Interior, which would be cognizable in a court of general jurisdiction therein.

LA 16–16, eff. April 21, 2016. Amended LA 07–18, eff. May 18, 2018.

§ 4. Force of the Cherokee Common Law

The Cherokee Common Law, as modified by the Constitution of the Cherokee Nation, statutes, judicial decisions, and the condition and wants of the people, shall remain in full force and effect within the Cherokee Nation in like force with any statute of the Cherokee Nation insofar as the common law is not so modified, but all Cherokee Nation laws shall be liberally construed to promote their objective.

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LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 5. 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 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 at law or in equity, unless superseded by a Cherokee Nation Rule of Evidence.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 6. Legislative purpose

This Act shall be construed so as to protect and ensure the political integrity, the economic security, and the health and welfare of the tribe.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 7. Right to bring suit

A. Any citizen of the Cherokee Nation may bring a civil cause of action in the Courts of the Cherokee Nation based on any federal statute or common law, or the laws of any state where that citizen resides.

B. The Cherokee Nation Attorney General acting as *parens patriae*, may bring a civil cause of action in the Courts of the Cherokee Nation based on any federal statute or common law, or the laws of any state where any citizen of the Cherokee Nation resides. To the extent there is any conflict between the laws of the Cherokee Nation and federal law or the applicable state law, the laws of the Cherokee Nation control.

C. The Cherokee Nation Attorney General acting as *parens patriae*, may bring a civil cause of action in any district court of the United States or in any court in any state of the United States having jurisdiction over the defendant, to secure monetary or injunctive relief based on any applicable federal statute, common law, or the laws of any state.

D. In any action brought under the laws of any state, the United States, or any foreign nation, where at least 50 citizens of the Nation and/or Nation Business entities would qualify as potential parties, the Cherokee Nation Attorney General acting *in parens patriae*, has the right to represent the citizens of the Nation in such action.

E. In any action under the laws of any state, the United States, or any foreign nation, where at least 50 citizens of the Nation and/or Nation Business Entities would qualify as plaintiffs, the Cherokee Nation Attorney General acting as *parens patriae*, has the right to submit an aggregated claim or other

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request for relief on behalf of all citizens of the Nation entitled to relief in such action. This includes, but is not limited to, claims submitted in connection with settlement or judgment in a class action, mass action, or mass tort claim. The Cherokee Nation Attorney General shall collect all monies owed to the citizens of the Nation in the aggregate and has the authority to distribute those monies in accordance with the laws of the Cherokee Nation.

LA 07–18, eff. May 18, 2018.

§§ 8 to 10. Reserved

§ 11. Limitations of actions

A. Civil actions other than for the recovery of real property can only be brought within the following periods after the cause of action shall have accrued and not afterwards:

1. Within one (1) year: An action for libel, slander, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation;
2. Within three (3) years: An action upon a contract, express or implied, not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;
3. Within five (5) years: An action upon any contract, agreement, or promise in writing;
4. ¹
5. Within five (5) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter specifically enumerated; an action for relief on the ground of fraud—the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud, an action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or negligence of another;
6. ¹
7. Within five (5) years: An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute.
8. Within six (6) years: An action brought under the CNUDPA, with the exception of a claim brought under Section 27 (The Antitrust Act) where the statute of limitations is calculated from the date of the last commission of

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such act or practice that is a violation of the CNUDPA.

9. Within ten (10) years: An action brought under Section 27 The Antitrust Act, except if brought by the Cherokee Nation Attorney General as *parens patriae*.

10. No statute of limitations shall apply to the Cherokee Nation as a party plaintiff or to the Attorney General as a party plaintiff acting in *parens patriae* on behalf of the Cherokee Nation, one or more tribal citizens of the Cherokee Nation or one or more Cherokee Nation Business Entities.

B. Nothing herein expressly, or impliedly, waives the Cherokee Nation's sovereign immunity.

C. Statutes of limitations shall begin to run from the date when the plaintiff knew, through the exercise of reasonable diligence, of all the elements of the particular cause of action. Whether a plaintiff knew of a particular element is a fact question to be determined by a jury.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

¹So in original.

§ 12. Reserved

§ 13. Parens patriae

A. The Cherokee Nation Attorney General may bring a civil action in the name of the Cherokee Nation as *parens patriae* on behalf of tribal citizens of the Cherokee Nation and/or on behalf of one or more Nation Business Entities to secure monetary relief for injuries and damages sustained by such persons by reason of any violation of law, both federal and that of states where any citizen of the Cherokee Nation resides, including but not limited to, violations of the Cherokee Nation Unfair & Deceptive Practices Act. Aggregate data and evidence shall be deemed admissible if found by the court to be relevant. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief:

1. Which wholly duplicates amounts which have been awarded for the same injury to tribal citizens of the Cherokee Nation; or
2. Which is properly allocable to natural persons who have excluded their claims pursuant to subsection (C)(2) of this section.

B. The court shall award the Cherokee Nation as monetary relief threefold the total actual damage sustained or ten thousand dollars (\$10,000) per violation, whichever is greater, plus the cost of suit, including a reasonable attorney's fee. The court may award under this section prejudgment interest on the total award for the period beginning on the date of filing of Cherokee Nation's

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pleading setting forth a claim of *parens patriae* and ending on the date of judgment at a rate equal to the average United States Treasury Bill rate of the preceding calendar year. The court may award under this section postjudgment interest on the total award for the period starting on the date of judgment at the prime rate, as listed in the first edition of the Wall Street Journal published for each calendar year, plus two percent (2%). In determining whether an award of interest under this paragraph for any period is just in the circumstances the court shall only consider:

1. Whether the Cherokee Nation or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;
2. Whether, the Cherokee Nation or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and
3. Whether the Cherokee Nation or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

C. Notice; exclusion election; final judgment

1. In any action brought under subsection (A) of this section the Attorney General shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case;
2. Any person on whose behalf an action is brought under subsection (A) of this section may elect to exclude from adjudication the portion of the Cherokee Nation claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection;
3. The final judgment in an action under subsection (A) of this section shall be *res judicata* as to any claim under this title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

D. Attorney's fees in any action under subsection (A) of this section:

1. The amount of the plaintiffs' attorney's fees shall be determined by the

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court; and

2. The court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding by clear and convincing evidence that the Attorney General has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 14. Wrongful death

A. A claim for wrongful death may be brought against a person who, by his negligence or by willful, wanton or reckless acts, causes the death of another under such circumstances that the deceased could have recovered damages for personal injuries if death had not resulted.

B. A person shall be liable for the negligence or the willful, wanton or reckless act of his agents or servants to the same extent and subject to the same limits as he would be liable under this section for his own act.

C. An action to recover damages under this section shall be commenced within five (5) years from the date of death, or within five years from the date when the deceased's executor or next of kin knew, or in the exercise of reasonable diligence, should have known of all the elements for a cause of action.

D. The damages recoverable in actions for wrongful death as provided in this section shall include the following:

1. Medical and burial expenses which shall be distributed to the person who paid the expenses or to the decedent's estate if paid by the estate;
2. The loss of consortium and the grief of the surviving spouse, which shall be distributed to the surviving spouse;
3. The mental pain and anguish suffered by the decedent, which shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent;
4. The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, which must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss;
5. The grief and loss of companionship of the children and parents of the decedent, which shall be distributed to them according to their grief and loss of companionship;

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6. The fair monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to, compensation for the loss of the reasonably expected income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent to the persons entitled to the damages recovered;

7. Punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or his representative if such person be deceased, in such case as the decedent's death was caused by the malicious, willful, wanton, or reckless conduct of the defendant or by the gross negligence of the defendant. Such damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

E. Where the recovery is to be distributed according to a person's pecuniary loss or loss of companionship, the judge shall determine the proper division;

F. The above-mentioned distributions shall be made after the payment of legal expenses and costs of the action.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 15. Joint tortfeasors

A. Joint tortfeasors are two or more persons who either:

1. Act in concert to commit a tort;
2. Act independently but cause a single indivisible tortious injury; or
3. Share responsibility for a tort because of vicarious liability.

B. Each joint tortfeasor shall be held jointly and severally liable for the plaintiff's total damages;

C. The doctrine of learned intermediary is specifically rejected;

D. The innovator of a device, drug, or other product may be held liable for fraud or misrepresentation, by misstatement or omission, based on statements it made in connection with the manufacture, safety, and efficacy of the original device, drug or product by a plaintiff claiming injury caused by a generic product manufactured by a different company.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 16. Class actions

A. All persons may join in one action as plaintiffs if:

1. They assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, personal injury or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

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2. They have a claim, right, or interest adverse to the defendant in the property or controversy which is the subject of the action.

B. It is not necessary that each plaintiff be interested as to every cause of action or as to all relief prayed for. Judgment may be given for one or more of the plaintiffs according to their respective right to relief.

C. All persons may be joined in one action as defendants if there is asserted against them:

1. Any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, injury or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

2. A claim, right, or interest adverse to them in the property or controversy which is the subject of the action.

D. It is not necessary that each defendant be interested as to every cause of action or as to all relief prayed for. Judgment may be given against one or more defendants according to their respective liabilities.

E. Where the plaintiff is in doubt as to the person from whom he or she is entitled to redress, he or she may join two or more defendants, with the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined between the parties.

F. When parties have been joined under Section (A) or (C), the court may make such orders as may appear just to prevent any party from being embarrassed, delayed, or put to undue expense, and may order separate trials or make such other order as the interests of justice may require.

G. If the consent of anyone who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

H. It is the intent of the Tribal Council in enacting this section to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action, or to promote justice for all Cherokees. The Tribal Council finds that the use of funds collected by the Court Fund pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

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I. Prior to the entry of any judgment in a class action, the court shall determine the total amount that will be payable to all class citizens, if all class citizens are paid the *pro rata* amount to which they are entitled pursuant to the judgment. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class citizens. After the report is received, the court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue, plus interest on that sum at the legal rate of interest from the date of entry of the initial judgment, to organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to organizations providing services to the indigent.

J. No appeal shall be taken from the granting of the certification of a class.

K. Any waiver by a person of their right to pursue a class action is contrary to public policy and shall be unenforceable and void.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 17. Permissive joinder

Any federally recognized Indian tribe or member of a federally recognized tribe may join in any suit filed in Cherokee Nation District Court with permission of the Attorney General of the Cherokee Nation. Said Joinder shall not waive either expressly or impliedly the sovereign immunity of said tribe. Jurisdiction over said tribe or person shall be limited to the case pending before the Court.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 18. Limitation of new action after reversal or failure otherwise than on merits

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fails in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within two (2) years after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 19. Interlocutory appeals

The District Court shall not certify jurisdictional rulings for interlocutory appeal.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 20. Appeal

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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 the judgment is affirmed on appeal. The Supreme Court may waive bond if the party demonstrates by petition or affidavit that he/she is unable to post the bond. In lieu of any supersedeas bond, the parties may stipulate with respect to any agreement or undertaking. In lieu of any cost bond, the parties may stipulate with respect to any agreement or undertaking conditioned that the monies or properties of the Court are fully protected or prepaid. In the event of a reversal, the premium of any bond will be taxed as a part of the costs. All such stipulations must be approved by the Court and filed in the record.

Except as otherwise provided by law or by agreement of the parties, every bond, undertaking, or stipulation must be secured by (1) the deposit of cash or negotiable government bonds, undertaking, or stipulation; (2) the undertaking or guaranty of a corporate surety doing business in the State of Oklahoma, and holding a certificate of authority from such state; or (3) the undertaking or guaranty of sufficient solvent sureties by a person or entity who owns real or personal property within the State of Oklahoma worth double the amount of the bond, undertaking, or stipulation over all debts and liabilities, and over all obligations assumed on other bonds, undertakings, or stipulations, and exclusive of all legal exemptions.

A. Stay with Bond on Appeal: If an appeal is taken from a monetary judgment awarded in Cherokee Nation District Court, the appellant may obtain a stay by supersedeas bond. The bond must be given upon filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

B. Stay Without Bond on an Appeal by the Cherokee Nation, Its Officers, or Its Agencies

1. The Court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the Cherokee Nation, its officers or its agencies or on an appeal directed by a department of the Cherokee government.

2. When there is a stay of proceedings other than the enforcement of the judgment, the trial court shall have jurisdiction of proceedings related to the enforcement of the judgment as well as any other matter embraced in the action and not affected by the judgment or order appealed from.

C. Supersedeas Bond

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1. Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for any of the following:

- a. Money or the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action;
- b. Costs awarded which otherwise would not have been awarded as costs.

2. The undertaking shall be on condition that if the judgment or order or any part of it is affirmed or the appeal is withdrawn or dismissed, the party ordered to pay shall pay the amount of the judgment or order, or the part of it as to which the judgment or order is affirmed, as entered after the receipt of the remittitur, together with any interest which may have accrued pending the appeal and entry of the remittitur, and costs which may be awarded against the appellant on appeal;

3. The undertaking shall be for double the amount of the judgment or order. The liability on the undertaking may be enforced if the party ordered to pay does not make the payment within ten (10) days after the filing of the remittitur from the reviewing court;

4. If a surety on the undertaking pays the judgment, either with or without action, after the judgment is affirmed, the surety is substituted to the rights of the creditor and is entitled to control, enforce, and satisfy the judgment, in all respects as if the surety had recovered the judgment;

5. Costs awarded by the trial court shall be added to the judgment for purposes of determining the bond amount;

6. Attorney fees awarded shall be added to the judgment for purposes of determining the bond amount.

D. A decision of the Supreme Court of the Cherokee Nation shall lift the stay and the bond shall be released to the prevailing party immediately.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

CHAPTER 2

UNFAIR AND DECEPTIVE PRACTICES

Section

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Historical and Statutory Notes

2018 Legislation

LA 07-18, Section 2, provides:

“Section 2. Purpose. The purpose of this

Act is to make technical amendments to Chapters

1, 2 and 3 of Title 12 of the Cherokee

Nation Code Annotated as found in Legislative

Act 16-16.”

§ 21. Title of Chapter

This chapter shall be known as the Cherokee Nation Unfair & Deceptive Practices Act (“CNUDPA” or “Act”).

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 22. Purpose

The purpose of this Act is to enhance the protections against unfair, deceptive and illegal marketing, advertising and unfair competition relating to transactions of goods and services.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 23. General provisions

A. The provisions of this Act must be construed as cumulative to existing law and not as new enactments;

B. Any waiver by a person of the provisions of this Act including, but not limited to, arbitration provisions that waive a person’s right to seek redress through the courts or proceed as a class action, is contrary to public policy and shall be unenforceable and void;

C. The provisions of this Act are not exclusive. The remedies provided herein for violation of any section of this Act or for conduct proscribed by any section of this Act shall accrue in addition to any other procedures or remedies for any violation or conduct provided for in any other law. Nothing in this Act shall limit any other statutory, customary or common law rights. Nothing in this Act shall limit the right of the Attorney General or any other person to bring class actions or other lawsuits. If any act or practice proscribed under this title also constitutes a cause of action in common law, customary law, or pursuant to another statute, the person or Attorney General may also assert such common law or statutory causes of action under the procedures and with the remedies provided for in such law.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

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§ 24. Construction and definitions

A. This Act shall be liberally construed and applied to promote its underlying purposes, which are to protect the Cherokee Nation and persons against unfair and deceptive acts and practices, both directly and indirectly, and to provide efficient and economical procedures to secure such protection.

B. As used in this Act:

1. **“Goods”** means any tangible chattels bought or leased for use primarily for any purpose, including personal, family, medical or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale, directly or indirectly or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property;
2. **“Services”** means any work, labor, and services for a commercial or business use, including services furnished in connection with the sale or repair of goods;
3. **“Person”** means an individual, group of individuals, partnership, corporation, business entity, limited liability company, the Cherokee Nation, association, or other group, however organized, who seeks or acquires, by purchase or lease, any goods or services for any purpose;
4. **“Nation Business Entity”** means any partnership or corporate entity that is owned or controlled by the Cherokee Nation
5. **“Consumer”** means any individual or group of individuals, who is a buyer of goods or services for personal use;
6. **“Transaction”** means any delivery and acceptance of goods and services. Transactions include, but are not limited to, the sale of goods, services, drugs and medical devices to the Cherokee Nation for the use and benefit of tribal recipients, regardless of whether the manufacturer sold directly to the consumer or used a third party;
7. **“Senior Citizen”** means a person who is 65 years of age or older;
8. **“Disabled Person”** means any person who has a physical or mental impairment that substantially limits one or more major life activities;
9. **“Physical or mental impairment”** means any of the following:
 - a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine;

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b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. **“Physical or mental impairment”** includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

10. **“Major life activities”** mean functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

11. **“Sell”** includes selling, offering for sale or advertising for sale, whether directly or indirectly;

12. **“Give”** includes giving, offering to give or advertising the intent to give, directly and/or indirectly;

13. **“Article or product”** includes any article, product, commodity, thing of value, service or output of a service trade;

14. **“Vendor”** includes any person who performs work upon, renovates, alters or improves any personal property belonging to another person;

15. **“Cost”** as applied to production includes the cost of raw materials, labor, and all overhead expenses of the producer. Cost as applied to distribution means the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor, plus the cost of doing business by the distributor and vendor and in the absence of proof of cost of doing business a markup of six (6) percent on such invoice or replacement cost shall be *prima facie* proof of such cost of doing business. Cost as applied to warranty service agreements includes the cost of parts, transporting the parts, labor, and all overhead expenses of the service agency. Discounts granted for cash payments shall not be used to reduce costs;

16. **“Supplier”** is any person engaged in the business of making a consumer product directly or indirectly available to consumers.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 25. Deceptive practices

A. Deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

B. It shall be a violation of this act, whether or not any person is in fact misled, deceived or damaged thereby, for any person to engage in, *inter alia*, the following deceptive acts or practices:

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1. Passing off goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association with, or certification by another;
4. Using deceptive representations or designations of geographic origin in connection with goods or services;
5. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have;
6. Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand;
7. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model if they are of another;
8. Disparaging the goods, services, or business of another by false or misleading representation of fact;
9. Using innuendo or ambiguity as to a material fact, which has a tendency to mislead;
10. Advertising goods or services with intent not to sell them as advertised;
11. Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity;
12. Advertising furniture without clearly indicating that it is unassembled if that is the case;
13. Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller;
14. Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions;
15. Employs "bait and switch" advertising, which consists of an offer to sell the subject of a consumer transaction which the seller does not intend to sell, which advertising is accompanied by one or more of the following practices:
 - a. Refusal to show the subject of a consumer transaction advertised;
 - b. Disparagement of the advertised subject of a consumer transaction or the terms of sale;

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- c. Requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction;
- d. Refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time;
- e. Showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement;
- f. Accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item; or
- g. Willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;
- 16. Misrepresenting the safety or efficacy of any product good, or service that is the subject of a consumer transaction, including but not limited to, food, medical devices, pharmaceuticals, motor vehicles, etc.;
- 17. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- 18. Representing that a part, replacement, or repair service is needed when it is not;
- 19. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not;
- 20. Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction;
- 21. Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer;
- 22. Inserting an unconscionable provision in a contract;
- 23. Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (a) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (b) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product;
- 24. The home solicitation of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the

Includes: LA 28-21

purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of this Act;

25. Charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of Cherokee Nation or other public social services. For purposes of this paragraph, the following definitions shall apply:

a. "Social services" means those activities and functions of government involved in providing aid or services, or both, including health care services and medical assistance, to those persons who are in need of that aid or those services and may benefit from them;

b. "Unreasonable fee" means a fee that is exorbitant and disproportionate to the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, all of the following:

- (i) The time and effort required;
- (ii) The novelty and difficulty of the services;
- (iii) The skill required to perform the services;
- (iv) The nature and length of the professional relationship;
- (v) The experience, reputation, and ability of the person providing the services;
- (vi) Paragraph (22) shall not apply to attorneys licensed to practice law, who are subject to Rules of Professional Conduct.

26. Charging or receiving an unreasonable interest rate in connection with the purchase or sale of any good or provision or receipt of any service.

a. "Unreasonable interest rate" means an interest rate that is exorbitant and disproportionate to the total cost or value of the goods or services being purchased or sold. Factors to be considered, when appropriate, in determining the reasonableness of the interest rate are based on the circumstances existing at the time of the sale of the good or service and shall include, but not be limited to, all of the following:

- i. The interest rate charged for comparable competitive goods or services;
- ii. The interest rate charged for the same good or service sold or provided to another under similar circumstances and costs;
- iii. The novelty or uniqueness of the good or service;
- iv. The skill required to create the good or perform the service.

Includes: LA 28-21

27. Charging an unreasonable price or receiving an unreasonable payment for a good or service.

a. "Unreasonable price" or "unreasonable payment" means a price or payment that is exorbitant and disproportionate to the value of the good provided or the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a price or payment are based on the circumstances existing at the time of the sale of the good or service and shall include, but not be limited to, all of the following:

- i. The price or payment for comparable competitive goods or services;
- ii. The price or payment of the same good or service sold or provided to another under similar circumstances and costs;
- iii. The novelty or uniqueness of the good or service;
- iv. The skill required to create the good or perform the services;
- v. Paragraph (23) shall not apply to attorneys licensed to practice law, who are subject to Rules of Professional Conduct.

28. Failing to adequately warn or instruct of the potential risks, side effects, or allergic reactions that the manufacturer or distributor knew or reasonably should have known about;

29. Making any decision relating to the purchase or sale of goods, or provision of services, or determination of the cost, fee, value, or interest rate to be charged to an individual based on their geographical location, race, gender, ethnicity, or tribal affiliation;

30. Violation of any law affecting or impacting on consumer goods, supplies, and services enacted by the United States;

31. Any other act or practice determined by the court to be deceptive with regard to the sale of any goods and/or services to consumers.

C. Remedies

1. Each violation of any of the provisions of this Act is punishable by a fine of ten thousand dollars (\$10,000) for each violation or each individual transaction that constitutes a violation in addition to any other remedy provided by law and equity; except in the instances in which a Senior Citizen or a Disabled Person is the victim of such violation in which case the fine shall be twenty-five thousand dollars (\$25,000).

2. In any action under this act in which judgment is entered against the defendant the plaintiff shall be awarded reasonable attorney fees together with the costs of suit;

3. The remedies or penalties provided by this act are cumulative to each

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other and to the remedies or penalties available under all other laws of the Cherokee Nation.

LA 16–16, eff. April 21, 2016. Amended LA 07–18, eff. May 18, 2018.

§ 26. False advertising

A. It is unlawful for any individual, entity, association, or any employee or agent thereof with intent directly or indirectly to sell products, to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before in the Cherokee Nation, or to make or disseminate or cause to be made or disseminated from the Cherokee Nation, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, including over the internet, any statement, concerning that product, real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, which fails to adequately warn, or which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised;

B. It is unlawful for any person to solicit a sale or order for sale of goods or services at the residence of a prospective buyer, in person or by means of telephone, without clearly, affirmatively and expressly revealing at the time the person initially contacts the prospective buyer, and before making any other statement, except a greeting, or asking the prospective buyer any other questions, that the purpose of the contact is to effect a sale, by doing all of the following:

1. Stating the identity of the person making the solicitation;
2. Stating the trade name of the person represented by the person making the solicitation;
3. Stating the kind of goods or services being offered for sale;
4. And, in the case of an “in person” contact, the person making the solicitation shall, in addition to meeting the requirements of paragraphs (1), (2) and (3), show or display identification which states the information

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required by paragraphs (1) and (2) as well as the address of the place of business of one of such persons so identified.

C. It is unlawful for any person, in soliciting a sale or order for the sale of goods or services at the residence of a prospective buyer, in person or by telephone, to use any plan, scheme, or ruse which misrepresents his true status or mission for the purpose of making such sale or order for the sale of goods or services;

D. In addition to any other penalties or remedies applicable to violations of this section, the intentional violation of this section shall entitle persons bound to a contract, when there was a sales approach or presentation or both in which such intentional violation of this act took place, to damages of three times the amount of the sale;

E. Each violation of any of the provisions of this section is punishable by a fine not exceeding ten thousand dollars (\$10,000) in addition to any other remedy provided by law; except in the instances in which a Senior Citizen or a Disabled Person is the victim of such violation in which case the fine shall be twenty-five thousand dollars (\$25,000);

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

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

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

§ 27. Product Liability Actions

A. A manufacturer or seller shall be liable for any loss caused by the manufacturer's or seller's negligence, intentional misconduct, recklessness, or other act or omission, such as negligently modifying or altering a product.

B. For purposes of this section, "loss" includes actual damages, punitive damages, consequential damages, court costs and other reasonable expenses, reasonable attorneys' fees, and reasonably foreseeable harm.

C. Damages awarded by the trier of fact shall, on final judgment, be deemed reasonable for purposes of this section.

D. For purposes of this section, a wholesale distributor or retail seller who completely or partially assembles a product in accordance with the manufacturer's instructions shall be considered a seller.

LA 08-18, eff. May 18, 2018.

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Historical and Statutory Notes

2018 Legislation

LA 08-18, Section 2, provides:

“Section 2. Purpose. The purpose of this

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

§ 28. Unfair Competition Law

A. As used in this section The Cherokee Nation Antitrust Act shall be referred to as the “Antitrust Act,”

B. Definitions

As used in the Antitrust Act:

- (1) **“Attorney General”** means the Attorney General of the Cherokee Nation, any attorney employed by the Office of the Attorney General designated by the Attorney General to act on his behalf and/or any other person retained or employed by the Attorney General as a duly authorized representative.
- (2) **“District Court”** means the District Court for the Cherokee Nation.
- (3) **“Nation”** means The Cherokee Nation.
- (4) **“Person”** includes corporations, partnerships, and associations existing under or authorized by any state or territory of the United States, or any foreign state or nation.
- (5) **“Public office”** means any organized body, office, agency, institution, or entity established by the laws or regulations of the Nation for the exercise of any function of government.
- (6) **“Trust”** is a combination of capital, skill, or acts by two or more persons for any of the following purposes:
 - (a) To create or carry out any restrictions on trade or commerce;
 - (b) To limit or reduce the production of, or increase or reduce the price of, a product or service;
 - (c) To prevent competition in design, manufacturing, making, transportation, sale, purchase or providing of a product or service;
 - (d) To raise, fix, maintain, or stabilize the price at which a product or service is sold, offered for, or intended for sale, barter, use, or consumption to the Cherokee Nation, or to any citizen of or entity owned by the Cherokee Nation, or to persons within the territories of the Cherokee Nation;
 - (e) To make, enter into, execute, or carry out contracts, obligations, or

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agreements, oral or written, of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, consumption or a service below a common standard figure or fixed value, or by which they agree in any manner to keep the price of such article, commodity, or service at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or service between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale of such article, commodity or service, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or of such article, commodity or service, that its price might in any manner be affected;

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

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

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

C. Prohibition of Agreements in Restraint of Trade.

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

D. Conspiracy Against Trade Prohibited.

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

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Each individual violation of this section is a separate offense.

E. Illegal Contracts.

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

F. Jurisdiction

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

Any proceedings to restrain, enjoin or to seek damages for violations of the Antitrust Act, shall be instituted by the filing of a complaint setting forth the case and praying for all such remedies requested. Any complaint and all subsequent proceedings thereafter shall comply with the Federal Rules of Civil Procedure and the Local Rules of the District Court.

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

G. Right to Civil Cause of Action

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

H. Parties Defendant—Multiple Proceedings

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

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proceeding for damages a bar to one instituted to restrain and enjoin.

I. Statute of Limitations

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

J. Evidence.

In any case brought for violation of the Antitrust Act it is sufficient to prove that a trust, combination or conspiracy exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it or proving or producing an article of agreement or a written instrument on which it may have been based; or that it was evidenced by a written instrument.

K. Remedies

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

L. Recovery of Fees and Costs

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

M. Damages

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

- (1) treble the damages sustained, or
- (2) damages in the amount equal to ten thousand dollars (\$10,000) for each transaction affected by any actions forbidden or declared unlawful by

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this Antitrust Act, or

(3) the full sales price for all products or services affected by any actions forbidden or declared unlawful by this Antitrust Act.

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

N. INJUNCTIVE RELIEF

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

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

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

LA 16-16, eff. April 21, 2016. Amended LA 08-18, eff. May 18, 2018. Renumbered from 12 CNCA § 27.

Historical and Statutory Notes

2018 Legislation

LA 08-18, Section 2, provides:

“Section 2. Purpose. The purpose of this Act is to modernize the laws and the Cherokee Nation and to protect elders, disabled and all other Cherokee citizens from unfair and deceptive business practices, unsafe products and unfair competition.”

§ 29. Remedies and procedures

In addition to the specific remedies above, the below remedies shall also govern:

A. Any person who engages, has engaged, or proposes to engage in violations of this Act shall be liable for each violation, which shall be assessed and recovered in a civil action. The number of violations shall be computed based upon each item sold, each marketing material distributed and each prescription filled in violation of this Act. A single act may result in multiple violations of the CNUDPA. Penalties shall be cumulative for violations of each section of the CNUDPA;

B. The Cherokee Nation may bring an action for any violation of this Act on behalf of itself and tribal citizens for the recovery of damages, civil

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penalties, injunction and all other remedies available by law or in equity.

C. Whenever the Attorney General has reason to believe that any person is using or is about to use any act or practice declared to be unlawful, he may bring an action in the name of the Cherokee Nation against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such method, act or practice. The court may issue temporary restraining orders or preliminary or permanent injunctions and make such other orders or judgments as may be necessary to restore to the Cherokee Nation or any person who has suffered any loss by reason of the use or employment of such unlawful method, act or practice.

D. If the court finds any act or practice unlawful with regard to any security or any contract of sale of a commodity for future delivery, the court may issue such orders or judgments as may be necessary to restore any person who has suffered any loss up to three but not less than two times that amount if the court finds that the use of the act or practice was a reckless violation, a civil penalty to be paid to the Cherokee Nation of ten thousand dollars (\$10,000) for each such violation, and also may require said person to pay the reasonable costs of investigation and litigation of such violation, including reasonable attorney fees;

E 1.

F. The court shall impose a civil penalty for each violation of this Act. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth;

G. In determining whether to impose a civil penalty and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

1. Whether the defendant knew or should have known that his or her conduct was directed to one or more Senior Citizens or Disabled Persons;
2. Whether the defendant's conduct caused one or more Senior Citizens or Disabled Persons to suffer: physical impairment or injury, loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal

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or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the Senior Citizen or Disabled Person;

3. Whether one or more Senior Citizens or Disabled Persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

H. Any court of competent jurisdiction hearing an action pursuant to this Act may make orders and judgments as may be necessary to restore to any person, Senior Citizen or Disabled Person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court. If the court determines that full restitution cannot be made to those disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a *pro rata* basis depending on the amount of loss;

I. Any person who intentionally violates any injunction shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. For the purposes of this section, the court issuing such an injunction or order shall retain jurisdiction, and the cause shall be continued, and in such case the Attorney General acting in the name of the Cherokee Nation may immediately petition for recovery of such civil penalty;

J. Any person entitled to bring an action may bring an action against that person who used or employed any method, act, or practice declared to be unlawful, to recover or obtain any or all of the following, as appropriate and

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ordered by the Court:

1. Three times actual damages, or \$10,000, whichever is higher;
2. An order enjoining the methods, acts, or practices;
3. Restitution of property;
4. Civil penalty;
5. Punitive damages;
6. Equitable relief; and
7. Any other relief that the Court deems proper.

K. Any consumer who is a Senior Citizen or a Disabled Person may seek and be awarded, in addition to the remedies specified therein, up to twentyfive thousand dollars (\$25,000) where the trier of fact finds all of the following:

1. That the consumer has suffered physical, emotional, or economic damage resulting from the defendant's conduct; and
2. That an additional award is appropriate.

L. In any action under this Act, it is not necessary to allege or prove actual damages or the threat thereof, or actual injury or the threat thereof, to the plaintiff. But, in no case shall the total award of damages in a class action be less than ten thousand dollars (\$10,000) for each violation;

M. Aggregate data and evidence shall be admissible if found by the court to be relevant.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018. Renumbered from 12 CNCA § 28.

¹So in original.

CHAPTER 3

INTEREST ON JUDGMENTS

Section

30. Interest on judgments

Historical and Statutory Notes

2018 Legislation

LA 07-18, Section 2, provides:

“Section 2. Purpose. The purpose of this

Act is to make technical amendments to Chapters

1, 2 and 3 of Title 12 of the Cherokee

Nation Code Annotated as found in Legislative

Act 16-16.”

§ 30. Interest on judgments

The Court may award interest on the total damages for the period beginning on the date of filing of a pleading setting forth a claim at a rate equal to the average United States Treasury Bill rate of the preceding calendar year. In

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determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall only consider:

- A. Whether plaintiff or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;
- B. Whether, in the course of the action involved, plaintiff or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and
- C. Whether plaintiff or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

LA 16-16, eff. April 21, 2016. Amended LA 07-18, eff. May 18, 2018.

Oklahoma Statutes

Interest on judgments, see 12 O.S. §§ 727, 727.1.

CHAPTER 5

CIVIL PROTECTIVE ORDERS

Section

503. Jurisdiction for civil protective orders

§ 503. Jurisdiction for civil protective orders

Legislative History: Exclusive jurisdiction over civil protective order proceedings at subsection (A) is based upon exercise of exclusive tribal jurisdiction over crimes and civil matters on Indian lands which are not embodied in the Assimilative Major Crimes Act. Exclusive jurisdiction may alternatively be based upon case law based upon the individual facts in the case. Concurrent jurisdiction provisions at subsection (B) state the alternative grounds for jurisdiction: subject matter jurisdiction over a Cherokee respondent or Indian Country; subject matter jurisdiction over Cherokee lands where the exercise of police power is desirable for the health and safety of Cherokee citizens and the orderly administration of justice; enforcement of foreign protective orders; and interstitial jurisdiction pending the determination of the proper forum or forums. Subsection (C) mandates the Court to exercise jurisdiction where it can be liberally interpreted, under the sovereign power of Cherokee Nation to protect its citizens and the noncitizens

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within Cherokee Nation, against harm.

Subsection (D) describes the Court's authorization to utilize jurisdictional theory to respond appropriately in light of many complex factual considerations which have been addressed by evolving case law, for example.

LA 33-05, eff. November 12, 2005. Amended LA 13-18, eff. June 15, 2018.

Historical and Statutory Notes

2018 Legislation

LA 13-18, Section 2, provides:

"Section 2. Purpose. Congress has clarified with the reauthorization of the Violence Against Women Act (VAWA) of 2013, that tribal courts have full jurisdiction over all parties to a protective order if the protection order arose in Indian Country or if the order was issued within the authority of the Indian tribe per 18 U.S.C. 2265(e). This act expands the civil jurisdiction over civil protective orders to include non-Indians who have protective orders issued against them by an citizen of a federally recognized tribe."

CHAPTER 9

CHEROKEE NATION JUDGMENT FUND ACT

Section

1401. Short title

1402. Purpose

1403. Definitions

1404. Act governs

1405. Indemnification not waived—Gaming compact not affected

1406. Fund established

1407. Appropriations authorized

1408. Certification of judgments

1409. Claims allowed

1410. Dormancy period

§ 1401. Short title

This Act shall be known and may be cited as the Cherokee Nation Judgment Fund Act.

LA 08-16, eff. May 11, 2016.

§ 1402. Purpose

The purpose of this Act is to create a fund from which judgment claims against the Cherokee Nation shall be paid in a fair and efficient manner and bar payment of the same by any department, agency or subdivision of the

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Cherokee Nation.

LA 08-16, eff. May 11, 2016.

§ 1403. Definitions

As used in this Act, the following words have the following meanings:

1. **"Attorney General"** means the Attorney General of the Cherokee Nation, or his designee.
2. **"Certified Judgment"** means any judgment which has been certified by the Attorney General.
3. **"Claim"** means a right to payment under a certified judgment.
4. **"Claimant"** means the holder of valid, certified judgment.
5. **"Department"** means any department, agency or subdivision of the Cherokee Nation.
6. **"Fund"** means the Cherokee Nation Judgment Fund.
7. **"Indemnity"** means any contract, agreement or assurance held by the Cherokee Nation as security against an anticipated loss. This term shall include any applicable insurance policy held by the Cherokee Nation for protection against risks and perils except those specifically enumerated.
8. **"Judgment"** means any final judgment, award, or compromise settlement payable in money for a sum certain against the Cherokee Nation. Judgment includes all interest and costs specified in the judgment, award, or compromise settlement, specifically including any attorney fees awarded against the Cherokee Nation.
9. **"Treasurer"** means the Treasurer of the Cherokee Nation.

LA 08-16, eff. May 11, 2016.

§ 1404. Act governs

This Act governs all judgments, inclusive of attorney fees and interest, entered against the Cherokee Nation or any department, agency or subdivision thereof.

LA 08-16, eff. May 11, 2016.

§ 1405. Indemnification not waived—Gaming compact not affected

Nothing in this Act shall serve to disavow, disclaim or otherwise waive the validity of any indemnification agreement held by the Cherokee Nation; nor shall anything in this Act prevent the payment of judgment claims from the same.

Nothing in this Act shall limit, alter or modify the respective obligations of the Cherokee Nation or the State of Oklahoma under the Cherokee Nation Tribal State Gaming Compact or any other applicable agreement.

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Judgment claims paid through any applicable indemnity agreement shall be deemed fully satisfied and thus barred from certification for payment from the Fund.

LA 08-16, eff. May 11, 2016.

Oklahoma Statutes

State-Tribal Gaming Act, see 3A O.S. § 261 et seq.

§ 1406. Fund established

There is hereby established a special fund of the Cherokee Nation to be known as the "Cherokee Nation Judgment Fund." All monies accruing to the credit of the Fund are hereby appropriated, and shall be budgeted and expended by the Treasurer for the payment of eligible claims.

LA 08-16, eff. May 11, 2016.

§ 1407. Appropriations authorized

For each fiscal year, the Tribal Council may appropriate such amounts to the Fund as the Tribal Council determines appropriate to satisfy certified judgments arising during such fiscal year in full. No other funding source shall be used to satisfy a properly certified judgment.

LA 08-16, eff. May 11, 2016.

§ 1408. Certification of judgments

All judgment claims shall be presented to the Attorney General for review prior to submission for payment against the Fund. Whenever the Attorney General determines that no further judicial review shall be sought from a judgment, and that such judgment is otherwise unpaid, the Attorney General shall certify the judgment for payment from the Fund.

LA 08-16, eff. May 11, 2016.

§ 1409. Claims allowed

A. A Claimant in possession of a certified judgment shall be entitled to payment from the Fund by the Treasurer. All claims shall be presented on a form prescribed by the Treasurer.

B. The Treasurer shall pay all allowed claims under this section on a first come, first served basis.

C. The Treasurer shall not pay to any Claimant, in any single fiscal year, any amount which exceeds one-half (1/2) of the balance of the Fund at the time of payment. Any portion of a claim exceeding one-half of the balance of the Fund shall be deemed a disallowed claim.

D. If the Treasurer determines any portion of a claim is disallowed under this section, the Treasurer shall, at the same time the Treasurer pays the amount of the allowed portion, notify the Claimant in writing of the amount of

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the disallowed claim and basis for the determination. Such written notification shall constitute recognition of the disallowed claim by the Treasurer.

E. Any disallowed claim shall constitute a new claim under subsection (A) above. Such new claim shall bear interest at the applicable rate. The holder of a disallowed claim may present the same to the Treasurer for payment in any subsequent fiscal year after the fiscal year in which the determination of the Treasurer was made.

F. The amount of the new claim under paragraph (C) above shall be an amount equal to the amount of the disallowed claim plus applicable interest allowed by law.

LA 08-16, eff. May 11, 2016.

§ 1410. Dormancy period

A. The Attorney General shall not certify any judgment unless such judgment has been presented to him within one (1) year after the date of its issuance.

B. Any certified judgment shall become unenforceable and be of no effect if, within two (2) years after the date of certification by the Attorney General, it has not been presented to the Treasurer for payment as claim.

C. Any disallowed claim shall become unenforceable and be of no effect if, within two (2) years after the date of disallowance by the Treasurer, it has not been presented to the Treasurer for payment as a new claim.

LA 08-16, eff. May 11, 2016.

**CHAPTER 10
HARASSMENT**

Section

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§ 1501. Short Title

This act shall be known and may be cited as the “Anti-Harassment Act of 2021”.

LA 28–21, eff. June 18, 2021.

Historical and Statutory Notes

LA 28–21, Section 2, provides:

Section 2. Purpose

The purpose of this Act is to expand the civil procedure code to protect against serious personal harassment through repeated invasions of a person’s privacy within the Cherokee Nation.

§ 1502. Definitions

1. “Course of conduct” means a pattern of conduct composed of a series of acts over time, however short, evidencing a continuity of purpose. “Course of conduct” includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of “course of conduct.”
2. “Unlawful harassment” includes unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.
3. “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for the person’s safety or the safety of the person’s immediate family, and that serves no legitimate purpose.
4. “Unlawful violence” is any assault or battery, or stalking prohibited in 21 CNCA § 1134, but does not include lawful acts of self-defense or defense of others.

LA 28–21, eff. June 18, 2021.

§ 1503. Course of conduct—Determination of purpose

In determining whether the course of conduct serves any legitimate or lawful

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purpose, the court should consider whether:

1. Any current contact between the parties was initiated by the respondent only or was initiated by both parties;
2. The respondent has been given clear notice that all further contact with the petitioner is unwanted;
3. The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;
4. The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to:
 - a. Protect property or liberty interests;
 - b. Enforce the law; or
 - c. Meet specific statutory duties or requirements;
5. The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;
6. Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

LA 28–21, eff. June 18, 2021.

§ 1504. Protection Order—Petition

A person who has suffered harassment as defined in Section 1502 may seek a temporary restraining order and an order after a hearing prohibiting harassment as provided in this section.

There shall exist an action known as a petition a civil anti-harassment protection order under this chapter.

1. A petition for relief shall allege the existence of harassment, shall allege an appropriate jurisdictional basis for relief under Section 1512 of this chapter, and shall be accompanied by an affidavit made under penalty of perjury stating the specific facts and circumstances from which relief is sought.
2. A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.
3. No filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter.
4. A person is not required to post a bond to obtain relief in any proceeding under this section.
5. The parent or guardian of a child under age eighteen may petition for

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an order of protection to restrain a person age eighteen years or over from contact with that child upon a showing that contact with the person to be enjoined is detrimental to the welfare of the child.

6. The parent or guardian of a child under the age of eighteen may petition the District Court for an order of protection to restrain a person age eighteen years or over.

LA 28-21, eff. June 18, 2021.

§ 1505. Anti-harassment protection orders—Ex parte temporary—Hearing—Longer term, renewal—Acts not prohibited

1. Upon filing a petition for a civil anti-harassment protection order under this chapter, the petitioner may obtain an ex parte temporary anti-harassment protection order. An ex parte temporary anti-harassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary anti-harassment protection order is not granted. If the court declines to issue an ex parte temporary anti-harassment protection order, the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte temporary order shall be filed with the court.

2. An ex parte temporary anti-harassment protection order shall be effective for a fixed period not to exceed fourteen days. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. The ex parte order and notice of hearing shall include at a minimum the date and time of the hearing set by the court to determine if the temporary order should be made effective for a term not to exceed one year, and notice that if the respondent should fail to appear or otherwise not respond, an order for protection will be issued against the respondent pursuant to the provisions of this chapter, for a maximum of one year from the date of the hearing. The notice shall also include a brief statement of the provisions of the ex parte order and notify the respondent that a copy of the ex parte order and notice of hearing has been filed with the clerk of the court.

3. At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil anti-harassment protection order shall issue

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prohibiting such unlawful harassment.

4. An order issued under this chapter shall be effective for not more than one year.

5. At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall require additional attempts at obtaining personal service. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period, not to exceed one year.

6. The court, in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

- a. Restraining the respondent from making any attempts to contact the petitioner;
- b. Restraining the respondent from making any attempts to keep the petitioner under surveillance; and
- c. Requiring the respondent to stay a stated distance from the petitioner's residence and workplace.

7. In issuing the order, the court shall order the respondent to surrender, and prohibit the respondent from possessing, all firearms and any dangerous weapons.

8. The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.

9. The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order shall not prohibit the respondent from the use or enjoyment of real property to which the respondent has a

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cognizable claim unless that order is issued under a separate action commenced with a summons and complaint to determine title or possession of real property.

10. The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order shall not limit the respondent's right to care, control, or custody of the respondent's minor child.

11. A petitioner may not obtain an ex parte temporary anti-harassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil anti-harassment protection order unless good cause for such failure can be shown.

12. The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any.

LA 28-21, eff. June 18, 2021.

§ 1506. Representation or appearance

1. Nothing in this chapter shall preclude either party from representation by private counsel or from appearing on his or her own behalf.

2. The court may require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee. If the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent to pay the filing fee and costs, including service fees.

LA 28-21, eff. June 18, 2021.

§ 1507. Service of Order

1. An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (5) and (7) of this section.

2. The Cherokee Nation Marshal Service or a cross-deputized law enforcement officer shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party. If the order includes a requirement under Section 1505 for the immediate surrender of all firearms and any dangerous weapons, the order must be served by a law enforcement officer.

3. If the Cherokee Nation Marshal Service or a cross-deputized law enforcement officer cannot complete service upon the respondent within ten days, the Marshal or law enforcement officer shall notify the petitioner.

4. Returns of service under this chapter shall be made in accordance with the applicable court rules.

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5. If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary. The court's order, entered after a hearing, need not be served on a respondent who fails to appear before the court, if material terms of the order have not changed from those contained in the temporary order, and it is shown to the court's satisfaction that the respondent has previously been personally served with the temporary order.

LA 28-21, eff. June 18, 2021.

§ 1508. Notice to law enforcement agencies—Enforceability

A copy of an anti-harassment protection order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the Cherokee Nation Marshal Service.

Upon receipt of the order, the Marshal Service shall forthwith enter the order into any computer-based criminal intelligence information system available in this Nation used by law enforcement agencies to list outstanding warrants. The Marshal Service shall expunge expired orders from the computer system. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable throughout the boundaries of the Cherokee Nation Reservation.

LA 28-21, eff. June 18, 2021.

§ 1509. Enforcement of order—Knowledge prerequisite to penalties—Reasonable efforts to serve copy of order

1. When the court issues an order of protection pursuant to this chapter, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth herein for a violation of the order unless the respondent knows of the order.

2. When the Cherokee Nation Marshal Service or a cross-deputized peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation.

LA 28-21, eff. June 18, 2021.

§ 1511. Other remedies

Nothing in this chapter shall preclude a petitioner's right to utilize other existing civil remedies.

LA 28-21, eff. June 18, 2021.

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§ 1512. Jurisdiction

The Cherokee Nation District Court may exercise jurisdiction over any action or proceeding brought under this chapter. Any order issued pursuant to this chapter shall be enforceable only within the boundaries of the Cherokee Nation Reservation.

LA 28-21, eff. June 18, 2021.

§ 1513. Criminal penalty

Any respondent age eighteen years or over who willfully disobeys any civil antiharassment protection order issued pursuant to this chapter shall be guilty of a misdemeanor, punishable by imprisonment for a term not to exceed one (1) year or by a fine in an amount not to exceed Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment.

LA 28-21, eff. June 18, 2021.

§ 1514. Modification of order

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order under this chapter. A respondent may file a motion to terminate or modify an order no more than once in every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewal. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the Cherokee Nation Marshal Service specified in the modified order or termination order. Upon receipt of the order, the Cherokee Nation Marshal Service shall promptly enter it in the law enforcement information system.

LA 28-21, eff. June 18, 2021.

§ 1515. Constitutional rights

Nothing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly.

LA 28-21, eff. June 18, 2021.

§ 1516. Court appearance after violation

1. A defendant arrested for violating any civil anti-harassment protection order issued pursuant to this chapter is required to appear in person within 48 hours after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release.

2. A defendant who is charged by citation, complaint, or information with

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violating any civil anti-harassment protection order issued pursuant to this chapter and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the charge.

3. Appearances required pursuant to this section are mandatory and cannot be waived.

LA 28-21, eff. June 18, 2021.

NOT YET CODIFIED - SEE HEADER