



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Details (With Text)

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Sponsors:	Canaan Duncan, Victoria Vazquez, Daryl Legg, E. O. "JR." Smith, Rex Jordan, Mike Shambaugh, Keith Austin				
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8/12/2021	1	OFFICE OF THE CHIEF	Signed	
8/9/2021	1	TRIBAL COUNCIL	Approved	Pass
7/13/2021	1	RULES COMMITTEE	Approved and Forwarded to Council	Pass

AN ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act amends Title 21 of the Cherokee Nation Code Annotated and shall be codified at the sections referenced herein of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to further modernize the Nation's criminal code and establish the Trademark Anti-Counterfeiting Act.

Section 3. Legislative History

LA-10-90	LA-32-03	LA-20-08	LA-03-21
LA-13-91	LA-36-03	LA-22-08	LA-07-21
LA-24-02	LA-08-06	LA-08-12	LA-18-21
LA-25-02	LA-10-06	LA-09-12	LA-19-21
LA-39-02	LA-18-06	LA-35-12	LA-29-21
LA-40-02	LA-29-06	LA-10-13	
LA-41-02	LA-31-06	LA-09-16	
LA-42-02	LA-34-06	LA-12-18	
LA-31-03	LA-09-07	LA-28-20	

Section 4. Amendments

Title 21, Chapter 12 shall be amended as follows:

§ 444. Escape or attempt to escape from arrest or detention

A. It is unlawful for any person, after being lawfully arrested or detained by a peace officer, to escape or attempt to escape from such peace officer.

B. Any person who escapes or attempts to escape after being lawfully arrested or detained for custody for a misdemeanor offense Such person who escapes or attempts to escape after being lawfully arrested or detained for custody for a crime offense shall be guilty of a misdemeanor.

C. Any person who escapes or attempts to escape after being lawfully arrested or detained for custody for a felony offense shall be guilty of a felony.

D. It is unlawful for any person admitted to bail or released on recognizance, bond, or undertaking for appearance before any court of the Cherokee Nation, and required as a condition of such release from detention to wear any electronic monitoring device on the body of the person to remove such device without authorization from the court. For purposes of this subsection, any person charged with a misdemeanor offense who removes such device without authorization from the court shall be guilty of a misdemeanor and any person charged with a felony offense who removes such device without authorization from the court shall be guilty of a felony.

Title 21, Chapter 70 shall be further expanded and amended as follows:

CHAPTER 70

TRADEMARK ANTI-COUNTERFEITING ACT

§ 1990. Short title

This act shall be known and may be cited as the “Trademark Anti-Counterfeiting Act”.

§ 1990.1. Definitions

For the purposes of this act:

A. "Counterfeit mark" means:

1. any unauthorized reproduction or copy of intellectual property, and
2. intellectual property that is affixed to any item that is knowingly sold, offered for sale, manufactured or distributed or to any identifying services offered or rendered without the authority of the intellectual property owner;

B. "Intellectual property" means any trademark, service mark, trade name, label, term, device, design or word that is adopted or used by a person to identify that person's goods or services; and

C. "Retail value" means:

1. for items that bear a counterfeit mark and that are components of a finished product, the counterfeiter's regular selling price of the finished product on or in which the component would be utilized, or
2. for all other items that bear a counterfeit mark or services that are identified by a counterfeit mark, the counterfeiter's regular selling price for those items or services.

§ 1990.2. Use, possession, distribution, manufacture, etc. of item bearing counterfeit mark--Penalties--Seizure and forfeiture--Civil actions--Damages and attorney fees

A. Except as provided in subsections B and C of this section, a person who knowingly and with intent to sell or distribute, uses, displays, advertises, distributes, offers for sale, sells or possesses any item that bears a counterfeit mark or any service that is identified by a counterfeit mark shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year or by a fine not to exceed One Thousand Dollars (\$1,000.00) or by both such fine and imprisonment.

B. Any person who commits any prohibited act proscribed in subsection A of this section shall, upon conviction, be guilty of a felony punishable by a term of imprisonment not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or both such fine and imprisonment, if either:

1. The person has one previous conviction under any provision of this section; or
2. At least one of the following exists:
 - a. the violation involves more than one hundred but fewer than one thousand items that bear the counterfeit mark, or
 - b. the total retail value of all of the items or services that bear or are identified by the counterfeit mark is more than One Thousand Dollars (\$1,000.00) but less than Ten Thousand Dollars (\$10,000.00).

C. Any person who knowingly manufactures or produces with intent to sell or distribute any item that bears a counterfeit mark or any service that is identified by a counterfeit mark

shall, upon conviction, be guilty of a felony punishable by a term of imprisonment not to exceed three (3) years, or by a fine not to exceed three times the retail value of such items or services, or by both such fine and imprisonment. Such fine shall not exceed Fifteen Thousand Dollars (\$15,000.00).

- D. Any person who commits any prohibited act proscribed by subsection A of this section shall, upon conviction, be guilty of a felony punishable by a term of imprisonment not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment if either:
1. The person has two or more previous convictions under this section; or
 2. At least one of the following exists:
 - a. the violation involves at least one thousand items that bear the counterfeit mark, or
 - b. the total retail value of all of the items or services that bear or are identified by the counterfeit mark is at least Ten Thousand Dollars (\$10,000.00).
- E. For purposes of this section, any person who knowingly has possession, custody or control of at least twenty-six items that bear a counterfeit mark is presumed to possess the items with intent to sell or distribute the items.
- F. In any criminal proceeding in which a person is convicted of a violation of any provision of this section, the court may order the convicted person to pay restitution to the intellectual property owner in addition to any other provision allowed by law.
- G. The investigating law enforcement officer may seize any item that bears a counterfeit mark and all other personal property that is employed or used in connection with a violation of this section, including any items, objects, tools, machines, equipment, instrumentalities or vehicles. All personal property seized pursuant to this section shall be subject to forfeiture according to 21 CNCA § 1738.
- H. After a forfeiture has been ordered by the district court, a law enforcement officer shall destroy all seized items that bear a counterfeit mark; however, if the counterfeit mark is removed from the seized items, the intellectual property owner may recommend to the court that the seized items be donated to a charitable organization.
- I. Any certificate of registration of any intellectual property pursuant to tribal, state, or federal law is prima facie evidence of the facts stated in the certificate of registration and may be used at trial.
- J. In addition to other remedies allowed by law, an intellectual property owner who sustains a loss as a result of any violation of this section may file a civil action against the defendant for recovery of up to treble damages and the costs of the suit including reasonable attorney fees.
- K. The remedies provided in this section are cumulative to all other civil and criminal remedies provided by law.
- L. For the purposes of this section, the quantity or retail value of items or services includes the aggregate quantity or retail value of all items that the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses and that bear a counterfeit mark or that are identified by a counterfeit mark.

Section 5. Provisions as cumulative

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

Section 6. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 7. Effective Date/Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Section 8. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.