



# Council of the Cherokee Nation

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

## Legislation Text

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### **A RESOLUTION AUTHORIZING THE LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR THE LEASE AGREEMENT BETWEEN CATERPILLAR FINANCIAL SERVICES CORPORATION AND THE CHEROKEE NATION**

**WHEREAS**, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people;

**WHEREAS**, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America;

**WHEREAS**, being a federally recognized Indian Tribe, the Cherokee Nation enjoys governmental immunity from suit under federal and tribal law; and,

**WHEREAS**, the Cherokee Nation ("Nation") has through inherent sovereign authority and by constitution and tribal law the authority to enter into contractual agreements to benefit the Nation and the citizenry thereof; and

**WHEREAS**, the Cherokee Nation wishes to enter into a contractual agreement, known as the Lease Agreement, with Caterpillar Financial Services Corporation ("Cat Financial"); and

**WHEREAS**, Cat Financial has requested a limited waiver of sovereign immunity from the Nation so that the agreement may be enforced if necessary;

**BE IT RESOLVED BY THE CHEROKEE NATION**, that for the sole purpose of allowing for enforcement of the terms of the Lease Agreement, established as set forth in Attachment 1, which is incorporated by reference and made a part of this resolution as if stated herein in full, the Cherokee Nation Council agrees to a limited waiver of sovereign immunity, only if all of the following conditions are met:

(1) The entity seeking to bring suit against the Nation is Cat Financial, or an affiliate thereof that provides

funding/services to the Nation under the Lease Agreement, and

(2) The claim is for breach of contract or indemnification and seeks only compensatory damages resulting from the Nation's noncompliance with the attached Agreement, provided the Nation's limited waiver of sovereign immunity in an action for compensatory damages shall be limited to damages incurred through the date of the termination of the attached Agreement, and

(3) That in the event of an award of compensatory monetary damages, the award may be paid out of any assets of the Cherokee Nation, excluding real property and improvements by way of fixtures and excluding funds held in trust by the United States on behalf of the Cherokee Nation and shall not be a lien or encumbrance upon tribal property or allow recovery from any elected officials, officers, or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs or attorney fees;

**BE IT FURTHER RESOLVED** that nothing herein shall be construed as a waiver of immunity from suit seeking attorney's fees, punitive damages or any other form of damages from any party whatsoever, or as a waiver extended for the benefit of any entity, person, partnership, or firm whatsoever, other than Cat Financial as a party to the Lease Agreement for enforcement of said Agreement;

**BE IT FURTHER RESOLVED** that this waiver shall not be construed to authorize any action or claim against the Nation sounding in tort or any other type of claim or recovery not expressly authorized herein, for which purposes the Cherokee Nation's sovereign immunity is and shall be reserved.

**BE IT FURTHER RESOLVED** that Cat Financial as a party to the Lease Agreement may not assign or transfer any rights under this waiver.

**BE IT FURTHER RESOLVED** that this waiver shall not allow recovery from any elected officials, officers or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs, attorney fees or any other damages whatsoever.

**BE IT FURTHER RESOLVED** that the Principal Chief is authorized to execute an agreement on behalf of the Nation pursuant to which the Nation would not object or cause Cat Financial to object to the contract known as the Lease Agreement, or any subcontract of the Lease Agreement, being governed by and in accordance with the laws of the State of Oklahoma; to the jurisdiction of the United States District Court for the Northern District of Oklahoma, or to the venue of the United States District Court for the Northern District of Oklahoma in connection with an action by Cat Financial who has also agreed to abide by the terms of the Lease

Agreement, to enforce its rights under the Lease Agreement.