



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
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Legislation Text

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A LEGISLATIVE ACT DEFINING NEPOTISM, AND DEFINING ACCEPTABLE PARAMETERS FOR EMPLOYMENT AND CONTRACTING AND AMENDING TITLE 28, "ETHICS", ADDING NEW SECTIONS, AND REPEALING CERTAIN SECTIONS OF THE CHEROKEE NATION CODE ANNOTATED

BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION

This Act shall be known as the "Sunshine Ethics Act of 2007" and codified in Title 28, Sections, 3, 10, 11, 12, 13, 19, 20, 21, and 30 of the Cherokee Nation Code Annotated.

SECTION 2. PURPOSE

The purpose of this Act is to codify the issues relating to conflicts of interest pertaining to employees and appointed and elected officials of the Cherokee Nation; use of businesses owned wholly or partially by Cherokee Nation employees and appointed and elected officials; employment of relatives of elected officials, including the prohibition of nepotism; and the parameters under which Cherokee Nation employees and officials must operate with respect to conflicts of interest.

The Cherokee Nation Constitution in Article X, Section 10, provides that, "No official, member or officer of the Council, Cabinet Member, employee of any official, Council, Cabinet, or subdivisions thereof, or any person employed in any capacity by the Cherokee Nation shall receive from any individual, partnership, corporation, or entity doing business with the Cherokee Nation directly or indirectly, any interest, profit, benefits, or gratuity, other than wages, salary, per diem, or expenses specifically provided by law." This Act is in part intended to specify those situations "provided by law" under which a transaction which would otherwise be prohibited by this section of the Constitution will be permitted.

SECTION 3. LEGISLATIVE HISTORY

This Act repeals 19 C.N.C.A. § 4, 51 C.N.C.A. §§ 4 and 14, and 21 C.N.C.A. § 481. This Act amends Title 28 of the Cherokee Nation Code Annotated concerning "Ethics" by amending § 3 and by adding new §§ 10, 11, 12, 13, 19, 20, 21 and 30.

SECTION 4. DEFINITIONS

Title 28 § 3, subsection (B) is hereby amended as follows:

B. Employee" means any person engaged for his services to the Nation or its instrumentalities part or full time and who receives compensation from the Nation or its instrumentalities for his or her services.

Title 28 § 3 is hereby amended by adding the following subsections:

F. “Instrumentalities” means Cherokee Nation Enterprises, Cherokee Nation Businesses, and Cherokee Nation Industries and Housing Authority of the Cherokee Nation, any component units of the Cherokee Nation and any entities in which the Cherokee Nation is the sole or majority stock holder or owner.

G. “Relative” shall include the following: parents, children (including adopted children but not including foster children even when in current placement with the individual), spouses (including common law spouses or those with whom the subject individual shares a conjugal relationship), siblings (one or more persons having one common parent), step-parents and step-children, step-siblings, parents-in-law, siblings-in-law, grandparents-in-law, grandchildren-in-law, aunts, uncles, nephews, nieces, grandparents, and grandchildren, wards over which the subject individual has an existing guardianship, and anyone living in the same household as the individual. These relationships include those created by adoption as well as by marriage or blood. Provided, however, that for the purposes of this Act, a divorce of husband and wife or permanent termination of the conjugal relationship shall terminate all relationship by affinity that existed by reason of the marriage or conjugal relationship.

H. “Immediate family” shall include parents, children (including adopted children but not including foster children even when living in the same household), spouses (including common law spouses or those with whom the subject individual shares a conjugal relationship), siblings (one or more persons having one common parent), step-parents and step-children, wards over which the subject individual has guardianship or anyone living in the same household as the individual.

I. “Nepotism” means the hiring of immediate family by a hiring authority.

J. “Hiring Authority” is the branch of government, instrumentality official, board or commission, or CEO or other executive office ultimately responsible for hiring decisions, including but not limited to Principal Chief and Deputy Principal Chief, Tribal Council, Supreme Court, Cherokee Nation Businesses, Cherokee Nation Enterprises, Housing Authority of the Cherokee Nation, Cherokee Nation Industries and other entities or instrumentalities, Gaming, Tax, Election and other boards and commissions, for their respective branch of government, instrumentalities, or boards or commissions.

K. “Official” means any elected or appointed person to any governmental entity, instrumentality, commission or board of the Cherokee Nation government or its instrumentalities as defined by this Act.

SECTION 5. SUBSTANTIVE PROVISIONS OF LAW; REPEALS, ADDITIONS AND AMENDMENTS

The following sections of the Cherokee Nation Code Annotated are hereby repealed:

19 C.N.C.A. § 4:

“No person shall be employed in any capacity by the Cherokee Nation who is related to a member of the Council by affinity or consanguinity within the first degree.”

51 C.N.C.A. § 4:

“No person shall be employed in any capacity by the Cherokee Nation who is related to the Principal Chief by

affinity or consanguinity within the first degree.”

51 C.N.C.A. § 14:

“No person shall be employed in any capacity by the Cherokee Nation who is related to the Deputy Principal Chief by affinity or consanguinity within the first degree.”

1 C.N.C.A. § 481:

“It shall be unlawful for any executive, legislative, ministerial or judicial officer to appoint or vote for the appointment of any person related to him by affinity or consanguinity within the third degree, to any clerkship, office, position, employment or duty in any department of the Nation of which such executive, legislative, ministerial or judicial officer is a member, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds or fees of such office. Provided, however, that for the purposes of this chapter, a divorce of husband and wife shall terminate all relationship by affinity that existed by reason of the marriage, regardless of whether the marriage has resulted in issue who are still living.”

For purposes of this Act, the following sections are hereby added:

28 C.N.C.A. § 10 - Disclosure of Business Interests Required.

A. Any employee or official that does business with or attempts to do business with the Cherokee Nation or its instrumentalities shall file a written statement with the Secretary of State concerning the particular business which is contemplated to do business with the Cherokee Nation.. Said statement must be filed prior to such business contracting or doing business with the Cherokee Nation or its instrumentalities. Such statement shall be a public record and shall only include the name of the business, the address of the outside business and the percentage of the business owned by the employee or official.

B. The willful failure to disclose an ownership interest as required in this Section on the part of an employee may subject the employee to disciplinary action, up to and including immediate discharge. The willful failure to disclose an ownership interest as required in this Section on the part of an official shall constitute “willful neglect of duty” and may subject the official to removal from office pursuant to the Constitution and laws of the Cherokee Nation.

28 C.N.C.A. § 11 - No Conflict under Certain Circumstances; Solicitation Prohibited.

A. Where an employee or their immediate family member or an official or their immediate family member has an ownership interest in a business, and the Cherokee Nation or its instrumentalities utilize that business, no conflict will exist so long as each of the following are met:

- a. The ownership interest has been properly disclosed;
- b. The business is chosen for use because of highly favorable pricing, uniqueness of services provided, geographical location or some other significant and legitimate business reason;
- c. The business is chosen for use without any input from the employee or official who maintains, or whose immediate family maintains, the ownership interest;

d. The employee or official is not in the department or agency of the Nation or its instrumentality which is doing such business; and

e. The employee or official has no supervisory or purchasing control over the decision to use the business, other than, in the case of elected officials, that normal review over annual budgets and budget modifications, provided that when a budget modification is required in order to pay for the services or part of the services of a business owned in whole or in part by a Council member or his or her immediate family member, the member of the Council who maintains the ownership interest, or whose immediate family member maintains the ownership interest, shall recuse himself or herself from voting on the budget modification.

B. No employee or official who has an ownership interest in a business, or whose immediate family member has an ownership interest in a business, may solicit for that business from the Cherokee Nation or its instrumentalities. To so solicit may subject the employee to disciplinary action, up to and including immediate discharge. Such a prohibited soliciting of business on the part of an official shall constitute “willful neglect of duty” and may subject the official to removal from office pursuant to the laws and Constitution of the Cherokee Nation. For purposes of this Section, solicitation shall not include applying for TERO certification and placement on a TERO business list, nor shall it include responding to a request for bids.

C. Where an employee or official of the Cherokee Nation sells real property to the Cherokee Nation, there shall be no conflict of interest provided that the employee or official did not solicit the Cherokee Nation for the purchase, where the property has previously been for sale and where the property sale is for a price that is at the prevailing market value.

28 C.N.C.A. § 12 - Involvement in Business Decision; Crime Defined.

The involvement of an employee or official in a purchasing or business decision, including any attempt to influence the decision-making parties, other than in the case of an elected official in the normal annual budgetary review excluding budget modifications, in any transaction between the Cherokee Nation or its instrumentalities and a business owned, in whole or part, by the employee or member of the employee’s immediate family shall constitute a crime, and is punishable under 21 C.N.C.A. § 10. Such involvement may also subject the employee to disciplinary action, up to and including immediate discharge and may constitute “willful neglect of duty” and may subject an official to removal from office pursuant to the laws and Constitution of the Cherokee Nation.

28 C.N.C.A. § 13 - Resolution of Conflict Issues Not Defined by Statute.

A. In situations not defined by statute, any question of whether or not a conflict exists with regard to an employee shall be made pursuant to the written policies and procedures of each entity. Such determination shall be in writing and shall be made open and available to the public upon request. Should any question arise as to conflict, the affected employee must seek a determination as designated in the employer’s policy and procedure. Failure to request such a determination, or failure to make known to the employer of any questionable activity, may result in disciplinary action up to and including immediate termination.

B. In situations not defined by statute, any question of whether or not a conflict exists with regard to an

appointed official shall be resolved by the Principal Chief. Such determination shall be in writing and shall be made open and available to the public.

C. In situations not defined by statute, any question of whether or not a conflict exists with regard to a member of the Cherokee Nation Council shall be resolved by a majority vote of the membership of the Council. Such determination shall be made in public and shall be put in writing and be open and available to the public.

D. In situations not defined by statute, any question of whether a conflict exists with regard to the Principal Chief or Deputy Principal Chief shall be determined under Cherokee law, including but not limited to proceedings authorized by Legislative Act 10-02.

E. If it is deemed that a conflict exists, such conflict may be resolved by discontinuing the transaction(s) that resulted in the conflict, and/or by transfer of the employee to another department and/or by any other action deemed appropriate by the applicable reviewing body, including any appropriate disciplinary action. In the case of the Cherokee Nation Council, any disciplinary action shall be determined by 2/3 vote of the membership of the Council.

F. The Cherokee Nation and its instrumentalities shall, within sixty (60) calendar days of the effective date of this Act, promulgate policies and procedures for resolving conflicts pursuant to this Section.

28 C.N.C.A. § 14 - Reserved For Future Use

28 C.N.C.A. § 15 - Reserved For Future Use

28 C.N.C.A. § 16 - Reserved For Future Use

28 C.N.C.A. § 17 - Reserved For Future Use

28 C.N.C.A. § 18 - Reserved For Future Use

28 C.N.C.A. § 19 - Nepotism Prohibited.

The employment of immediate family by any official of the Nation or its instrumentalities having hiring authority shall constitute nepotism and is prohibited.

28 C.N.C.A. § 20 - Employment of Relatives of Elected Officials Permitted, when.

A. If an elected official has an immediate family member employed by the Cherokee Nation or a Cherokee Nation instrumentality, the employment of whom is not otherwise prohibited by this Act, such official shall disclose that relationship prior to any vote or action involving the department or instrumentality in which the relative is employed, except for votes taken in the annual budgeting process, in open session, but excluding

budget modifications. The Council shall require, by a majority vote, the disclosing Council member to recuse himself/herself should the Council determine a conflict of interest exists. Failure to disclose such relationship prior to action or vote involving the department or instrumentality may constitute willful neglect of duty and may result in removal of the Council member pursuant to the laws and Constitution of the Cherokee Nation.

B. If an individual employee has already been employed by the Cherokee Nation or a Cherokee Nation instrumentality for one continuous year prior to a relative of that employee becoming an elected official, the employee shall not be required to separate from employment due to his/her relative becoming an elected official.

28 C.N.C.A. § 21 - Solicitation of Employment and Appointment of Relatives of Appointed and Elected Officials Unlawful.

A. It shall be unlawful for any elected official, any District Court Judge, or any Supreme Court Justice to appoint or vote for the appointment or employment of any of his/her relatives to any position within the Nation or the Nation's instrumentalities.

B. It shall be unlawful for any elected official, any District Court Judge, or any Supreme Court Justice to campaign, urge, or endorse for appointment or employment any of his/her relatives to any position within the Nation or the Nation's instrumentalities.

C. Where a relative of any elected official, any District Court Judge, or any Supreme Court Justice is employed or appointed to any position within the Nation or its instrumentalities, it shall be unlawful for any official, any judge of the District Court or any Supreme Court Justice to campaign or urge for or against or to otherwise affect or attempt to affect any terms or conditions of that relative's appointment or employment, including but not limited to, salary, position, disciplinary action, and termination of employment; provided that this Section shall not affect the ability of a District Court Judge or Supreme Court Justice to decide employment cases concerning relatives of other officials, Judges or Justices.

D. Any elected official, District Court Judge, or Supreme Court Justice who shall violate any provision of this section shall be deemed guilty of a crime involving official misconduct and willful neglect of duty, and may be subject to removal from office as prescribed in the Constitution and laws of the Cherokee Nation.

E. Nothing within this Act shall prohibit the Nation or its instrumentalities from promulgating policies and procedures intended to prevent conflicts of interests within the chain of command or within a department based on the relationships of employees not otherwise covered by this Act.

28 C.N.C.A. § 30 - Right to Judicial Review Not Abrogated.

Nothing in this Title shall serve to abrogate or dilute an employee or official's right, otherwise granted by law, to review by the Cherokee Nation Courts of any action affecting his or her position unless otherwise provided by this Act.

SECTION 6. PROVISIONS AS CUMULATIVE

The provisions of this act shall cumulative to existing law.

SECTION 7. SEVERABILITY

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

SECTION 8. EMERGENCY DECLARED

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

SECTION 9. SELF-HELP CONTRIBUTIONS

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