



Legislation Text

File #: 07-041, Version: 1

A LEGISLATIVE ACT AMENDING TITLE 20, “COURT AND PROCEDURES” OF THE CHEROKEE NATION CODE ANNOTATED; RELATING TO COURT RULES AND JURISDICTION; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title:

This act shall be known as the “Judicial Reform And Jurisdiction Act of 2006” and shall be codified as Title 20 Chapter 1, et. seq. of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to establish jurisdiction of the Supreme Court over Constitutional matters, provide for Tribal Council adoption of Court rules and codify the name change from Judicial Appeals Tribunal to Supreme Court in all laws and official documents of the Cherokee Nation

Section 3. Legislative History

- This Act amends certain sections of Title 20 of the CNCA
- Cherokee Nation Legislative Act 40-03
- Cherokee Nation Constitution Article VIII Section 4, which states:

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

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

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

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

Section 4. Definitions

- A. “Supreme Court” means the five (5) member court referenced in Article VIII Section 1 of the Cherokee Nation Constitution.

- B. “Jurisdiction” means power and authority of a Court to hear and determine a judicial proceeding.

Section 5. Substantive Provisions

(1) Title 20 Sections 31 through 43 are hereby repealed in their entirety.

(2) Title 20 Section 51 is hereby amended to read as follows:

Jurisdiction of the Supreme Court: The Supreme Court shall have original and exclusive jurisdiction over:

1. Writs of Habeas Corpus, mandamus, quo warranto, certiorari, prohibition and all other matters set forth under Article VIII of the Cherokee Nation Constitution.
2. Any case or controversy involving Cherokee Nation elections, disputes arising between the branches of government of the Cherokee Nation ~~and any disputes involving fiscal matters of the Cherokee Nation.~~

(3) Title 20 Section 51.1 shall read as follows:

Codification of the term “Supreme Court”:

3. All statutes and official documents of the Cherokee Nation which contain the term Judicial Appeals Tribunal shall be changed to Cherokee Nation Supreme Court where applicable.

(4) Section 20 Section 57 shall be amended to read as follows:

- A. The Justices shall have authority to adopt rules of pleading, practice, and procedure applicable to any or all proceedings in the Supreme Court of the Cherokee Nation. In addition, they may adopt uniform rules for the admission of evidence and may require the use of standard forms for pleadings, motions and other papers filed in the Supreme Court by litigants, as well as for judgments, writs, and court orders.
- B. Any rule adopted by the Justices shall be transmitted to the Council, directing the codification of such rule.
- C. No rule adopted by the Justices shall be effective until approved under procedures adopted by the Justices and transmitted to the Council.

(5) Title 20 Section 16 shall be amended as follows:

“Salary for District Judges and Associate District Judges shall be fixed by the Office of the Principal Chief with approval by the Council. District Court Judges and Associate District Court Judges shall be considered a special class of employees for travel purposes. District Court Judges and Associate District Court Judges are exempt from any disciplinary action through the Human Resource Department Policy and Procedures. Such judges may only be disciplined or removed under the provision of the Constitution of the Cherokee Nation or applicable statute.”

Section 6. Provisions not cumulative

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

Section 7. Severability

The provisions of this act are severable and if any part 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 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.