



Legislation Text

File #: 12-141, Version: 2

A LEGISLATIVE ACT RELATING TO AMENDING AND REPEALING SUBSEQUENT AMENDMENTS TO THE CHEROKEE NATION SOVEREIGN IMMUNITY ACT, LA#23-04 BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the 2012 Amendment to the Sovereign Immunity Act- LA 23-04 and codified as (Title) _____ (Section) _____ of the Cherokee Nation Code Annotated.

Section 2. Purpose

To amend the Sovereign Immunity Act so that only the Council of the Cherokee Nation shall have the authority to execute and approve limited waivers of sovereign immunity where needed for contracts and agreements, business transactions, business entities, government compacts, certain legal actions, and other situations which may occur and require such waiver and repeal subsequent amendments to LA 23-04.

Section 3. Legislative History

LA 23-04 was enacted June 14, 2004, and amended by LA16-05 on April 11, 2005, by LA12-08 on July 14, 2008, and LA12-11 on June 20, 2011.

Article VI, Section 7 of the Cherokee Nation Constitution provides that "The Council shall have the power to establish laws which it shall deem necessary and proper for the good of the Nation, which shall not be contrary to the provisions of this Constitution."

Section 4. Definitions

For purposes of this Title:

- a. "Council" means the Council of the Cherokee Nation which is the Constitutional Legislative Body of the Nation.
- b. "Act" means an enactment of the Council as provided in the Constitution.
- c. "Business Entity" means any business entity in which the Nation is a majority owner including but not limited to Cherokee Nation Business and its businesses.
- d. "Nation" means Cherokee Nation.
- e. "Resolution" means an enactment of the Council as provided in the Constitution.
- f. "Sovereign Immunity" means the preclusion of bringing suit against the government without its consent.

Section 5. Sovereign Immunity

- a. The Nation is a Federally Recognized Indian Nation existing from time immemorial and retains the inherent right to preclude lawsuits under the doctrine of sovereign immunity.
 - b. The Nation does not consent to lawsuits in any court except by Act or Resolution.
- c. The Nation has the inherent right to waive, and grant authority to waive sovereign immunity with limitations as to time, place, manner, subject and any other restrictions desired.

Section 6. Substantive Provisions:

LA-23-04 is amended and subsequent amendments are repealed by amending as follows:

A. Only the Council of the Cherokee Nation shall have the authority to waive sovereign immunity on behalf of the Nation. The Principal Chief, Deputy Chief and no other elected official (other than the council), cabinet members, appointees, board or commission or any entity of the Cherokee Nation, including Cherokee Nation Business, shall have any authority to execute such a waiver. Any waiver by the Council shall require a majority vote to approve such waiver.

B. Conditions of Waivers

1. All Waivers shall be in writing in an agreement or contract which contains other terms and approved by a Council Resolution or Legislative Act.

2. All waivers shall contain provisions limiting:

(a) Who may bring a claim: Only parties to a contract shall be eligible to bring a claim.
(b) Type of claims allowed: Any waiver shall be limited to obligations or rights arising under a written contract or agreement in a breach of contract claim.

(c) Types of relief or damages: The waiver shall be specifically limited to an award of actual or liquidated damages under the terms of the agreement. The waiver shall not allow recovery from the Business Entity for punitive or exemplary damages. Nor shall the waiver 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.

(d) Choice of forum: Preference for jurisdiction of lawsuits pursuant to a waiver shall be filed, subject to a court asserting jurisdiction, first in Cherokee Nation courts, second in federal courts, third in state court.

(e) Choice of law: Preference of applicable law shall be prioritized as follows: Nation law first, Federal law second, and State law third.

(f) Duration of the waiver: Waivers shall be limited to the duration of the contract.

3. Any waiver granted under this section shall not be canceled, terminated or withdrawn except by agreement with the party entitled to the waiver.

4. In addition to all provisions hereinabove, any waiver of the sovereign immunity of the Cherokee Nation as a government shall be limited to:

(a) Actual damages resulting from legislative action which has a material adverse effect on a Business Entity's ability to perform obligations to a party to a contract under the contract.

(b) Any contractual obligation of an Business Entity in the event that the Nation terminates or dissolves the Business Entity or materially and unreasonably increases restrictions on the Business Entity's capacity to engage in its operations.

(c) Declaratory judgment interpreting the scope and validity of a waiver.

Section 7. Provisions as cumulative

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

Section 8. 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 9. 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.