



Legislation Text

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ACT RELATING TO THE ACCOUNTABILITY OF ELECTED OFFICIALS OF THE CHEROKEE NATION

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the “Government Officials’ Accountability Act of 2007” and codified as _____ (Title) _____ (Section) _____ of the Cherokee Nation Code Annotated (CNCA).

Section 2. Purpose

The purpose of this Act is to require accountability from elected officials by requiring disclosure of business interests and potential conflicts of interest, setting out penalties for causing harm to the Nation by disclosures of privileged and confidential information to external parties, and describes acts of treason and sedition against the Nation and consequences for these actions. The Act protects employees’ personnel records from distribution, and clarifies which business relationships are conflicts of interest and which are permitted by law.

Section 3. Legislative History

The Governmental Records Act was enacted on February 9, 1998, providing for requests and furnishing of records to elected officials. Article X Section 10 of the Constitution of the Cherokee Nation prohibits any elected official, cabinet member, or employee of the Nation from receiving from any entity doing business with the Nation any interest, profit, benefits or gratuity other than wages, salary or expenses. The Cherokee Nation Ethics in Government Act is codified at 28 CNCA.

Section 4. Definitions

For purposes of this Title:

- A. “Conflict of Interest” means a situation in which an elected or appointed official or employee of the Nation has a decision-making role in an official or fiduciary capacity from which he or she stands to benefit personally because of another relationship. The appearance of a conflict of interest is present if there is a potential for the personal interests of an individual to clash with official or fiduciary duties.
- B. “Employee” means any person engaged for his or her 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.
- C. “Instrumentalities” means those entities in which the Cherokee Nation is the sole or majority stock holder or owner, including but not limited to: Cherokee Nation Enterprises, Cherokee Nation Industries, and Cherokee Nation Businesses. It also shall include those component units reported under the Cherokee Nation for financial purposes, including but not limited to the Housing Authority of the Cherokee Nation, Cherokee Nation Home Health, and other component units.
- D. “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 individual shares a conjugal relationship), siblings (one or more persons have one common parent), step-parents, step-children, step-siblings, parents-in-law, grandparents-in-law, grandchildren-in-law, aunts, uncles, nephews, nieces, grandparents, grandchildren, and wards over which the 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 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 by affinity that existed by reason of the marriage or conjugal relationship.

- E. "Immediate Family" shall include 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 individual shares a conjugal relationship), siblings (one or more persons have one common parent), step-parents, step children, and wards over which the individual has an existing guardianship, and anyone living in the same household as the individual.

Section 5. Substantive Provisions of Law: Repeals, Additions and Amendments

Disclosure of Business Interests Required

- A. Disclosure of business interests shall be required when the subject business has dealings with the Cherokee Nation, including receiving any payments, having any contracts or otherwise receiving any benefit from the Nation.
- B. Every official of the Cherokee Nation shall file a written statement of all outside businesses owned, wholly or partially, by the official or his or her immediate family with the Cherokee Nation Election Commission and the Treasurer that are covered in Section 5.A. above. Such statement shall be due thirty (30) calendar days after taking office or within thirty (30) calendar days of acquiring the ownership interest if acquired after taking office and must be filed prior to such business contracting or doing business with the Cherokee Nation or its instrumentalities. Such statement shall be public record and shall include the name and address of the outside business, the percentage owned by the official and/or spouse, and any current business relationship with the Nation or its instrumentalities or current business relationship or employment with another tribe or Nation of American Indians or entity that may constitute a conflict of interest.
- C. Every employee of the Cherokee Nation or its instrumentalities shall file a written statement of all outside businesses owned, wholly or partially, by the official or his or her spouse with his or her immediate supervisor and personnel and contracts (Purchasing and Acquisitions) office that are covered in Section 5.A. above. Such statement shall be due thirty (30) calendar days after employment or within thirty (30) calendar days of acquiring the ownership interest if acquired after taking office and must be filed prior to such business contracting or doing business with the Cherokee Nation or its instrumentalities. Such statement shall be public record and shall include the name and address of the outside business, the percentage owned by the official and/or spouse, and any current business relationship with the Nation or its instrumentalities or with another tribe or Nation of American Indians, or with any entity that may constitute a conflict of interest.
- D. Current employees and officials shall file such a statement within 90 calendar days of the enactment of this Act. Employees shall be notified by their supervisor of the need to comply with this Act.

The willful failure to disclose 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 the 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.

No Conflict under Certain Circumstances; Solicitation Prohibited.

- A. Where an employee or their spouse has ownership interest in a business, and the Cherokee Nation or its instrumentalities utilize that business, no conflict will exist so long as:
- a) The ownership interest has been properly disclosed;
 - b) The business is chosen for use because of 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 spouse maintains, the ownership interest;
 - d) The employee is not in the department or agency of the Nation or its instrumentalities which is doing said

business; and

e) The employee has no supervisory or purchasing control over the decision to use the business.

B. No employee or official who has ownership interest in a business, or whose spouse has ownership interest in a business, may solicit for that business from the Cherokee Nation or 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 Constitution and Laws 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.

Release of Privileged and Confidential Information

A. Information obtained by elected officials under the Government Records Act, or in executive session may not be made available to any individual except other elected or appointed officials of the Cherokee Nation.

B. Knowingly and willfully communicating, transmitting, furnishing or otherwise making available to anyone other than elected or appointed officials of the Cherokee Nation 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.

C. Any such release of information that results in a direct, foreseeable and calculable financial loss to the Cherokee Nation or its instrumentalities shall constitute a crime.

D. Any such release of information that aids a foreign government in opposition to the government of the Cherokee Nation, or aids any individual or entity in litigation against the Cherokee Nation, shall constitute “treason or sedition” in section xx below.

Treason or Sedition Against the Cherokee Nation

A. Elected and appointed officials shall not be permitted to engage in any actions, including meetings, speeches, publications, or actively rendering aid to those in litigation against, or foreign governments in opposition to the rightful government of the Cherokee Nation, the Constitution of the Cherokee Nation, and all laws duly passed by the Cherokee Nation, elections held by the Cherokee Nation and the Cherokee Nation Supreme Court’s interpretation thereof.

B. Any elected or appointed official found to be guilty of committing such actions shall be in violation of the oath of office in Article XIII, Section 1 of the Cherokee Nation Constitution, shall have committed willful neglect of duty and be subject to removal from office under Article XI of the Cherokee Nation Constitution, and shall be guilty of a crime.

C. Nothing herein shall affect the authority of the Attorney General in Article VII Section 13 from representing the Nation in all criminal cases in the courts of the Nation and civil actions wherein the Cherokee Nation is named as a party.

Personnel Files and Other Documents

A. Personnel files for employees of the Cherokee Nation or its instrumentalities may be obtained through the Government Records Act but may not be photocopied or in any way reproduced. To view these documents, the requesting elected official must appear in person at the Human Resources office and may view the records in person. Personnel files may not be removed from the Human Resources office. If said documents are found to be photocopied or any anyway reproduced by an employee this may subject the employee to disciplinary action, up to and including immediate discharge. If said documents are found to be photocopied or any anyway reproduced by a elected official it 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.

B. Any personnel files having names of reporting parties for any incidents, including but not limited to sexual harassment, embezzlement, reports under the Whistleblower Protection Act or other matters, such reporting parties’ names shall be redacted prior to making the personnel record available under the Governmental Records Act.

C. Notebooks, meeting notes, drafts and other forms of notation are not considered “Records” under the Government Records Act and may not be requested by elected officials through said Act.

Section 6. Provisions as 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. Effective Date

The provisions of this act shall become effective thirty (30) days from and after the date of 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.