



Council of the Cherokee Nation

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

Legislation Text

File #: 16-047, Version: 2

A LEGISLATIVE ACT AMENDING TITLE 12 OF THE CHEROKEE NATION CODE ANNOTATED ESTABLISHING THE CHEROKEE NATION JUDGMENT ACT BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION

This Act shall be known, and may be cited as, the “**Cherokee Nation Judgment Fund Act of 2016**” and codified under Title 12, Civil Procedure, of the Cherokee Nation Code Annotated (CNCA).

SECTION 2. PURPOSE

The purpose of this Act is to create a fund from which judgment claims against the Cherokee Nation shall be paid in a fair and efficient manner and bar payment of the same by any department, agency of subdivision Cherokee Nation.

SECTION 3. DEFINITIONS

As used in this Act, the following words have the following meanings:

1. “Attorney General” means the Attorney General of the Cherokee Nation, or his designee.
2. “Certified Judgment” means any judgment which has been certified by the Attorney General.
3. “Claim” means a right to payment under a certified judgment.
4. “Claimant” means the holder of valid, certified judgment.
5. “Department” means any department, agency or subdivision of the Cherokee Nation.
6. “Fund” means the Cherokee Nation Judgment Fund.
7. “Indemnity” means any contract, agreement or assurance held by the Cherokee Nation as security against an anticipated loss. This term shall include any applicable insurance policy held by the Cherokee Nation for protection against risks and perils except those specifically enumerated.
8. “Judgment” means any final judgment, award, or compromise settlement payable in money for a sum certain against the Cherokee Nation. Judgment includes all interest and costs specified in the judgment, award, or compromise settlement, specifically including any attorney fees awarded against the Cherokee Nation.
9. “Treasurer” means the Treasurer of the Cherokee Nation.

SECTION 4. ACT GOVERNS

This Act governs all judgments, inclusive of attorney fees and interest, entered against the Cherokee Nation or any department, agency or subdivision thereof.

SECTION 5. INDEMINIFICATION NOT WAIVED; GAMING COMPACT NOT AFFECTED

Nothing in this Act shall serve to disavow, disclaim or otherwise waive the validity of any indemnification agreement held by the Cherokee Nation; nor shall anything in this Act prevent the payment of judgment claims from the same.

Nothing in this Act shall limit, alter or modify the respective obligations of the Cherokee Nation or the State of Oklahoma under the Cherokee Nation Tribal State Gaming Compact or any other applicable agreement.

Judgment claims paid through any applicable indemnity agreement shall be deemed fully satisfied and thus barred from certification for payment from the Fund.

SECTION 6. FUND ESTABLISHED

There is hereby established a special fund of the Cherokee Nation to be known as the "Cherokee Nation Judgment Fund." All monies accruing to the credit of the Fund are hereby appropriated, and shall be budgeted and expended by the Treasurer for the payment of eligible claims.

SECTION 7. APPROPRIATIONS AUTHORIZED

For each fiscal year, the Tribal Council may appropriate such amounts to the Fund as the Tribal Council determines appropriate to satisfy certified judgments arising during such fiscal year in full. No other funding source shall be used to satisfy a properly certified judgment.

SECTION 8. CERTIFICATION OF JUDGMENTS

All judgment claims shall be presented to the Attorney General for review prior to submission for payment against the Fund. Whenever the Attorney General determines that no further judicial review shall be sought from a judgment, and that such judgment is otherwise unpaid, the Attorney General shall certify the judgment for payment from the Fund.

SECTION 9. CLAIMS ALLOWED

- A. A Claimant in possession of a certified judgment shall be entitled to payment from the Fund by the Treasurer. All claims shall be presented on a form prescribed by the Treasurer.
- B. The Treasurer shall pay all allowed claims under this section on a first come, first served basis.
- C. The Treasurer shall not pay to any Claimant, in any single fiscal year, any amount which exceeds one-half (1/2) of the balance of the Fund at the time of payment. Any portion of a claim exceeding one-half of the balance of the Fund shall be deemed a disallowed claim.
- D. If the Treasurer determines any portion of a claim is disallowed under this section, the Treasurer shall, at the same time the Treasurer pays the amount of the allowed portion, notify the Claimant in writing of the amount of the disallowed claim and basis for the determination. Such written notification shall constitute recognition of the disallowed claim by the Treasurer.

- E. Any disallowed claim shall constitute a new claim under subsection (A) above. Such new claim shall bear interest at the applicable rate. The holder of a disallowed claim may present the same to the Treasurer for payment in any subsequent fiscal year after the fiscal year in which the determination of the Treasurer was made.
- F. The amount of the new claim under paragraph (C) above shall be an amount equal to the amount of the disallowed claim plus applicable interest allowed by law.

SECTION 10. DORMANCY PERIOD

- A. The Attorney General shall not certify any judgment unless such judgment has been presented to him within one (1) after the date of its issuance.
- B. Any certified judgment shall become unenforceable and be of no effect if, within two (2) years after the date of certification by the Attorney General, it has not be presented to the Treasurer for payment as claim.
- C. Any disallowed claim shall become unenforceable and be of no effect if, within two (2) years after the date of disallowance by the Treasurer, it has not be presented to the Treasurer for payment as a new claim.

SECTION 11. APPLICABILITY

Any judgment, including attorney's fees, awarded by any judicial body following the passage of this Act, regardless of its date of filing, shall be subject to the restrictions contained herein.

SECTION 12. SEVERABILITY

The provisions of this Act are severable and if any part of any 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 13. NO WAIVER

Nothing in this Act shall be deemed a waiver of the Cherokee Nation's sovereign immunity for any purpose.