



## Legislation Text

**File #:** LA-16-02, **Version:** 1

Legislative Act 16-02

AN ACT AMENDING THE CHEROKEE NATION MEMBERSHIP ACT TO MAKE TECHNICAL CORRECTIONS AND TO ESTABLISH RULES AND PROCEDURES APPLICABLE TO THE RE-ENROLLMENT OF PERSONS WHO RELINQUISH THEIR TRIBAL CITIZENSHIP, AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title.

This Act shall be known as the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002.

Section 2. Purpose.

The purpose of this Act is to make certain technical and substantive amendments to the Cherokee Nation Membership Act, L.A. 6-92, as amended by L.A. 2-93 (11 CNCA ♦♦ 1, et seq.), including amendments establishing rules and procedures applicable to the re-enrollment of certain persons who have relinquished their Tribal citizenship; and to declare an emergency.

Section 3. Findings.

The Tribal Council of the Cherokee Nation makes the following findings:

A. Prior to the adoption of this Act, Cherokee Nation Tribal citizens have been permitted to relinquish their Tribal citizenship and then re-enroll at any time. As a consequence, some persons have engaged in the abusive practice of relinquishing their Tribal citizenship in order to garner the benefits of services or programs offered by another Indian tribe, and then re-enrolling as citizens of Cherokee Nation in order to obtain the benefits of services or programs offered by the Nation.

B. A system of laws that allows the practice of frequent "switching" of citizenship between or among two or more Indian tribes, simply in order to obtain multiple financial and other benefits, leads to an inequitable distribution of services among citizens of the Cherokee Nation and other Indian people, creates the possibility of duplicative Tribal and federal services, imposes undue burdens and administrative costs on the Nation and the office of the Registrar, and undermines the traditional cultural and political values of all Cherokees.

C. It is in the best interest of the Nation to adopt provisions of law that discourage the practice of repeatedly "switching" tribal affiliation in order to obtain multiple and potentially duplicative benefits from Tribal and federal programs.

Section 4. Amendments to Cherokee Nation Membership Act.

A. Section 1 of the Cherokee Nation Membership Act (11 CNCA ♦♦let seq.) is hereby amended to read in full as follows:

This enactment shall be known as the "Cherokee Nation MemberCitizenship Act."

B. Section 4 of the Cherokee Nation Membership Act is hereby amended to read in full as follows:

A. "Adopted Person" means a person whose biological parents' parental rights have been given awarded to ethers♦te♦mtereise♦beetkirt♦order another or other persons pursuant to court order, judgment or decree, or an orphaned person who has been formally adopted by another person or other persons in accordance with the law. "Adoptive Parent" means a person who has been awarded permanent care, custody and parental rights of another person pursuant to a final court order, judgment or decree of adoption.

B. "Applicant" means a person submitting an application for enrollment in the Cherokee Nation.

C. "Base Roll" means a specific list of individuals used for determining tribal membership. One must prove back directly to an individual who is listed by blood on a base roll. The base roll as used herein means those final rolls otherwise known as the Dawes Commission Rolls or the Final Rolls. The Final Rolls were closed in 1907. Those Final Rolls by blood used for membership purposes are (1) Cherokees by Blood, (2) Cherokee Minors by Blood, and (3) Delaware Cherokees, and (4) Shawnee Cherokees.

D. "Certificate of Degree of Indian Blood" is means the official document issued by the Bureau of Indian Affairs (BIA) stating a person's degree of Indian blood. The CDIB is an acceptable document used to meet the necessary evidence requirements. The CDIB is not an enrollment/member-citizenship document.

E. "Cherokee Register" means the current membership roll of the Nation and is maintained by the Registrar.

F. "Citizen," "enrolled citizen" and "Tribal citizen" mean any person who having met all requirements to be a member of the Cherokee Nation under Article ifi of the Constitution, is enrolled on the Cherokee Register in accordance with the provisions of this Title, except that the term "citizen" also includes any Original Enrollee and any newborn child who qualifies for citizenship under the provisions of section 11A of this Title, whether or not such Enrollee or child has been enrolled on the Cherokee Register. Provided, however, any such newborn child shall no longer be a citizen when the period of his or her temporary citizenship expires as provided in section 11A unless the child is otherwise enrolled on the Cherokee Register in accordance with the provisions of sections 11, 12, 13 and 14 of this Title.

G. "Direct Ancestors" means those persons who are the biological parents, grandparents, great-grandparents, etc., through whom enrollment rights are claimed. Collateral relations such as brothers, sisters, nieces, nephews, cousins, etc., are not direct ancestors. "Direct Descendent" means a person who is the biological child, grandchild, great-grandchild, etc., of a Direct Ancestor who is or was an Original Enrollee.

H. "Enrollment" means the process for applying to be formally recognized or registered as a member citizen of the Cherokee Nation.

I. "Member" means, for the purposes of this Title, a citizen as defined in this section.

J. "Nation" means the Cherokee Nation.

K. "Necessary Evidence" means the documents that clearly establish relationships from one generation to another and that the person does peassess-Cherokee-bleed has a Direct Ancestor on the Dawes Rolls. These documents must be State certified copies of the original birth and/or death records. These records are issued by State Vital Statistics Offices. Other acceptable records are Court Ordered Determinations or a CDIB issued by the BIA.

L. "Original Enrollee" means an individual whose name is listed on the Final Rolls.

M. "Registrar" means the person who has the immediate administrative jurisdiction over the affairs of registration for enrollment/member-citizenship.

N. "Registration Committee" means the Registrar and two assistants.

O. "Sponsor" means a person who is acting on behalf of a minor or an incompetent adult in (i) submitting an application for Tribal Membercitizenship, (ii) requesting the release of records or information pursuant to 11 CNCA ♦ 33, (iii) requesting and submitting a Tribal Citizenship Relinquishment Application Form pursuant to 11 CNCA ♦ 34, or (iv) any other dealings with the Registrar which relate in any respect to Tribal Member-citizenship, and

1. in the case of a minor, a biological parent of such minor whose parental rights relating to the minor have not been terminated by a court of law, or a duly-appointed legal guardian, adoptive parent, child welfare social worker, or other representative with power and authority over the care, custody and welfare of such minor; or

2. in the case of an incompetent adult, a duly-appointed legal guardian or other representative with power and authority over the affairs, care, custody and welfare of such incompetent adult; or,

3. in whenever acting on behalf of either a minor citizen or

an incompetent adult citizen, and subject to the provisions of section 34.A. of this Title, any adult person determined by the Registrar to have express unambiguous authority in writing to act on behalf of the minor or incompetent adult from for Tribal citizenship purposes signed by a person who is qualified to be a Sponsor under paragraph 1 or 2 of this subsection.

P. "Tribal Citizenship Relinquishment Form" means any form approved for use by the Registrar in connection with the relinquishment of a person's citizenship pursuant to the provisions of this Title.

Q. "Tribal Membership" and "Tribal citizenship" is-the-effienti-eenifiecti♦en mean a

person's status as a citizen of the Cherokee Nation.

C. Section 33 of the Cherokee Nation Membership Act is hereby amended by adding new subsections "G" and "H," which subsections shall read in full as follows:

G. The status of a person as an enrolled citizen of the Cherokee Nation is hereby deemed to be public information. In addition to any other Tribal citizenship information that the Registrar is now or may hereafter be authorized to release or otherwise make public under the laws of the Cherokee Nation, the Registrar is authorized to disclose to any person, upon request, the following Tribal citizen information-

1. Whether or not a person is currently enrolled as a citizen of Cherokee Nation, and, if so, the date on which the person became enrolled as a Tribal citizen

2. Whether or not a person has relinquished his or her Tribal citizenship one or more times, and, if so, the date or dates on which the relinquishment of his or her Tribal citizenship became effective under Section 34 of this Title; and

3. Whether or not a person, having relinquished his or her Tribal citizenship one or more times, has re-enrolled as a Tribal citizen, and, if so, the date or dates upon which such person re- enrolled as a Tribal citizen.

H. The Registrar shall maintain and keep current a list of the names of all persons who have relinquished their Tribal citizenships, together with their former enrollment numbers and the effective dates of relinquishments of Tribal citizenship. If any person appearing on the list re-enrolls pursuant to the Tribal Citizenship Act, the person's name shall remain on the relinquishment list but notation shall be made thereon of the re-enrollment and each of the date or dates on which such person re-enrolled as a citizen.

D. Section 34 of the Cherokee Nation Membership Act is hereby amended to read in full as follows:

A. Any member citizen or Sponsor of a citizen of the Cherokee Nation may request apply-for-relinquishment-of-a Tribal member Citizenship - Relinquishment Form, which shall be furnished directly to the member citizen or Sponsor by the Registrar. Provided, however, if the person whose citizenship is to be relinquished is a minor child, the Sponsor, in addition to the requirements of section 4.0. of this Title, must also be that minor child's biological parent or Adoptive Parent. A Sponsor who is not a minor child's biological parent or Adoptive Parent shall have no authority to act on such minor child's behalf in the relinquishment of the minor's Tribal citizenship. The request for a Tribal Citizenship Relinquishment Application Form shall be made in person or in a writing and signed by the member citizen or the member citizen's Sponsor and delivered to the Registrar.

B. The Registrar Office of the General Counsel of the Cherokee Nation is hereby authorized to prepare the Tribal Citizenship Relinquishment Form and any other necessary forms, which shall be consistent with the provisions of this section, which -shall to be used for in connection with the relinquishment of Tribal Member Citizenship.

C. Upon receipt of a request pursuant to subsection A of this section, the Registrar shall issue to the member citizen or Sponsor a Tribal Citizenship Relinquishment Application Form. Provided, however, prior to issuing the Form the Registrar shall enter thereon the name of the member citizen, the member citizen's Registry Number, the Sponsor's name (if any) and the date of issuance of the Form. No Tribal Citizenship Relinquishment Application Form may be used by to relinquish the citizenship of any member person other than that of the member citizen whose name and Registry Number is entered on the Relinquishment Form by the Registrar.

D. The Tribal member citizen or Sponsor shall complete and sign the Tribal Citizenship Relinquishment Application Form before a notary public, and file the notarized Form with the clerk of the District Court of the Cherokee Nation, who shall open a civil case styled "In re the relinquishment of citizenship of , a Tribal

♦ Citizen," without charging a filing fee, and shall assign the case a number. The relinquishment case so opened shall be set for an initial hearing on a date not more than 30 days after the date of filing of the notarized Form. The court clerk shall cause notice of the initial hearing to be delivered to the Citizen at the time of filing or subsequently by First Class Mail. Notice of the hearing shall also be mailed to the Cherokee Nation Department of Justice.

At the initial hearing, the Tribal citizen or Sponsor shall be placed under oath, and the Court or the Nation's attorney shall inquire of the citizen or Sponsor who is relinquishing citizenship-

1. in any case where the Tribal citizen whose citizenship is being relinquished is a minor, whether the Sponsor is the biological parent or Adoptive Parent of the minor citizen and is otherwise qualified to act as a Sponsor under section 4.0. of this Title; whether the minor citizen is currently the subject of a deprived child, juvenile delinquency, adoption or other proceeding involving the custody of the minor; and whether any

person with parental or custodial rights to the child disputes the relinquishment or who, if unaware of the relinquishment proceeding, would likely dispute the relinquishment if he or she were aware of same;

2. whether the Tribal citizen or Sponsor is aware that by relinquishing Tribal citizenship, all benefits and privileges to which the citizen is entitled as a consequence of being a citizen will be forfeited upon the effective date of relinquishment of citizenship; and

3. if the person whose citizenship is being relinquished is 18 years of age or older or will be of such age by the time the Relinquishment Form will be submitted to the Registrar pursuant to subsection I of this section, whether the Tribal citizen or Sponsor is aware that said person will not be eligible to re-enroll as a Tribal citizen for a period of five years following the effective date of the relinquishment.

At the conclusion of the initial hearing, the Court shall issue a written order authorizing the citizen or Sponsor to submit the Tribal Citizen Relinquishment Form to the Registrar unless, based on the citizen's or Sponsor's testimony, the Court finds-

1. in any case where the person whose citizenship is to be relinquished is a minor, that the person acting as a Sponsor is not the child's biological parent or Adoptive Parent or is not qualified to act as a Sponsor under the provisions of section 4.0. of this Title; that the minor citizen is the subject of a deprived child, juvenile delinquency, adoption or other custodial

proceeding pending in any court: or that another person with parental or custodial rights with regard to the minor citizen disputes the relinquishment or, if such other person is unaware of the relinquishment request, he or she would likely dispute the relinquishment if he or she were aware of same: or

2. that the citizen or Sponsor indicates that he or she had been unaware of the consequences of relinquishment and requests of the Court additional time in order to reconsider the decision to relinquish, in which event the Court shall reschedule the hearing for a later date to determine whether the citizen or Sponsor wishes to proceed with relinquishment. If at the rescheduled hearing, the citizen or Sponsor thereafter indicates that he or she no longer wants to relinquish citizenship, or fails to appear at the rescheduled hearing without first requesting a continuance, the Court shall dismiss the action without prejudice. Otherwise, the Court shall issue an order authorizing submission of the Relinquishment Form to the Registrar in accordance with this section.

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to 11 CNCA ♦♦ 11, 12, 13 and 14. If at the conclusion of the initial hearing the Court finds that the person whose citizenship is to be relinquished is a minor child and that the person seeking the relinquishment of the minor child's citizenship is not the child's biological parent or Adoptive Parent or is not otherwise qualified to act as the child's Sponsor, the Court shall issue an order dismissing the case without prejudice. If the Court finds that the person is qualified to act as the minor child's Sponsor but that the minor is the subject of a deprived child, juvenile delinquency, adoption or other custodial proceeding, or that another person has parental or custodial rights with regard to the child and disputes or would likely dispute the relinquishment, the Court shall schedule another hearing no more than 30 days after the initial hearing and shall require that notice of same be given to all persons known to the Court to have parental or custodial rights with regard to the minor citizen. All such persons, including the Nation through its attorneys, may appear at the subsequent hearing and present evidence and testimony of witnesses on the issue of whether or not relinquishment of Tribal citizenship would be in the best interest of the minor citizen. Within 15 days after the conclusion of the subsequent hearing, the Court shall issue its order and decision on whether relinquishment would be in the best interests of the minor citizen. The party seeking to have the child's citizenship relinquished shall have the burden of proving such by a preponderance of the evidence.

H. All Cherokee Nation District Court hearings required under this section involving minor citizens and the Court files associated therewith, shall be confidential and closed to the public as in other juvenile cases; provided, copies of any Court order authorizing or denying relinquishment shall be made available to the Registrar for filing in the minor child's citizenship records in accordance with this section but shall not otherwise be subject to public disclosure under this or any other law of the Cherokee Nation. The Registrar shall not reproduce, release or disclose the contents of any such order to any person except as expressly authorized by order of the Cherokee Nation District Court or Judicial Appeals Tribunal.

I. If after any hearing authorized by this section the Court, having determined that the relinquishment process should proceed, issues an order allowing the citizen or Sponsor to submit the Tribal Citizenship Relinquishment Form to the Registrar, the citizen or Sponsor must, within 60 days following the issuance of the order, deliver certified copies of the order and the notarized Relinquishment Form to the Registrar, which copies shall be made available to the citizen or Sponsor by the court clerk without charge. Upon timely receipt of the certified copies of the Court's order and the Relinquishment Form, the Registrar shall stamp both with the date on which they were received by the Registrar and place them in the Tribal citizen's file. The Registrar shall not accept the Relinquishment Form without the certified copy of the Court's order authorizing relinquishment to proceed. The relinquishment of the person's Tribal citizenship shall become effective 60 days after the date on which the certified copies of the Court's order and Tribal Citizenship Relinquishment Form were delivered to the Registrar in accordance with this subsection, unless prior to the expiration of said 60-day period the Registrar receives a written request from the member or Sponsor that the Tribal Citizenship Relinquishment Form be revoked or withdrawn. If a written request by the Tribal citizen or Sponsor to revoke or withdraw his or her Tribal Citizenship Relinquishment Form is delivered to the Registrar prior to the expiration of the 60-day period, the Tribal Citizenship Relinquishment Form shall be deemed withdrawn and the person's status as a Tribal citizen shall continue as if the Relinquishment Form had never been received by The Registrar.

J. Except as provided in subsections K and M of this section, any person who has relinquished his or her Tribal citizenship may re-enroll at any time as a Tribal citizen pursuant to 11 CNCA 0 11, 12, 13 and 14.

K. Any person who relinquishes his or her own Tribal citizenship in accordance with the provisions of this section shall be ineligible to re-enroll as a Tribal citizen for a period of five years following the effective date of his or her relinquishment of Tribal citizenship if, but only if-

1. the certified copies of the notarized Tribal Citizenship Relinquishment Form and the Court's order authorizing relinquishment to proceed were received by the Registrar on or after the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002, L.A. - 02. and

2. the Tribal citizen whose citizenship was relinquished was 18 years of age or older on the date on which the certified copies of said Relinquishment Form and order were received by the Registrar.

Upon the expiration of said five-year period following the effective date of his or her relinquishment, such person shall be eligible to re-enroll as a citizen in accordance with the provisions of this Title; provided, however, no person subject to the five-year ineligibility period of this subsection shall be eligible to re-enroll as a citizen if, at any time after the effective date of his or her relinquishment, the person was convicted of a felony or of any crime involving moral turpitude under the laws of any federally-recognized Indian Tribe, state or the United States; and provided further that, in addition to all other requirements for enrollment under this Title, any person subject to the five-year ineligibility period of

this subsection who thereafter seeks to re-enroll as a Tribal citizen must also execute an affidavit affirming under oath that at no time subsequent to the effective date of his or her relinquishment had he or she been convicted of any such felony or crime of moral turpitude. Said affidavit must be presented to the Registrar together with the application to re-enroll.

L. The provisions of subsection K of this section shall not apply to any person who was under the age of 18 years of age at the time his or her Tribal Citizenship Relinquishment Form was received by the Registrar or whose citizenship was relinquished through a Sponsor, or to any person, regardless of age, whose Tribal Citizenship Relinquishment Form or other document requesting or declaring his or her relinquishment of Tribal membership was received by the Registrar prior to the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002. L.A. 16-02.

M. Any Person who relinquished his or her citizenship but, as of the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002 (L.A. 16-02), had not re-enrolled as a citizen, may apply for re-enrollment by delivering to the Registrar a completed application to re-enroll no later than 270 days following the effective date of said Act (L.A. 16-02-02). Any such person who fails to deliver to the Registrar a completed application to re-enroll prior to the expiration of said 270-day period following the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002 shall be ineligible to re-enroll as a citizen for the remainder of the five-year period commencing on the effective date of said Act (L.A. 16-02). Provided, however, the re-enrollment ineligibility period of this subsection shall not apply to any person who was at the time of his or her relinquishment less than 18 years of age or whose relinquishment was procured through a Sponsor. For the purposes of this subsection, the term "completed application" means an application to re-enroll as a citizen that substantially complies with the provisions of sections 11, 12, 13 and 14 of this Title and is submitted to the Registrar simultaneously with all documentation required by section 14 of this Title. No later than 30 days after the effective date of L.A. 16-02, the Registrar cause notice of the provisions of this subsection M to be sent by First Class Mail to the last known address of all persons who are subject to the re-enrollment ineligibility period of this subsection. The Registrar shall also cause notice of this subsection to be published in the next issue of the Cherokee Phoenix and Indian Advocate published after the effective date of said L.A. 16-02.

N. Commencing on the effective date of the Tribal Citizenship Relinquishment and Technical Amendments Act of 2002 (L.A. 16-02), all Tribal Citizenship Relinquishment Forms shall include the following language above the signature line:

NOTICE: THE RELINQUISHMENT OF YOUR TRIBAL CITIZENSHIP HAS SERIOUS CONSEQUENCES  
I, THE UNDERSIGNED. UNDERSTAND THAT ANY PERSON 18 YEARS OF AGE OR OLDER WHO RELINQUISHES HIS OR HER TRIBAL CITIZENSHIP DOES THEREBY ALSO WAIVE THE RIGHT TO RE-ENROLL AS A CITIZEN OF CHEROKEE NATION FOR A PERIOD OF FIVE YEARS FOLLOWING THE EFFECTIVE DATE OF THE CITIZENSHIP RELINQUISHMENT.  
I UNDERSTAND THAT BY RELINQUISHING MY TRIBAL CITIZENSHIP I WILL LOSE ALL BENEFITS THAT I MAY BE ENTITLED TO BY VIRTUE OF MY STATUS AS A CITIZEN OF CHEROKEE NATION.  
I UNDERSTAND THAT THIS RELINQUISHMENT OF TRIBAL CITIZENSHIP WILL BECOME EFFECTIVE 60 DAYS AFTER THE DATE ON WHICH THIS RELINQUISHMENT FORM IS RECEIVED BY THE REGISTRAR UNLESS, BEFORE THE END OF THAT 60-DAY PERIOD, I DELIVER TO THE REGISTRAR A WRITTEN REQUEST TO REVOKE OR WITHDRAW THIS RELINQUISHMENT FORM.

Section 5. Severability.

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

Section 6. Declaration of emergency.

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.

Enacted by the Council of the Cherokee Nation on the 13th day of MAY, 2002.

Hastings Shade, President Council of the Cherokee Nation

ATTEST: Stephanie Wickliffe-Shepherd, Secretary Council of the Cherokee Nation

Approved and signed by the Principal Chief this 21st day of MAY, 2002.

Chad smith, Principal Chief Cherokee Nation

ATTEST: Jay Hannah Secretary Treasurer Cherokee Nation

YEAS AND NAYS AS RECORDED:

John Ketcher	YEA	Melvina Shotpouch	YEA
Don Crittenden	YEA	Stephanie Shepherd	ABSENT
Harold Phillips	YEA	John Keener	YEA
Jackie Bob Martin	YEA	Harold J. DeMoss	YEA
Mary Flute Cooksey	YEA	Dorothy McIntosh	
David Thornton, Sr.	NAY	Nick Lay	ABSTAINED
Don Garvin		YEA Charles Hoskin	ABSENT
Barbara Starr-Scott	YEA		