



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
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Legislation Text

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A LEGISLATIVE ACT REPEALING THE SUNSHINE ETHICS ACT AND ALL SUBSEQUENT AMENDMENTS AND CREATING A NEW ETHICS ACT ENTITLED "THE CHEROKEE NATION ETHICS ACT OF 2012"

BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION

This Act shall be known as the "Cherokee Nation Ethics Act of 2012" and codified in Title 28, of the Cherokee Nation Code Annotated.

SECTION 2. PURPOSE

The purpose of this Act is to codify the issues relating to conflicts of interest pertaining to employees and appointed and elected officials of the Cherokee Nation; use of businesses owned wholly or partially by Cherokee Nation employees and appointed and elected officials; contracting with relatives of elected officials, and the parameters under which Cherokee Nation employees and officials must operate with respect to conflicts of interest.

The Cherokee Nation Constitution in Article X, Section 10, provides that, "No official, member or officer of the Council, Cabinet Member, employee of any official, Council, Cabinet, or subdivisions thereof, or any person employed in any capacity by the Cherokee Nation shall receive from any individual, partnership, corporation, or entity doing business with the Cherokee Nation directly or indirectly, any interest, profit, benefits, or gratuity, other than wages, salary, per diem, or expenses specifically provided by law." This Act is in part intended to specify those situations "provided by law" under which a transaction which would otherwise be prohibited by this section of the Constitution will be permitted.

SECTION 3. LEGISLATIVE HISTORY

This Act repeals Title 28 of the Cherokee Nation Code Annotated concerning "Ethics" which is the Sunshine Ethics Act and all of its subsequent amendments and enacts the a new ethics code which shall be entitled the "Cherokee Nation Ethics Code of 2012".

SECTION 4. DEFINITIONS

A. "Instrumentalities" means Cherokee Nation Government and any entities in which the Cherokee Nation is the sole or majority stock holder or owner and all entities that are 51% or more owned by Cherokee Nation.

B. "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 subject individual shares a conjugal relationship). siblings (one or more persons having one

common parent), step-parents and step-children, step siblings, parents-in-law, siblings-in-law, grandparents-in-law, grandchildren-in-law, aunts, uncles, nephews, nieces, grandparents, and grandchildren, wards over which the subject 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 by 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 shall terminate all relationship by affinity that existed by reason of the marriage or conjugal relationship.

C. "Immediate family" shall include parents, children (including adopted children but not including foster children even when living in the same household), spouses (including common law spouses or those with whom the subject individual shares a conjugal relationship), siblings (one or more persons having one common parent), step-parents and step-children and wards over which the subject individual has guardianship or anyone living in the same household as the individual.

D. "Hiring Authority" is the branch of government, instrumentality, official, board or commission or CEO or other executive office ultimately responsible for hiring decisions including but not limited to Principal Chief and Deputy Principal Chief, Tribal Council, Supreme Court and other entities or instrumentalities including Gaming, Tax, Election and other boards and commissions for their respective branch of government instrumentalities or boards or commissions any entities in which the Cherokee Nation is the sole or majority stock holder or owner and all entities that are 51% or more owned by Cherokee Nation.

E. "Official" means any elected or appointed person to any governmental entity, instrumentality, commission or board of the Cherokee Nation government or its instrumentalities any entities in which the Cherokee Nation is the sole or majority stock holder or owner and all entities that are 51% or more owned by Cherokee Nation as defined by this Act.

F. "Interest, profit, benefit or gratuity" as used in Article 10, Section 10 of the Cherokee Nation Constitution shall not include any benefit paid on behalf of and for the betterment of a Cherokee nation citizen, regardless of the payee of the benefit.

SECTION 5. SUBSTANTIVE PROVISIONS OF LAW

28 C.N.C.A. § 11 Solicitation Prohibited.

A. No employee or official who has an ownership interest in a business, or whose immediate family member has an ownership interest in a business may solicit for that business from the Cherokee Nation or its 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 laws and Constitution 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.

B. Where an employee or official of the Cherokee Nation sells real property to the Cherokee Nation there shall be no conflict of interest, provided that the employee or official did not solicit the Cherokee Nation for the purchase,

where the property has previously been for sale and where the property sale is for a price that is at the prevailing market value.

28 C.N.C.A. § 12 - Involvement in Business Decision; Crime Defined.

The involvement of an employee or official in a purchasing or business decision, including any attempt to influence the decision-making parties, other than in the case of an elected official in the normal annual budgetary review excluding budget modifications. in any transaction between the Cherokee Nation or its instrumentalities and a business owned, in whole or part, by the employee or member of the employee's immediate family shall constitute a crime and is punishable under 21

C.N.C.A. § 10. Such involvement may also subject the employee to disciplinary action, up to and including immediate discharge and may constitute "willful neglect of duty" and may subject an official to removal from office pursuant to the laws and Constitution of the Cherokee Nation.

28 C.N.C.A. § 13- Resolution of Conflict Issues Not Defined by Statute.

A. In situations not defined by statute any question of whether or not a conflict exists with regard to an employee shall be made pursuant to the written policies and procedures of each entity. Such determination shall be in writing and shall be made open and available to the public upon request. Should any question arise as to conflict the affected employee must seek a determination as designated in the employer's policy and procedure. Failure to request such a determination or failure to make known to the employer of any questionable activity may result in disciplinary action up to and including immediate termination.

B. In situations not defined by statute any question of whether or not a conflict exists with regard to an appointed official shall be resolved by the Principal Chief. Such determination shall be in writing and shall be made open and available to the public.

C. In situations not defined by statute. any question of whether or not a conflict exists with regard to a member of the Cherokee Nation Council shall be resolved by a majority vote of the membership of the Council. Such determination shall be made in public.

D. In situations not defined by statute, any question of whether a conflict exists with regard to the Principal Chief or Deputy Principal Chief shall be determined under Cherokee law including but not limited to proceedings authorized by Legislative Act 10-02.

E. If it is deemed that a conflict exists, such conflict may be resolved by discontinuing the transaction(s) that resulted in the conflict, and/or by transfer of the employee to another department and/or by any other action deemed appropriate by the applicable reviewing body, including any appropriate disciplinary action. In the case of the Cherokee Nation Council, any disciplinary action shall be determined by 2/3 vote of the membership of the Council.

F. The Cherokee Nation and its instrumentalities shall within sixty (60) calendar days of the effective date of this Act promulgate policies and procedures for resolving conflicts pursuant to this Section.

28 C.N.C.A. § 14- *Reserved For Future Use*

28 C.N.C.A. § 15- *Reserved For Future Use*

28 C.N.C.A. § 16- *Reserved For Future Use*

28 C.N.C.A. § 17- *Reserved For Future Use*

28 C.N.C.A. § 18- *Reserved For Future Use*

28 C.N.C.A. § 19 Employment of Relatives of Elected Officials Permitted

A. There shall be no prohibition in employing relatives of Elected or Appointed Officials or Employees of the Cherokee Nation so long as it is for wages, salary, per diem or expenses. However, in no instance may a relative within the first degree be employed within the direct chain of command of another immediate family member.

28 C.N.C.A. § 20 -Contracting with Relatives of Elected Officials

A. No elected or public official, member or officer of the Council, Cabinet Member, or relative within the first degree of such individual shall be authorized to contract with the Cherokee Nation or its entities or instrumentalities or any entity where the tribe owns 51% or more shall contract with any primary contractor or sub-contractor who is contracting with the Cherokee Nation. Individual employment contracts are exempt from this provision.

28 C.N.C.A. § 21-Solicitation of Employment and Appointment of Relatives of Appointed and Elected Officials Unlawful.

A. It shall be unlawful for any elected official any District Court Judge or any Supreme Court Justice to appoint or vote for the appointment or employment of any of his/her relatives to any position within the Nation or the Nation's instrumentalities.

B. It shall be unlawful for any elected official, any District Court Judge, or any Supreme Court Justice to campaign, urge or endorse for appointment or employment any of his/her relatives to any position within the Nation or the Nation's instrumentalities.

C. Where a relative of any elected official any District Court Judge or any Supreme Court Justice is employed or appointed to any position within the Nation or its instrumentalities, it shall be unlawful for any official any judge of the District Court or any Supreme Court Justice to campaign or urge for or against or to otherwise affect or attempt to affect any terms or conditions of that relative's appointment or employment including but not limited to salary position, disciplinary action, and termination of employment; provided that this Section shall not affect the ability of a District Court Judge or Supreme Court Justice to decide employment cases concerning relatives of other officials, Judges or Justices.

D. Any elected official, District Court Judge, or Supreme Court Justice who shall violate any provision of this section shall be deemed guilty of a crime involving official misconduct and willful neglect of duty, and may be subject to removal from office as prescribed in the Constitution and laws of the Cherokee Nation.

E. Nothing within this Act shall prohibit the Nation or its instrumentalities from promulgating policies and procedures intended to prevent conflicts of interests within the chain of command or within a department based on the relationships of employees not otherwise covered by this Act.

28 C.N.C.A. § 30- Right to Judicial Review Not Abrogated.

Nothing in this Title shall serve to abrogate or dilute an employee or official's right otherwise granted by law to review by the Cherokee Nation Courts of any action affecting his or her position unless otherwise provided by this Act.

SECTION 6. PROVISIONS AS CUMULATIVE

The provisions of this act shall cumulative to existing law.

SECTION 7. SEVERABILITY

The provisions of this Act are severable and if any part or 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.