



Council of the Cherokee Nation

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

Legislation Text

File #: 12-160, Version: 1

A LEGISLATIVE ACT AMENDING THE CHEROKEE NATION LIMITED MIXED BEVERAGES SALES ACT - LEGISLATIVE ACT #41-03 AS AMENDED BY LEGISLATIVE ACT #09-04 AND #13-08 BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. TITLE AND CODIFICATION

This act shall be known as the 2012 Technical Amendment to the Cherokee Nation Limited Mixed Beverage Sales Act and codified as _____ (Title) _____ (Section) _____ of the Cherokee Nation Code Annotated.

Section 2. AUTHORITY

This legislation is enacted by the authority of the Cherokee Nation Tribal Council under Article V, Section 7 of the Constitution of the Cherokee Nation and the Federal Act of August 1953, 67 Stat. 586, codified at 18 U.S.C. Section 1161.

Section 3. PURPOSE

The purpose of this Act is:

- A. To amend Legislative Act 41-03, as amended by Legislative Acts 09-04 and 13-08, in order to clarify the activities that fall under the jurisdiction of the Cherokee Nation Tax Commission.
- B. To authorize corporate entities wholly owned by the Cherokee Nation, a person or entity designated by corporate entities wholly owned by the Cherokee Nation and the employees thereof to apply for a license from the Cherokee Nation Tax Commission to establish retail liquor sales at designated locations on Indian Country within the jurisdiction of the Cherokee Nation.
- C. To regulate and control the possession and sale of liquor at limited and designated areas of Indian Country within the jurisdiction of the Cherokee Nation.

Section 4. LEGISLATIVE HISTORY

LA 41-03 approved and signed on December 22, 2003, amended by LA 09-04 approved and signed on March 22, 2004, amended by Legislative Act 13-08 approved and signed on July 21, 2008.

Section 5. APPLICATION OF 18 U.S.C. SECTION 1161

Federal law requires that any Indian tribal authorization for the sale of liquor or other alcoholic beverages must be in conformity with the laws of the State and approved by an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country. All acts and transactions under this law of the Cherokee Nation shall be in conformity with federal law and with the laws of the State of Oklahoma as applicable.

Section 6. DEFINITIONS

As used in this Act, the following words shall have the following meanings unless the context clearly

requires otherwise:

- (a) "Alcohol" means the substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.
- (b) "Alcoholic beverage" is synonymous with the term "liquor" as defined in this Chapter.
- (c) "Board of Directors" means the Board of Directors of Cherokee Nation Enterprises, L.L.C. Businesses, LLC.
- (d) "CNE" means Cherokee Nation Enterprises, L.L.C. "Indian Country" shall include those areas defined by 18 U.S.C. § 1151.
- (e) "Liquor" includes mixed beverages and all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.
- (f) "Sale" or "Sell" includes exchange, barter and traffic, and also includes the selling or supplying or distribution, by any means whatsoever, of liquor.
- (g) "Tax Commission" means the Cherokee Nation Tax Commission.
- (h) "Trust Land" means those lands that are held in trust by the United States for the Cherokee Nation and not for any individual Indian.

Words in the plural include the singular, and vice versa, and words imparting the masculine gender include the feminine, as well as persons and licensees as defined in this section.

Section 7. POWERS OF ENFORCEMENT.

The Tax Commission. In furtherance of this Act, the Tax Commission shall have the power to:

- (a) issue licenses pursuant to Section 8 of this Act;
- (b) collect the excise tax specified in Section 9 of this Act;
- (c) publish and enforce rules and regulations adopted by the Tax Commission governing the sale, consumption and possession of alcoholic beverages;
- (d) establish procedure for conducting hearings related to licensing; and
- (e) take all necessary steps to enforce sections 8 and 9 of this Act, including the collection of fees, taxes and damages related thereto.

Section 8. SALES OF LIQUOR

A. License Required. Sales of liquor and alcoholic beverages may only be made by CNE, or other person approved by CNE corporate entities wholly owned by the Cherokee Nation, or other person or entity designated by corporate entities wholly owned by the Cherokee Nation and the employees thereof, under a license issued by the Tax Commission.

B. Identification. When requested by the provider of liquor, any person asking to purchase liquor or being served in a group shall be required to present official documentation bearing the holder's age, signature and photograph before being served. Official documentation includes one of the following:

- (1) Driver's license or identification card issued by any state department of motor vehicles or foreign nation;
- (2) United States Military identification;
- (3) Official Passport issued by any nation and accepted by the United States Department of State for entry into the United States;:
- (4) Cherokee Nation Tribal Identification Card that includes: a) the individual's color photograph; b) the

individual's full legal name; c) the individual's date of birth; d) the individual's signature; e) the Cherokee Nation seal; and f) the signature of the Cherokee Nation registrar.

Section 9. TAXES.

Excise Tax: In lieu of any otherwise applicable tribal sales tax on the retail sale of liquor for alcoholic beverages, there shall be an excise tax in the amount of two percent (2%) of the retail sales price, to be collected by the Tax Commission. These revenues shall be used to promote mental health and related issues associated with substance abuse and shall be reserved for expenditure as provided for in the annual budget by the Cherokee Nation Health Service. The Board of Directors shall be entitled to make recommendation as to how these revenues are expended.

Section 10. RULES, REGULATIONS, AND ENFORCEMENT.

- A. Sales Without License.** Any person who shall sell or offer for sale, distribute or transport, in any manner, liquor in violation of this Act, or who shall operate or shall have liquor for sale in his possession without a license, shall be guilty of a violation of this Act subjecting him or her to prosecution for a crime.
- B. Sale for Personal Consumption.** All sales shall be for the personal consumption of the purchaser or persons in a group. Resale of any alcoholic beverage is prohibited. Any person not licensed pursuant to this Act who purchases an alcoholic beverage and sells it, whether in the original container or not, shall be guilty of a crime.
- C. Illegal Purchases.** Any person who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this Act, subjecting him or her to prosecution for a crime.
- D. Minors.** No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a violation of this Act, subjecting him or her to prosecution for a crime.
- E. Sales to Minors.** Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a crime.
- F. Sales to Intoxicated Persons.** Any person who shall sell or provide any alcoholic beverage to an individual who is intoxicated, or appears intoxicated, shall be guilty of a crime.
- G. False Identification.** Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor or any alcoholic beverage shall be in violation of this Act, subjecting him or her to prosecution for a crime.
- H. Using False Identification.** Any person who attempts to purchase liquor or any alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this Act, subjecting him or her to prosecution for a crime.
- I. Punishment.** Any person found guilty of a crime under this section may be punished by imprisonment for up to one (1) year and/or fined up to \$500.00 for each violating.
- J. Contraband Liquor.** Any liquor, possessed contrary to the terms of this Act, whether for personal consumption, hospitality, sale, or otherwise, is declared to be contraband. Any tribal law enforcement officer who is authorized to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the

preservation of impounded property.

K. Forfeiture. Upon being found in violation of this Act, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Cherokee Nation.

Section 11. SEVERABILITY AND EFFECTIVE DATE

If any provision or application of this Act is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Act or to render such provisions inapplicable to other persons or circumstances. 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. This Act shall be effective on certification by the Secretary of the Interior or designee, or its publication in the Federal Register, whichever is later.