



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
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Tahlequah, OK 74464

Legislation Text

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AN ACT AMENDING TITLE 47 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act amends Title 47, Chapters 11 and 79 of the Cherokee Nation Code Annotated and shall be codified at the sections referenced herein of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to modernize the Nation's motor vehicle code.

Section 3. Legislative History

LA-2-91

LA-25-06

LA-30-20

LA-02-21

Section 4. Amendments

Title 47, Chapter 11 shall be amended as follows:

§ 11-902b. Motion for forfeiture

- A. The Attorney General may file a motion requesting forfeiture of the motor vehicle involved in the commission of an eligible offense as provided in this section. The provisions of this section shall apply to:

1. Any person who has been previously convicted of an offense under 47 CNCA §§ 11-902, 11-902.4, 11-903, or 11-904 and who is convicted of an offense under 47 CNCA §§ 11-902, 11-903, or 11-904 of this title within ten (10) years of any prior conviction under 47 CNCA §§ 11-902, 11-902.4, 11-903, or 11-904 and where at least one of the offenses, current or prior, involved the death of or serious bodily injury to another person; or
 2. Any person who has been convicted of a third or subsequent felony offense under 47 CNCA § 11-902.
- B. A motion for forfeiture may be filed at the time of charging but not later than thirty (30) days after the verdict or plea of guilty or nolo contendere. If a motion of intent to forfeit is filed prior to the verdict or plea of guilty or nolo contendere, the proceedings shall be stayed until the disposition of the criminal case. Notice shall be required even though the proceedings are stayed. If the motion is filed prior to the disposition on the criminal case, the Attorney General shall notify the Oklahoma Tax Commission or Cherokee Nation Tax Commission, depending on the source of tag issuance for the motor vehicle, and the Tax Commission shall place a lien upon the vehicle title. No person shall sell, damage, destroy, transfer or perfect a security interest on any vehicle subject to forfeiture. Prior to filing a motion for forfeiture, the Attorney General shall verify whether the vehicle was sold during any period of impoundment as provided by law. Any vehicle sold in an impound sale to pay towing, wrecker services or storage expenses shall not be subject to forfeiture as provided in this section.
- C. Upon filing a motion for forfeiture, except when the proceedings are stayed pursuant to subsection B of this section, the court shall schedule a hearing on the matter. The hearing shall be not less than twenty (20) days nor more than forty-five (45) days from the date the motion is filed. The Attorney General, within three (3) days of filing a motion of intent to forfeit, shall notify the convicted person, lienholders of record, and any person appearing to have an ownership or security interest in the vehicle. The notice shall contain the date, time and place of the hearing. When a motion for forfeiture has been stayed pending disposition of the criminal case and a verdict or plea of guilty or nolo contendere has been entered, the Attorney General shall give notice of the forfeiture hearing not less than ten (10) days prior to the hearing. The notice of persons specified in this subsection shall be by certified mail to the address shown upon the records of the Oklahoma Tax Commission or Cherokee Nation Tax Commission. For owners or interested parties, other than lienholders of record, whose addresses are unknown, but who are believed to have an interest in the vehicle, notice shall be by one publication in a newspaper of general circulation in the county where the person convicted of the offense that resulted in the forfeiture proceeding resides. The written notice shall include:
1. A full description of the motor vehicle;
 2. The date, time and place of the forfeiture hearing;
 3. The legal authority under which the motor vehicle may be forfeited; and
 4. Notice of the right to intervene to protect an interest in the motor vehicle.
- D. A forfeiture proceeding shall not extinguish any security interest of a lienholder of record; provided, however, the court may order the sale of the motor vehicle and the satisfaction of that security interest from the proceeds of sale as provided in subsection K of this section.

For purposes of a forfeiture proceeding, an affidavit obtained from the lienholder of record, in the absence of evidence of bad faith, shall be prima facie evidence of the amount of secured indebtedness owed to that lienholder. It shall be the responsibility of the Attorney General to obtain such affidavit prior to the forfeiture hearing.

In the absence of evidence of bad faith, no lienholder of record shall be required to attend the forfeiture hearing to protect its interest in the motor vehicle. However, each lienholder of record shall be given notice of the forfeiture hearing as provided in subsection C of this section. The Attorney General shall notify each lienholder of record at least ten (10) days before the sale of the motor vehicle ordered forfeited pursuant to this section; provided, the lienholder was not represented at the forfeiture proceeding.

- E. Any person having an ownership or security interest in a vehicle subject to forfeiture which is not perfected by a lien of record may file a written objection to the motion to forfeit within ten (10) days of the mailing of the notice of intent to forfeit.
- F. At the hearing, any person who claims an ownership or security interest in the motor vehicle which is not perfected by a lien of record shall be required to establish by a preponderance of the evidence that:
 - 1. The person has an interest in the motor vehicle and such interest was acquired in good faith;
 - 2. The person is not the person convicted of the offense that resulted in the forfeiture proceeding; and
 - 3. The person did not know or have reasonable cause to believe that the vehicle would be used in the commission of a felony offense.
- G. If a person satisfies the requirements of subsection F of this section, or if there is a lienholder of record that has provided an affidavit pursuant to subsection D of this section, the court shall order either an amount equal to the value of the interest of that person in the motor vehicle to be paid to that person upon sale of the motor vehicle after payment of costs and expenses or release the vehicle from the forfeiture proceedings if either the lienholder described in subsection D of this section or the person intervening in accordance with subsection F of this section has full right, title and interest in the vehicle.
- H. At the hearing, the court may order the forfeiture of the motor vehicle if it is determined by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:
 - 1. Incapacitation of the convicted person from the commission of any future offense under 47 CNCA §§ 11-902, 11-903, or 11-904;
 - 2. Protection of the safety and welfare of the public;
 - 3. Deterrence of other persons who are potential offenders under 47 CNCA §§ 11-902, 11-903, or 11-904;
 - 4. Expression of public condemnation of the serious or aggravated nature of the conduct of the convicted person; or

5. Satisfaction of monetary amounts for criminal penalties.

- I. Upon forfeiture of a motor vehicle pursuant to this act, the court shall require the owner to surrender the motor vehicle, the certificate of title, and the registration of the motor vehicle. The vehicle, the certificate of title, and the registration shall be delivered to the Cherokee Nation Marshal Service within three (3) days of the forfeiture order. The expense of delivering the vehicle shall be paid by the Attorney General. Costs of delivering the vehicle to the Marshal Service shall be reimbursable as costs of conducting the sale. A motor vehicle forfeited pursuant to this act, shall be sold by Marshal Services provided by law for the sale of other forfeited property, except as otherwise provided in this section.
- J. If a vehicle was impounded at the time of delivery to the Marshal Service and a forfeiture order is subsequently issued, all towing, wrecker services, and storage expenses shall be satisfied from the sale of the vehicle. If a vehicle is released from forfeiture and the vehicle has been delivered to the Marshal Service with impound expenses still owing, all impound expenses, including towing, wrecker service and storage expenses, shall be paid by the person prevailing on the dismissal of the forfeiture proceeding and the release of the vehicle to such person. If a notice for sale of the vehicle was filed for satisfaction of impound expenses prior to the filing of a motion for forfeiture, the vehicle shall be sold as provided by law for unpaid towing, wrecker services, and storage expenses and shall not be subject to forfeiture. If the convicted person redeems his or her interest in the vehicle at a sale for impound expenses, a forfeiture proceeding may thereafter proceed as authorized by this act. Neither the notice of sale for towing, wrecker services, and storage expenses nor the sale of such vehicle for impound expenses shall serve to extend the requirement for filing a motion to forfeit as provided in subsection B of this section.
- K. Except as provided in subsection J of this section, proceeds from the sale of any vehicle forfeited pursuant to this act shall be paid in the following order:
1. To satisfy the interest of any lienholder of record;
 2. To the Attorney General for the cost of conducting the sale, including expense of delivery, court filing fees, and publication expense;
 3. To satisfy impound expenses, including any towing, wrecker service and storage expenses incurred prior to delivery to the Marshal Service;
 4. To satisfy the interest of any person making proof as provided in subsection F of this section;
 5. To satisfy criminal penalties, costs and assessments pursuant to paragraph 5 of subsection H of this section if so ordered by the court;
 6. To the office of the Attorney General, not exceeding twenty-five percent (25%) of any remaining proceeds. Such payment shall be deposited in a special fund for such purpose as determined by the Attorney General's office; and
- L. The balance of the proceeds to be deposited in the Cherokee Nation Treasury.
- M. If a motor vehicle subject to forfeiture as provided by this act is a vehicle leased pursuant to a commercial rental agreement for a period of ninety (90) days or less, then the vehicle shall not be

subject to the forfeiture proceedings provided by this act.

- N. Upon the court dismissing a forfeiture proceeding, any lien placed upon the vehicle title by the Oklahoma Tax Commission or Cherokee Nation Tax Commission pursuant to subsection B of this section shall be released.

Title 47, Chapter 79 shall be amended as follows:

§ 1504. Seizure of tool, implement, or instrumentality without process

- A. Any tool, implement, or instrumentality, including but not limited to a motor vehicle or motor vehicle part, used or possessed in connection with any violation of 47 CNCA § 1503 may be seized by any peace officer upon process issued by any court of competent jurisdiction.
- B. Seizure of property described in subsection A of this section may be made by any peace officer without process if:
1. in accordance with any applicable law or regulation;
 2. the seizure is incident to inspection under an administrative inspection warrant;
 3. the seizure is incident to search made under a search warrant;
 4. the seizure is incident to a lawful arrest;
 5. the seizure is made pursuant to a valid consent to search;
 6. the property seized has been the subject of a prior judgment in favor of the Nation in a criminal proceeding, or in an injunction or forfeiture proceeding under 47 CNCA §§ 1505 or 1506; or
 7. there are reasonable grounds to believe that the property is directly or indirectly dangerous to health or safety.
- C. When property is seized under this section, the seizing agency may:
1. place the property under seal; or
 2. remove the property to a place selected and designated by the seizing agency.

§ 1505. Property subject to forfeiture-Disposition-New certificate of title

- A. The following are subject to forfeiture unless obtained by theft, fraud or conspiracy to defraud and the rightful owner is known or can be identified and located:
1. Any tool;
 2. Any implement; or
 3. Any instrumentality, including but not limited to, real estate, any motor vehicle or motor vehicle part, whether owned or not owned by the person from whose possession or control it was seized, which is used or possessed either in violation of 47 CNCA § 1503 or to promote or facilitate a violation of 47 CNCA § 1503.
- B. Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section where the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of 47 CNCA § 1503.
- C. Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or instrumentality is not subject to forfeiture under this section by reason of any act or omission which the owner proves to have been committed or omitted without the owner's knowledge or consent.
- D. 1. Seizing agencies will utilize their best efforts to identify any seized motor vehicle or motor vehicle part to determine ownership or the identity of any other person having a right or interest in a seized motor vehicle or motor vehicle part. In its reasonable identification and owner location attempts, the seizing agency will cause the stolen motor vehicle files of the state police and the office of the Marshal to be searched for stolen or wanted information on motor vehicles similar to the seized motor vehicle or consistent with the seized motor vehicle part.
2. Where a motor vehicle or motor vehicle part has an apparent value in excess of One Thousand Dollars (\$1,000.00),
 - a. the seizing agency shall consult with either expert law enforcement investigative personnel specially trained and experienced in motor vehicle theft investigative procedures and motor vehicle identification examination techniques, or by expert employees of not-for-profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques,
 - b. the seizing agency shall also request searches of the on-line and off-line files of the National Crime Information Center (NCIC) and the National Automobile Theft Bureau (NATB) when the files of the state police and the office of the Marshal have been searched with negative results.

- E. A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party where the secured party neither had knowledge of nor consented to the act or omission forming the ground for the forfeiture.
- F. Property, described in subsection A of this section, seized and held for forfeiture, shall not be subject to replevin and is subject only to the order and judgments of the court hearing the forfeiture proceedings.
- G. 1. The Attorney General shall bring an action for forfeiture in the Cherokee Nation District Court. The forfeiture action shall be brought within sixty (60) days from the date of seizure except where the Attorney General in the sound exercise of discretion determines that no forfeiture action should be brought because of the rights of property owners, lienholders, or secured creditors, or because of exculpatory, exonerating, or mitigating facts and circumstances.
2. The Attorney General shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding to each person whose right, title, or interest is of record in the Oklahoma Tax Commission, Cherokee Nation Tax Commission, the Oklahoma Department of Public Safety, the Federal Aviation Agency, or any other department of the State of Oklahoma, the Cherokee Nation, or any other state or territory of the United States, or of the federal government if such property is required to be registered in any such department.
3. Notice of the proceeding shall be given to any such other person as may appear, from the facts and circumstances, to have any right, title, or interest in or to the property.
4. The owner of the property, or any person having, or claiming, right, title, or interest in the property may within sixty (60) days after the mailing of such notice file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.
5. The Attorney General shall show at a forfeiture hearing, by a preponderance of the evidence, that such property was used in the commission of a violation of 47 CNCA § 1503, or was used or possessed to facilitate such violation.
6. The owner of property may show by a preponderance of the evidence that the owner did not know, and did not have reason to know, that the property was to be used or possessed in the commission of any violation or that any of the exceptions to forfeiture are applicable.
7. Unless the Attorney General shall make the showing required by subsection 5, above, the court shall order the property released to the owner. Where the Attorney General has made such a showing, the court may order:
- a. the property be destroyed by the agency which seized it or some other

agency designated by the court,

- b. the property be delivered and retained for use by the agency which seized it or some other agency designated by the court, or
- c. the property be sold at public sale.

H. A copy of a forfeiture order shall be filed with the Marshal and with each federal or state department with which such property is required to be registered. Such order, when filed, constitutes authority for the issuance to the agency to whom the property is delivered and retained for use or to any purchaser of the property of a title certificate, registration certificate, or other special certificate as may be required by law considering the condition of the property.

I. Proceeds from sale at public auction, after payment of all reasonable charges and expenses incurred by the agency designated by the court to conduct the sale in storing and selling the property, shall be paid into the Cherokee Nation Treasury.

J. No motor vehicle, either seized under 47 CNCA § 1504 or forfeited under this section, shall be released by the seizing agency or used or sold by an agency designated by the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number is corrected by the issuance and affixing of either an assigned or replacement vehicle identification number plate as may be appropriate under laws or regulations of the Nation.

K. No motor vehicle part having any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number shall be disposed of upon forfeiture except by destruction thereof, except that this provision shall not apply to any such motor vehicle part which is assembled with and constitutes part of a motor vehicle.

L. No motor vehicle or motor vehicle part shall be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or motor vehicle part which is unidentifiable shall be the subject of a written report sent by the seizing agency to the Department of Public Safety which report shall include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time and place of its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where the same is held or stored.

M. When a seized unidentifiable motor vehicle or motor vehicle part has been held for sixty (60) days or more after the notice to the Department of Public Safety specified in subsection L of this section, has been given, the seizing agency, or its agent, shall cause the motor vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of the time and place of sale shall be posted in a conspicuous place for at least thirty (30) days prior to the sale on the premises where the motor vehicle or motor vehicle part has been stored.

N. When a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of One

Thousand Dollars (\$1,000.00) or less, the seizing agency shall authorize the disposal of the motor vehicle or motor vehicle part, provided that no such disposition shall be made less than sixty (60) days after the date of seizure.

- O. The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part shall be deposited in the Cherokee Nation Treasury after deduction of any reasonable and necessary towing and storage charges.
- P. Seizing agencies will utilize their best efforts to arrange for the towing and storing of motor vehicles and motor vehicle parts in the most economical manner possible. In no event shall the owner of a motor vehicle or a motor vehicle part be required to pay more than the minimum reasonable costs of towing and storage.
- Q. A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable shall be held subject to the order of the Cherokee Nation District Court or, if a request for its release from such custody is made until the Attorney General has notified the defendant or the defendant's attorney of such request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination which in no event shall exceed fourteen (14) days from the date of service upon the defense of the notice of request for return of property as provided herein, the property shall be released to the person making such request after satisfactory proof of such person's entitlement to the possession thereof. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.
- R. When a seized vehicle is forfeited, restored to its owner, or disposed of as unidentifiable, the seizing agency shall retain a report of the transaction for a period of at least one (1) year from the date of the transaction.
- S. When an applicant for a certificate of title or salvage certificate presents to the Cherokee Nation Tax Commission proof that the applicant purchased or acquired a motor vehicle at a public sale conducted pursuant to this section and such fact is attested to by the seizing agency, the Cherokee Nation Tax Commission shall issue a certificate of title, salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the affidavit of the seizing agency that a state-assigned number was applied for and affixed to the motor vehicle prior to the time that the motor vehicle was released by the seizing agency to the purchaser.

§ 1506. Institution of civil proceedings

- A. The Attorney General, or any aggrieved person, may institute civil proceedings against any person in the Cherokee Nation District Court seeking relief from conduct constituting a violation of any provision of the Motor Vehicle Chop Shop, Stolen and Altered Property Act. If the

plaintiff in such a proceeding proves the alleged violation, or its threat, by a preponderance of the evidence, the court, after due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including, but not limited to:

1. ordering any defendant to be divested of any interest in any property;
 2. imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the defendant was engaged in previously;
 3. ordering the suspension or revocation of a license, permit, or prior approval granted by any public agency or any other public authority; or
 4. ordering the surrender of the charter of a corporation organized under the laws of the Nation or of any state or the revocation of a certificate authorizing a foreign corporation to conduct business within the Nation or the state upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by the Motor Vehicle Chop Shop, Stolen and Altered Property Act and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked.
- B. In a proceeding under this section, injunctive relief shall be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury shall have to be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.
- C. Any person injured, directly or indirectly, by conduct constituting a violation by any person of 47 CNCA § 1503 shall, in addition to any other relief, have a cause of action for threefold the actual damages sustained by the person.
- D. A final judgment or decree rendered against the defendant in any civil or criminal proceeding shall estop the defendant in any subsequent civil action or proceeding brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to the civil or criminal proceeding.
- E. Notwithstanding any other provision of law providing a shorter period of limitations, a civil action under this section may be commenced at any time within five (5) years after the conduct made unlawful under 47 CNCA § 1503 terminates or the cause of action accrues or within any longer statutory period that may be applicable. If any action is brought by a prosecutor to punish, prevent or restrain any activity made unlawful under 47 CNCA § 1503, the running of the period

of limitations shall be suspended during the pendency of such action and for two (2) years following its termination.

F. Personal service of any process in an action under this section may be made upon any person outside the state if the person has engaged in any conduct constituting a violation of 47 CNCA § 1503 in this Nation. The person shall be deemed to have thereby submitted to the jurisdiction of the courts of the Nation for the purposes of this provision.

G. Obtaining any civil remedy under this section shall not preclude obtaining any other civil or criminal remedy under either this act or any other provision of law. Civil remedies under this section are supplemental and not mutually exclusive.

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

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.

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.