



October 27, 2014

Chief Bill John Baker  
Cherokee Nation  
P.O. Box 948  
Tahlequah, OK 74465

**Re: Cherokee Nation Tribal Gaming Act, Legislative Act 17-14.**

Dear Chief Baker,

This letter responds to your July 25, 2014, request on behalf of the Cherokee Nation to the National Indian Gaming Commission to review and approve the Nation's amendments to its gaming act. The amendments to the gaming act are contained in Legislative Act 17-14 and Legislative Act 07-14 of the Council of the Cherokee Nation.

Legislative Act 17-14 and Legislative Act 07-14 revise the Tribe's current gaming act to conform with NIGC regulations, to differentiate between gaming activities and non-gaming activities that may or may not be under the jurisdiction of the Tribal gaming commission, to provide Tribal Council representation on the Tribal gaming commission, and most notable, to require that the Tribal regulations and controls not exceed or conflict with the NIGC's Minimum Internal Control Standards (MICS). The provisions most significantly amended cover definitions, membership of the Tribal gaming commission, powers and duties of the Tribal gaming commission, authorization of gaming, oversight of fiscal affairs, employment applications procedures, licensing procedures, and background investigation processes.

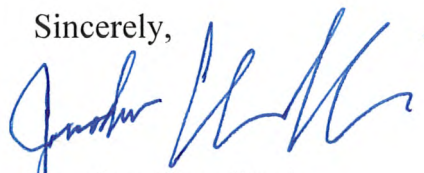
Thank you for bringing the amended gaming act to our attention. The gaming act is approved to the extent it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC regulation.

However, I am compelled to note my misgivings over some aspects of the gaming act. In particular, the provision of the gaming act that requires tribal regulations and controls not exceed the federal controls undermines the spirit of the NIGC regulations, especially the MICS – which are designed to be the ground floor of regulations upon which a tribe could build up from to address its specific requirements. Here, the Cherokee Nation has changed its Tribal law to limit the ability of its Tribal gaming commission to create controls it finds uniquely and perhaps better suited to its needs.

The NIGC sought to bolster tribal sovereignty and self-determination when it adopted the new Class II MICS by providing tribes with appropriate flexibility and discretion in developing tribal-specific regulations. Specifically, certain internal controls were left for tribes to develop and articulate in a manner that reflected their unique experience and specific regulatory concerns. With this gaming act, the Cherokee Nation has declined to authorize the development of such tribal-specific controls and instead defers to standards set forth by federal regulations and state compact terms. Further, implementing this provision of the gaming act may be difficult because Tribal regulators may struggle with determining what would “exceed” the NIGC MICS. Because of the potential implementation difficulties that may result from the gaming act’s lack of specificity, the NIGC will likely need to review the Tribe’s gaming operations with greater scrutiny.

If you have any questions, please contact Staff Attorney Heather Corson at (202) 632-7003.

Sincerely,



Jonodev Chaudhuri  
Chairman (Acting)

cc: Elizabeth Homer, Homer Law

# An Act

Legislative Act 17-14

## A LEGISLATIVE ACT AMENDING LA #10-11 MAKING TECHNICAL AMENDMENTS TO THE CHEROKEE NATION GAMING ACT

**BE IT ENACTED BY THE CHEROKEE NATION:**

### **§ 1. Title and Codification**

This enactment shall be known as the “Cherokee Nation Technical Gaming Amendment Act” and shall be codified at Title 4, Sections 1 to 69 of the Cherokee Nation Code Annotated.

### **§ 2. Purpose**

The purpose of this Act is:

- A. To amend Legislative Act #10-11 to make technical amendments to conform Cherokee Nation’s gaming ordinance to the regulations of the National Indian Gaming Commission.

### **§ 3. Legislative History**

- A. IGRA was enacted on October 17, 1988, establishing the NIGC. Under the IGRA, the NIGC is charged with regulating Class II gaming and certain aspects of Class III gaming.
- B. The NIGC adopted certain regulations in Chapter III of Title 25, Code of Federal Regulations (Parts 500-599), to provide purpose and scope, procedures for service of NIGC determinations, requirements for submitting new and existing gaming ordinances to the Chairman for approval, requirements for background investigations on Primary Management Officials and Key Employees, and requirements for licensing employees of Indian gaming operations.
- C. Cherokee Nation enacted Legislative Act 30-89, on April 8, 1989, known as the “Cherokee Nation Tribal Gaming Act,” to regulate the conduct of gaming owned and operated by the Cherokee Nation.
- D. On October 22, 1990, the Cherokee Nation amended the Gaming Act with Legislative Act 9-90, to comply with P.L. 100-497, October 17, 1988, 102 Stat. 2467, and to establish the Cherokee Nation Gaming Commission.

- E. On April 11, 1994, the Cherokee Nation amended the Gaming Act with LA 1-94.
- F. On October 16, 1995, the Cherokee Nation adopted Resolution 126-95 to authorize Class III gaming on Indian lands under its jurisdiction in the State of Kansas and other states where such gaming is permitted.
- G. On October 2, 2003, the Cherokee Nation amended the Act with LA 29-03 to authorize and provide for the regulation of Class III gaming which had been compacted for with the State of Oklahoma and/or authorized by legislative action.
- H. On November 10, 2003, the Cherokee Nation amended the Gaming Act with LA 37-03 to clarify the activities that fall under the jurisdiction of the Cherokee Nation Gaming Commission.
- I. On November 15, 2004, the Cherokee Nation amended the Gaming Act with LA 44-04 to provide technical amendments to the Gaming Act and provide for the regulation of Class III gaming that had been compacted for with the State of Oklahoma and/or authorized by legislative acts.
- J. On August 21, 2006, the Cherokee Nation amended the Gaming Act with LA 20-06 relating to gaming on lands within the jurisdiction of the Cherokee Nation.
- K. On March 12, 2007, the Cherokee Nation amended the Gaming Act with LA 15-07 to clarify that the Cherokee Nation Gaming Commission shall issue a separate license to each place, facility, or location in which Class II or Class III gaming is conducted.
- L. On September 13, 2010, the Cherokee Nation repealed and replaced Title 4- Amusements and Sports and the above gaming acts with the passage of Legislative Act #26-10.
- M. On May 19, 2011, the Cherokee Nation enacted LA #10-11, which repealed and replaced LA #30-89, LA #9-90, LA #1-94, R #126-95, LA #29-03, LA #37-03, LA #44-04, LA #20-06, LA #15-07 and amended LA #26-10.
- N. On April 24, 2014, the Cherokee Nation enacted LA #07-14 which amended LA #10-11.

**§ 4. Definitions**

For the purposes of this Title, and unless a different code meaning is clearly indicated, the terms used in this Title shall have the same meaning as defined in the “Indian Gaming

Regulatory Act,” Public Law 100-497, codified at 25 U.S.C. §§ 2701 et. seq., as amended:

- A. “Advisory Member” means a member of the Tribal Council, appointed by the Tribal Council, to attend and participate in meetings of the Cherokee Nation Gaming Commission and shall serve in an advisory, non-voting capacity.
- B. “Agent” and “Officially Licensed Agent” means any entity / corporation, wholly or majority owned by the Nation, its parent, subsidiary, and/or affiliate companies that conducts or has responsibility for gaming activities.
- C. “Class I Gaming” means social games solely for prized of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.
- D. “Class II Gaming” means:
  - 1. Bingo or lotto (whether or not electronic, computer, or other technological aids are used) when players:
    - a. Play for prizes with cards bearing numbers or other designations;
    - b. Cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined; and
    - c. Win the game by being the first person to cover a designated pattern on such cards.
  - 2. If played in the same location as bingo or lotto, Class II gaming includes:
    - a. Pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo; and
    - b. Non-banking games that:
      - i. State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and
      - ii. Play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes.
  - 3. Class II Gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.
- E. “Class III Gaming” includes all those forms of gaming that are not Class I or Class II gaming.
- F. “Compact” means any agreement entered into between the Cherokee Nation and the State of Oklahoma, as approved by the Secretary of the Interior, for the purposes of conducting Class III gaming. Any such agreement shall

only affect the scope of Class III gaming activities.

- G. "Facility License" means a separate license issued by the Gaming Commission to each place, facility or location on Indian lands and any other lands owned by the Cherokee Nation where Class II or Class III gaming may be conducted.
- H. "Gaming Commission" means the Cherokee Nation Gaming Commission.
- I. "Gaming Commissioner" means any member of the Gaming Commission duly appointed by the Principal Chief and confirmed by the Tribal Council.
- J. "Gaming Equipment" means all electronic, electro-mechanical, mechanical, or other physical components utilized in the play of Class II and Class III games.
- K. "Gaming Facility" means any premises, buildings, facilities, improvements, and/or equipment used or maintained in connection with the conduct of gaming, including but not limited to the storage of gaming equipment and/or materials and directly tied to the gaming operation/facility. This definition shall not include non-gaming operations, even if such operations are within the same building as gaming operations.
- L. "Gaming Facility Employee" means any employee of a gaming facility engaged in gaming or gaming related activity.
- M. "Gaming Public" or "Patron" means any natural person that is on the premises of a gaming facility acting or serving in the capacity as a customer or guest for the purpose of gaming.
- N. "Gaming System" means all components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games or any Class III games, inclusive of any and all support systems, player tracking and gaming accounting functions.
- O. "Gaming Vendor" means any person or entity who provides, through the sale, lease, rental or otherwise, any games, parts, maintenance or service in connection therewith to the Officially Licensed Agent in any amount.
- P. "IGRA" means the Indian Gaming Regulatory Act of 1988, Public Law 100-497, as codified at 25 U.S.C. §2701 et. seq., as amended.

- Q. “Indian Lands” means land over which Cherokee Nation exercises governmental power and that is either:
1. Held in trust by the United States for the benefit of Cherokee Nation or any member of Cherokee Nation; or
  2. Held by Cherokee Nation or any member of Cherokee Nation which is subject to restriction by the United States against alienation.
- R. “Jurisdiction” means all lands owned by the Nation or over which the Nation exercises commercial and/or governmental authority or control.
- S. “Key Employee” means:
1. A person who performs one or more of the following functions:
    - a. Bingo Caller;
    - b. Counting room supervisor;
    - c. Security and Surveillance;
    - d. Custodian of gaming supplies or cash;
    - e. Floor manager;
    - f. Pit boss;
    - g. Dealer;
    - h. Croupier;
    - i. Approver of credit;
    - j. Information technology employee with access to gaming related systems and equipment; or
    - k. Custodian of gambling devices including persons with access to cash and accounting records within such devices;
  2. If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or,
  3. If not otherwise included, the four most highly compensated persons in the gaming operation.
  4. Any other person designated by the Nation as a Key Employee.
- T. “License” means:
1. In connection with a gaming facility, a license issued by the Cherokee Nation Gaming Commission authorizing the operation of a gaming facility at a particular location owned and operated by the Nation;
  2. In connection with an individual person, a license or permit issued by the Cherokee Nation Gaming Commission authorizing the person to be engaged as a non-gaming employee, Key Employee, or Primary Management Official of a licensed gaming facility; and
  3. In connection with certain vendors, a license or permit issued by the Cherokee Nation Gaming Commission authorizing an individual or entity to conduct business and/or engage in activities that impact the operation of a gaming facility.
- U. “Nation” or “Tribe” means the Cherokee Nation.

- V. "NIGC" means the National Indian Gaming Commission.
- W. "Non-Gaming Employee" means any employee of the gaming operation who is not a Key Employee or Primary Management Official. If applicable, any Non-gaming employees licensed by the Gaming Commission shall be licensed in accordance with any limitations, restrictions, or regulatory requirements included in Section 22 of this Act.
- X. "Non-Gaming Vendor" means any person or entity who, directly or indirectly, provides or is likely to provide at least twenty-five thousand dollars (\$25,000.00) in goods or services to an Officially Licensed Agent within the gaming facility's fiscal year. PROVIDED, that attorneys or certified public accountants and their firms shall be exempt from this definition to the extent that they are providing services covered by their respective professional licenses.
- Y. "Person" means any natural individual, company, partnership, firm, joint venture, association, Limited Liability Company (LLC), corporation, estate, political entity of the Cherokee Nation, or other identifiable entity to which this title can be applied.
- Z. "Primary Management Official" means:
1. The person having management responsibility for a management contract;
  2. Any person who has authority:
    - a. To hire and fire employees;
    - b. To set up working policy for the gaming operation; or
  3. The chief financial officer or other person who has financial management responsibility.
  4. Any other person designated by the Nation as a Primary Management Official.
- AA. "Working Days" means Monday through Friday, except for holidays recognized by the Cherokee Nation and/or the federal government.

**§ 5. Protection of the Environment, Public Health and Safety**

- A. All gaming facilities licensed by the Gaming Commission shall be constructed, maintained, and operated in a manner that adequately protects the human environment and the health and safety of the public.
- B. The Gaming Commission shall utilize and/or rely on the Nation's established regulatory systems or certifications by appropriately licensed professionals for the purposes of enforcing applicable codes or regulations at each gaming facility. Laws, codes, regulations, policies, standards or procedures shall cover, at a minimum:



1. Emergency preparedness, including but not limited to fire suppression, law enforcement, security, and ambulatory services;
2. Food and potable water;
3. Construction and maintenance;
4. Hazardous materials;
5. Sanitation (both solid waste and wastewater); and
6. Other environmental or public health and safety standards adopted by the tribe in light of climate, geography, and other local conditions as may be applicable to the individually licensed gaming facilities.
7. Other city, county, and/or state standards the Nation may elect to abide by.

The Gaming Commission shall recommend to the Principal Chief and the Council of the Cherokee Nation any revisions or additions to laws, regulations, policies, standards or procedures necessary to comply with IGRA.

- C. Each facility shall be required to follow all applicable federal, tribal, and/or state codes or regulations provided in the Cherokee Nation Code Annotated, and any modifications or amendments made thereto, and/or that may be recognized, adopted, or followed by an appropriate Nation Commission or Department. The Gaming Commission shall rely on and not duplicate the regulation of such Commissions and Departments to ensure compliance with all applicable codes or regulations.

## **§ 6. Words and Terms**

In constructing the provisions of this Code, save when otherwise plainly declared or clearly apparent from the context:

- A. Words in the present tense shall include the future tense;
- B. Words in masculine, feminine and neutral genders shall include all genders, and;
- C. Words in the singular shall include the plural, and in the plural shall include the singular.

## **§ 7. Provisions as Cumulative**

The provisions of this Act shall be cumulative to existing Law.

## **§ 8. 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.

## **§ 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.

## **§ 10. Sovereign immunity**

Notwithstanding any provisions herein, this Act shall not limit or restrict the inherent sovereignty of Cherokee Nation, and neither the Act nor any of its provisions shall operate to waive, in whole or in part, the sovereign immunity of Cherokee Nation.

## **§ 11. 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.

## **§§12. – 19. Reserved for Future Use**

## **§ 20. Establishment of Cherokee Nation Gaming Commission**

The Cherokee Nation Gaming Commission is hereby established as a part of the Executive Branch of the government of the Nation in order to carry out the Nation's responsibilities under the IGRA (as amended) and the NIGC's regulations at 25 C.F.R. § 501 et. seq. (as amended) and to implement the provisions of this Act. Provided, however, all actions and regulations of the Gaming Commission shall be consistent with the provisions of this Act, all other laws and resolutions of the Cherokee Nation Tribal Council, and the Constitution of the Cherokee Nation and any applicable laws and/or regulations or regulating agencies established by the State of Oklahoma either: 1) pursuant to a compact on lands other than the lands defined in Section 4 (P) and (Z) of this Title; or 2) applicable to facilities operating: a) under the jurisdiction of the Oklahoma Horse Racing Act, Okla. Stat. tit. 3A, § 200 et. seq.; or b) in connection with a horse racing facility under a license granted under the authority of Okla. Stat. tit. 3A §262.

## **§ 21. Membership**

- A. The Gaming Commission shall consist of no less than five (5) members of the Cherokee Nation to be appointed by the Principal Chief of the Cherokee Nation and approved by the Tribal Council of the Cherokee Nation. In addition to the Gaming Commission, three (3) Tribal Council members shall be appointed to participate in Gaming Commission meetings in an advisory, non-voting capacity. These Advisory Members shall be appointed to serve by the Tribal Council. The term of an advisory member shall be three (3) years. Advisory Members shall be provided the same information as the Gaming Commissioners and the Gaming Commission shall inform the Advisory

Members of all meetings so Advisory Members shall be able to attend all meetings of the Gaming Commission.

- B. To be eligible to serve as a commissioner, a person must:
1. Be at least 25 years of age;
  2. Have a bachelor's degree from a college or university or equivalent experience;
  3. Be of high moral character or integrity;
  4. Be physically able to carry out the duties of office; and,
  5. Be able to pass a background investigation equivalent to that of a Primary Management Official to obtain and maintain a gaming license.
- C. The Principal Chief shall, at the time of making the initial appointments and also at the time of making each appointment to fill a vacancy on the Commission as provided herein, designate one member to serve as Chairman, one member to serve as Vice Chairman and one member to serve as Secretary.
- D. The terms of office of the Gaming Commission shall be three (3) years. Provided, however, the amendments set forth in this Legislative Act shall not affect the terms of office of the persons who are members of the Gaming Commission as of the effective date of this Act.
- E. At the expiration of their term, a Gaming Commissioner shall continue to serve until they are reappointed or replaced pursuant to sub-section (G) of this section.
- F. Gaming Commission members shall serve their terms of office free from political influence from any department of the government of the Nation and may be removed only for cause, after a hearing by the Cherokee Nation District Court under such rules and procedures as prescribed by the Tribal Council. A petition for removal for cause may be brought by a vote of the majority of Tribal Council Members or the Principal Chief. Except as authorized under the Constitution of the Cherokee Nation, no member of the Gaming Commission shall, directly or indirectly, solicit, receive or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any tribal political organization, candidacy or other tribal political purpose. No member of the Gaming Commission shall be a member of a committee of a partisan tribal political club, or a candidate for nomination or election to any paid tribal office, or take part in the management or affairs of any tribal political party or in any tribal political campaign, except to exercise his or her right as a private citizen privately to express his or her opinion and to cast his or her vote.
- G. In the event of the expiration of a Gaming Commissioner's term or a vacancy in the membership of the Gaming Commission, the Principal Chief shall, within one hundred-eighty (180) days of the occurrence of the vacancy, fill

such vacancy for the unexpired term, subject to confirmation by a majority vote of the Tribal Council. In the case of filling a vacancy, such appointment shall only be for the unexpired term.

**§ 22. Powers and Duties of the Gaming Commission**

- A. The Gaming Commission shall have the power to regulate and generally oversee conduct of all gaming operations in order to ensure compliance with this Act and any regulations adopted and orders issued by the Gaming Commission. The Gaming Commissioners shall each execute a conflict of interest provision disclosing potential unethical situations.
- B. The Gaming Commission shall be charged with the sole responsibilities of administering and enforcing the gaming provisions of this Act and any Tribal-State Compact to which the Nation may be a party.
- C. It shall be the responsibility of the Commission to promulgate regulations necessary to administer the relevant provisions of this Act, provided that rules and regulations promulgated or created by the Cherokee Nation Gaming Commission shall not exceed or conflict with the regulations issued by the Nation Indian Gaming Commission, including but not limited to the Nation Indian Gaming Commission Minimum Internal Control Standards or the provisions of the Indian Gaming Regulatory Act, as applicable, unless specifically outlined by law; nor shall the regulations promulgated exceed or conflict with what is required under any Cherokee Nation-State of Oklahoma Gaming Compact.
- D. The powers and duties of the Gaming Commission shall include, but not be limited to, the following:
  - 1. Making available application forms for all licenses and/or permits.
  - 2. Supervising the collection of all fees prescribed by this Act, Gaming Commission regulation, federal statutes or regulations, and any Tribal-State Compact to which the Nation may be a party.
  - 3. Processing all license applications and tax returns, which will be submitted under oath.
  - 4. Determining applicable fees.
  - 5. Auditing and/or reviewing financial records directly related to gaming activities only to ensure proper accountability.
  - 6. Reviewing all records, documents and anything else necessary and pertinent to the financial accountability of licensees or enforcement of any provision of this ordinance.
  - 7. Assessing sanctions, fines, or other penalties as needed against all vendors and/or facilities under the jurisdiction of and as deemed proper by the Gaming Commission for any violation of applicable laws, rules, and/or regulations applicable to gaming activities.
  - 8. Establishing procedures for conducting background investigations on

- and licensing of Key Employees, Primary Management Officials, other gaming facility employees, and vendors.
9. Establishing procedures for issuing licenses and permits to such employees, officials, and vendors.
  10. Obtain and process fingerprints, or designate a law enforcement agency to obtain and process fingerprints.
  11. Review and approve all investigative work conducted and report any possible or suspected criminal violation to the Cherokee Nation Marshal Service.
  12. Make license and/or permit suitability determinations.
  13. Report background investigation results to the National Indian Gaming Commission, as required.
  14. Inspect, examine, and monitor all gaming facility activities on a continuing basis.
  15. Have immediate, unfettered access to all areas of a gaming facility to review, inspect, examine, photocopy and/or audit all records of the gaming facility.
  16. Conduct civil / regulatory investigations of any suspected or reported violations of this Act, Gaming Commission regulation, tribal and/or federal statutes or regulations, or any Tribal-State Compact provision pertaining to gaming activities.
  17. Establish procedures for resolving disputes between the gaming public and a licensed gaming facility.
  18. Hold hearings on patron complaints, in compliance with procedures established by the Gaming Commission and/or any Tribal-State Compact provision.
  19. Comply with any and all reporting requirements under the IGRA, any Tribal-State Compact to which the Nation may be a party, and any other applicable law.
  20. Promulgate, issue, and enforce regulations necessary to comply with the minimum internal control standards issued by the Gaming Commission or the National Indian Gaming Commission, as amended. Provided that, all regulations shall be drafted in accordance with Section 22(C) as set further herein.
  21. Promulgate, issue, and enforce regulations on levying of fines and/or denial, suspension, restriction, or revocation of a gaming license or permit for violations of this Act, any Gaming Commission regulation, or any other applicable Tribal, Federal, or State law or regulation. Fines may not be assessed on employees.
  22. Ensure compliance with National Indian Gaming Commission regulations requiring payment of annual fees to, and filing reports with, the National Indian Gaming Commission.
  23. Ensure that all gaming facilities are in compliance with the federal Privacy Act procedures as required by NIGC regulations.
  24. The Gaming Commission or any member thereof, in the performance of its duties as defined by law, shall have the power to, in

administrative proceedings administer oaths and conduct administrative hearings for the purpose of the enforcement of this Act and/or any rules and regulations adopted by the Gaming Commission, assessment or collection of any fine, costs or other fees. The gaming facility shall provide the attendance of witnesses and the production of the books, records and papers of any person, firm, association or corporation under the jurisdiction of the Nation as necessary to show cause why action should not be taken by the Commission. Provided that the Cherokee Nation Marshal Service and Office of Attorney General have primary jurisdiction to enforce all criminal laws concerning gaming.

E. Dispute Resolution

1. The Gaming Commission shall promulgate regulations for resolving disputes between the gaming public and a gaming facility.
  - a. Separate regulations shall be provided for Class II and Class III gaming activities.
  - b. For Class III disputes, the Gaming Commission shall follow the parameters set forth in any Tribal-State Compact to which the Nation may be a party.
2. In resolving such disputes, the Gaming Commission may receive written statements, affidavits, or other materials from the parties of said dispute or their witnesses and, in its discretion, may order one or more hearings to take oral statements or testimony.
3. Any decision of the Gaming Commission in resolving such disputes shall be in writing and may be appealed by the parties to the Cherokee Nation District Court by filing an appeal, which shall contain a statement of the grounds for the appeal, within thirty (30) days of the date of receipt of the Gaming Commission's decision, in accordance with 4 CNCA § 67.
4. All decisions of the Gaming Commission for which a timely appeal has not been filed shall be final.
5. The dispute resolution procedures shall not apply to disputes governed by the regulations of the Oklahoma Horse Racing Commission.

**§ 23. Restrictions on Commissioners**

- A. To avoid potential conflicts of interest between the management and regulation of a gaming operation, the Nation hereby declares that:
1. No person, while actively serving in any of the following capacities may serve on the Gaming Commission: Principal Chief or Deputy Principal Chief, member of the Tribal Council, Justice or Judge of the Nation's courts, Nation employee, employee of the Gaming Commission, any employee of a gaming facility owned and operated by the Nation or its authorized agent or any appointed member thereof, or any vendor actively conducting business with a gaming facility. However, nothing herein shall prevent a Tribal Council member from

- serving as a non-voting Advisory Member to the Gaming Commission.
2. No person who is ineligible to be a Key Employee or Primary Management Official or any person convicted of a felony, embezzlement, theft or any other financially-related crime or honesty-related crime, such as fraud, may serve on the Gaming Commission.
  3. Gaming Commissioners are prohibited from:
    - a. Gambling in any gaming facility owned and operated by the Nation or its authorized agents;
    - b. Providing contractual services of any kind to any gaming facility;
    - c. Providing any management services to any gaming facility pursuant to a management contract;
    - d. Accepting complimentary items from a gaming facility;
    - e. Accepting gratuities or any other thing of value that could be considered a bribe from any licensee or applicant for a license or permit; and,
    - f. Engaging in outside employment or activities, including seeking or negotiating for future employment, that conflicts with their official duties and responsibilities.

- B. For purposes of this section, subparagraphs (A)(3)(d) and (A)(3)(e), complimentary items and/or gratuities, shall not include ceremonial gifts or other items of nominal value, or meals provided at the expense of a gaming facility, provided that such items do not each exceed one-hundred dollars (\$100.00) in value and are not offered as an inducement or for any action taken by the Gaming Commission.

#### **§ 24. No Financial Interest**

No Gaming Commissioner shall have any direct or indirect financial interest in any gaming facility or gaming vendor licensee. For purposes of this section, indirect financial interest shall not include ownership of any mutual funds or other non-self-directed investment fund which holds stock in a publicly traded company but shall include direct ownership of such stock.

#### **§ 25. Limitations—Recommendations**

The Gaming Commission shall exercise only that authority granted herein, but may make additional recommendations to the Principal Chief at any time it deems proper.

#### **§ 26. Budget and Compensation**

- A. Commission Funding and Budget
  1. Fees; General
    - a. The Gaming Commission shall be subject to the annual budgeting process as prescribed by the Principal Chief.

- b. Each licensee under the jurisdiction of the Gaming Commission shall pay to the Nation fees as established and scheduled by the Gaming Commission.
  - c. The Gaming Commission, by a vote of not less than a majority of its members, shall adopt the rate of the fees imposed on any gaming vendor, employee, facility, and any other licensing fee schedule on a bi-annual basis.
  - d. The projected expenditures of the Gaming Commission shall be in an amount not to exceed the amount of funds projected to be derived from fee assessments made under this section.
  - e. Any increases to the Gaming Commission budget shall follow the established tribal budgetary process.
  - f. Any unexpended fees shall be considered gaming revenues and shall be used in accordance with Section 38 of this Act.
2. Operational Fees
- a. The Treasurer shall adopt preliminary rates for gaming operations fees prior to the beginning of each fiscal year based upon the approved budget for the Commission and, if deemed necessary, shall modify those rates at any time during the fiscal year.
  - b. The Gaming Commission shall establish a schedule of fees to be paid to the Nation by each operation regulated under this Act. Fees shall be paid to the Nation on a monthly basis.
3. Penalties
- a. Failure by any vendor or facility to pay the fees imposed under the schedules established by the Gaming Commission shall, subject to the regulations of the Gaming Commission, be grounds for denial or revocation of the approval of any permit or license issued the licensee.
  - b. The Gaming Commission may assess a fine on any vendor or facility for failure to pay any prescribed license fee.
    - i. Any assessed fines shall be collected by the Nation to be used in accordance with Section 38 of this Act and shall not be considered a part of the Gaming Commission budget.

B. Gaming Commissioner Compensation

- 1. The annual compensation, payable monthly, of the Gaming Commissioners shall be determined as a part of the annual budget appropriation.
- 2. In no event shall compensation be based on a percentage of net profits from gaming operations of the Nation.
- 3. Members are eligible to be reimbursed for actual expenses incurred for Gaming Commission business, including necessary travel expenses, in addition to their monthly compensation.



**§ 27. Authorization of Gaming**

**A. Prohibition of Unauthorized Gaming**

No person licensed by the Gaming Commission shall engage, conduct or condone any game in a facility under the jurisdiction of the Gaming Commission unless such game is approved by the Gaming Commission and regulations for rules governing such game have been duly promulgated and approved by the Gaming Commission.

**B. Authorization of Gaming**

The Gaming Commission may authorize the playing of any game not prohibited by the IGRA, any game not prohibited by a Tribal-State Compact, and/or not specifically prohibited by the laws of the State of Oklahoma. The Gaming Commission shall promulgate regulations for rules governing all authorized games, including regulations governing the equipment, whether electronic or manual (e.g. chips, cards, machines, computer systems, etc.) used in such game. Any provision in a Tribal-State Compact with the State of Oklahoma providing for testing, notice to, and comment from the State shall be complied with before any game is authorized by the Gaming Commission.

**C. Approval of Gaming Equipment**

The Gaming Commission shall have the discretion to review and approve all gaming systems and other equipment used in the gaming facility as to quality, design, integrity, fairness, honesty, and suitability.

1. The Gaming Commission may require a prototype or sample of any model of gaming system or other equipment used in the gaming facility to be placed in the custody of the Gaming Commission and retained as a control for comparison purposes.
2. The Gaming Commission may rely on an independent outside testing laboratory or other professional expertise it deems necessary or appropriate to ensure the integrity of gaming systems, equipment, supplies, etc.

**D. Rules and Regulations of Games**

1. It shall be the responsibility of the Gaming Commission to promulgate regulations establishing the particular rules of all classes of gaming for each authorized game in order that said gaming will be conducted with fairness and uniformity.
2. The rules of each authorized game offered at facilities licensed by the Gaming Commission shall be posted, and shall be clearly legible, in a

conspicuous location and/or made available to patrons in pamphlet form. Such rules, and any modifications or amendments thereto, must be approved by the Gaming Commission prior to publication and implementation.

E. Gaming Related Activity of the Nation

The Gaming Commission shall have full jurisdiction for regulatory compliance and enforcement of any other gaming related activity that the Nation may elect to conduct. The Gaming Commission shall promulgate such regulations as it deems necessary to ensure the integrity of such activity and to ensure compliance with all applicable laws and regulations but the scope of such regulations shall be in accordance with Section 22(C) of this Act. Gaming Commission approval with regard to compliance with applicable gaming laws and regulations shall be required for any contracts related to any such gaming related activities. For the purposes of this section, such gaming related activities shall include, but are not limited to the following:

1. Manufacture, development, assembly, sales, or distribution of any gaming machines, devices, equipment, software, or components thereof;
2. Joint ventures with other Tribes, entities, persons, etc. related to gaming activity;
3. Pre-licensure of any entity or individual providing loans, grants or similar financial arrangements related to gaming activity in excess of \$50,000 in any twelve-month period, subject to the exceptions set forth in the Compact between the Cherokee Nation and State of Oklahoma.

**§ 28. Prohibited Acts**

A. In addition to other civil and criminal acts that may be regulated or prohibited by this Act, any Tribal-State Compact to which the Nation may be a party, other Tribal law or applicable federal law, the following shall constitute prohibited activities and unauthorized gaming under this Act and shall subject any perpetrator to Gaming Commission action including, but not limited to, the imposition of civil penalties, referral to appropriate law enforcement authorities for criminal proceedings, and license suspension or revocation. It is prohibited for any person:

1. To alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is determined but before it is revealed to the players;
2. To place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or knowledge of any event that affects the outcome of the game or knowledge that is the subject of the bet or wager;
3. To aid anyone in acquiring such knowledge as set forth in paragraph (2) above for the purpose of increasing or decreasing a bet or wager, or

- for the purpose of determining the course of play contingent upon that event or outcome;
4. To claim, collect, or take or attempt to claim, collect or take, money or anything of value in or from a gambling game with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;
  5. To knowingly entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this Act, with the intent that the other person play or participate in that gambling game;
  6. To place or increase a bet or wager after acquiring knowledge of the outcome of the game or event which is the subject of the bet or wager, including past-posting and pressing bets;
  7. To reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;
  8. To manipulate with intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose of the components, with knowledge or hope that the manipulation affects the outcome of the game or prize or with knowledge of any event that affects the outcome of the game or prize;
  9. To solicit funds or anything of value from any patron or employee for personal gain, such as panhandling, vagrancy, or prostitution.
  10. To unlawfully take or attempt to take any chips, currency, machine redemption tickets, or anything of value from any patron or employee on the gaming facility premises;
  11. To refuse to leave the gaming facility when appropriately advised to do so by a member of management, security, and/or the Gaming Commission;
  12. To damage or attempt to damage, either intentionally or negligently, any property, gaming device or equipment, or any article belonging to the Tribe, patron, or employee;
  13. Under the age of eighteen (18) to make any wager either directly or indirectly in any gaming facility;
  14. To either intentionally or knowingly cause injury or harm to any patron, or employee or threaten to do so;
  15. To possess any chips, cards, devices, paraphernalia, etc., that could reasonably be concluded as useful in cheating, defrauding, manipulating, or altering any game, gaming device, equipment, machine, computer, or supplies;
  16. For any employee to aid, conspire, collude or assist in any way any other employee or patron to win or have an unfair advantage to win or otherwise acquire anything of value unfairly;
  17. For any employee to knowingly provide false information or to misrepresent information contained in a gaming license application and/or during the course of a background investigation;

18. For any employee to knowingly make a false or misleading statement to the independent auditors or internal auditors, nor shall any employee conceal or intentionally fail to reveal any information necessary to make the statements to such auditors not false or misleading;
19. For any employee to knowingly make a false or misleading statement in connection with any contract for services or property or in response to any official inquiry by the Gaming Commission or its agents;
20. For any employee to knowingly make a false or misleading statement to any investigator or other representative of the Gaming Commission in the course of an investigation of a complaint or violation of this Act, the Gaming Commission rules and regulations, or of any provision of a Tribal-State compact to which the Nation may be a party;
21. For any employee to knowingly alter and/or destroy gaming records (e.g. Surveillance footage, gaming paperwork, accounting/financial reports) without proper authorization and/or that is outside of prescribed policies and procedures for such records;
22. For any person to offer or attempt to offer anything of value to a licensee in an attempt to induce the licensee to act or refrain from acting in a manner contrary to the official duties of the licensee contained in this Act, the Gaming Commission rules and regulations, any Tribal-State compact to which the Nation may be a party, or any applicable law;
23. For any licensee to accept anything of value with the expectation that receipt of such thing of value is intended, or that may be perceived as intended, to induce the licensee to act or refrain from acting in a manner contrary to the official duties of the licensee contained in this Act, the Gaming Commission rules and regulations, any Tribal-State Compact to which the Nation may be a party, or any applicable federal law;
24. For any person to take any action which interferes with or prevents the Gaming Commission or its agents from fulfilling its duties and responsibilities under this Act;
25. Any person possessing knowledge and/or any evidence that any gaming system or other equipment used in the gaming facility has been tampered with or altered in any way that would affect the integrity, fairness, honesty, or suitability of the system or equipment shall be immediately reported to the Gaming Commission;
26. Any action the Gaming Commission may take on the an individual for engaging in any of the foregoing does not preclude the Cherokee Nation Marshal Service and/or the Office of the Attorney General from taking any action they may deem necessary.

B. Unauthorized Gaming

Any person who commits any act of unauthorized gaming on any premises licensed by the Gaming Commission and/or owned and operated by the Tribe

shall be in violation of this Act and the Gaming Commission shall seek prosecution in the appropriate court of competent jurisdiction. Prosecution for such violations in other than a Federal Court is not meant to be exclusive; a finding of guilt or innocence shall not deprive the Federal government from jurisdiction.

C. Prohibition Against Electronic Aids

Except as specifically permitted by the Gaming Commission, it is a crime for any person to possess with the intent to use, or actually use, at any table game, either alone or in concert with others, any calculator, computer, or other electronic, electrical, or electromechanical device to assist in projecting an outcome at any table game, to keep track of or analyze the cards having been dealt, to change the probabilities of any table game or the playing strategies to be utilized. Violations are subject to Gaming Commission action and/or prosecution by the Nation and/or federal government under applicable laws.

D. Violations & Sanctions

1. Any patron, employee, vendor, or vendor agent who violates any part of this Act or any applicable law or regulation either referenced or contained herein, shall be deemed to have committed a crime. All matters and occurrences which indicate that a criminal act under the Tribal Code, any Tribal-State Compact to which the Nation may be a party, and/or federal law may have occurred in or around any gaming facility shall be immediately reported to the appropriate law enforcement agency and the Gaming Commission.
2. Violations which are not covered under a criminal code shall be deemed a civil violation. The Gaming Commission is authorized to establish a civil violations list of penalties and fines which shall be imposed by the Gaming Commission for all such civil violations of a vendor or facility with the violator afforded the rights to a hearing as provided in Chapter Six of this Act.
3. If the Gaming Commission should have reasonable cause to believe any such violation was committed, it may impose licensing sanctions, vendor or facility fines, seek prosecution and/or exclusion.

**§ 29. *Reserved for Future Use***

**§ 30. License Required for Gaming Facilities**

- A. Any agent of the Cherokee Nation conducting gaming operations for the benefit of the Cherokee Nation on property of the Cherokee Nation, including lands under the jurisdiction of the Cherokee Nation other than the lands defined in Section 4 (P) of this Title, shall be required to have and display prominently an appropriate, valid and current license issued pursuant to provisions of this Act.

- B. The Gaming Commission shall issue a separate license to each place, facility, or location where Class II and/or Class III gaming is conducted under the jurisdiction of the Cherokee Nation pursuant to this Title. Said license shall be renewed annually as set out herein.
- C. The Gaming Commission shall specify the form, conditions and content for the application for such licenses, which shall be submitted by the chief management official of the facility, and the initial application shall include a legal description of the lands whereon the facility is located, and a certification that said premises are lands under the jurisdiction of the Cherokee Nation as defined by this Title and shall identify the environmental, health, and public safety standards with which the place, facility, or location must comply, and a certification that the facility is in compliance therewith. Each subsequent application for the renewal of such facility license shall identify any changes or additions to said legal description and applicable environmental, health and safety standards, and include current certifications of compliance therewith. The Gaming Commission shall only issue such licenses if the applications therefore include the required information, certifications, and such further conditions as the Gaming Commission shall have specified.
- D. Conducting gaming operations without the lawful written approval and licensure of the Gaming Commission is a crime, and is punishable under 21 CNCA § 10. The Cherokee Nation Marshal Service and Office of the Attorney General have primary authority to enforce tribal criminal laws concerning gaming.

### **§ 31. Classes and Fees**

There shall be four (4) different classes of gaming, each characterized by its separate requirements and fees. These classes are created in compliance with the Indian Gaming Regulatory Act, Public Law 100-497, October 17, 1988, 25 U.S.C. 2501 et. seq., and the rules and regulations adopted pursuant to said Act.

### **§ 32. Charitable Gaming**

Charitable gaming operations are not required to be licensed by the Gaming Commission provided that:

1. All proceeds are for the benefit of a charitable organization.
2. The Gaming Commission determines the charitable organization to be exempt from this Act.
3. The charitable gaming operation is operated wholly by the charitable organization's employees and/or volunteers.

4. The Gaming Commission, at its sole discretion, may require the charitable organization to adopt procedures that protect the integrity of the gaming offered and that safeguard the assets used in connection with the gaming operation.

**§ 33. Class I Gaming License**

No license requirement.

**§ 34. Class II Gaming License**

Only a tribal enterprise wholly owned by the Cherokee Nation or its designated and approved agent or employee may apply for and receive a Class II Gaming license. Gaming operations must be conducted in facilities of the Cherokee Nation. A separate license must be issued by the Gaming Commission for each place, facility or location in which Class II gaming is conducted.

**§ 35. Class III Gaming License**

Only a tribal enterprise wholly owned by the Cherokee Nation or its designated and approved agent or employee may apply for and receive a Class III Gaming license. Gaming operations must be conducted in facilities of the Cherokee Nation. A separate license must be issued by the Gaming Commission for each place, facility or location on which Class III gaming is conducted.

**§ 36. Facility License**

The Gaming Commission may issue a facility license, pursuant to regulations adopted by the Gaming Commission, to a gaming facility if the gaming facility:

- A. Is adequate in all respects to accommodate the gaming intended to be carried on within the structure.
- B. Is equipped with security and surveillance equipment meeting or exceeding provisions set forth in regulations established by the Gaming Commission.
- C. Meets environmental, public health and safety standards of the Nation pursuant to §5 of this Code.
- D. Meets all requirements of applicable Tribal, Federal, and/or State law.
- E. Has paid all applicable license fees and other costs.

**§ 37. Vendor Licensing**

- A. All gaming and non-gaming vendors as defined in Section 4 are required to apply for and obtain a vendor license from the Gaming Commission prior to conducting business with any gaming facility, unless exempted under sub-section B of this section.
- B. The requirement in sub-section A above does not apply to the following vendor categories:
1. Tribal, local, State, or Federal governments and associated agencies;
  2. Cherokee Nation owned and/or chartered companies;
  3. Attorneys and Certified Public Accountants and their firms, to the extent that they provide services covered by their respective professional licenses;
  4. Sponsorships or charitable organizations;
  5. Public utilities;
  6. Entertainment;
  7. Insurance companies;
  8. Travel companies;
  9. Fleet service providers;
  10. Any person that qualifies for an exemption under the terms of any Tribal-State compact to which the Nation may be a party; or
  11. Any person otherwise specifically excluded by the Gaming Commission based on circumstances unique to that vendor or vendor category as determined by the Gaming Commission.
- C. The Gaming Commission shall:
1. Promulgate regulations for the vendor licensing application, background investigation, and licensing process, which shall be in conformity with the terms of any Tribal-State Compact to which the Nation may be a party;
  2. Promulgate regulations that provide two tiers of licensure. The first tier shall cover non-gaming vendors, and the second tier shall cover gaming vendors;
  3. Promulgate regulations that provide for due process for all license actions taken against a vendor and/or for any sanctions or fines levied against a vendor for violations of the Cherokee Nation gaming ordinance, Gaming Commission rules and regulations, the IGRA, NIGC rules and regulations, or any provision of any Tribal-State Compact to which the Nation may be a party;
  4. Promulgate fee schedules applicable to gaming and non-gaming vendor licenses, provided the non-gaming vendors shall be assessed a fee not to exceed the cost of the required background check;
  5. Require vendor agreements and/or contracts over twenty-five thousand dollars (\$25,000.00) to be included in the annual external audit.



**§ 38. Use of Gaming Revenue**

The Cherokee Nation will have the sole proprietary interest in and responsibility for the conduct of any gaming activity performed under a Class II or Class III license and all net revenues from any said gaming are to be used for tribal purposes including:

- A. To fund tribal government operations or programs;
- B. To provide for the general welfare of the Cherokee Nation and its tribal members;
- C. To promote tribal economic development;
- D. To donate to charitable organizations; or
- E. To help fund operations of local government agencies.

**§ 39. *Reserved for Future Use***

**§ 40. Records, Returns and Audits**

- A. It shall be the responsibility of the Gaming Commission to promulgate regulations and ensure the gaming operation establishes proper gaming accounting procedures and methods of operations for all licensees of Class II or Class III gaming activities so that all monies or things of value received and paid out may be properly monitored and accounted. All gaming facilities under the jurisdiction of the Gaming Commission shall be required to keep an approved gaming accounting system that shall comply with, but not be limited to, all applicable provisions of this Act and/or regulations of the Gaming Commission. Said accounting system shall reflect all business and financial transactions involved or connected in any manner with the gaming operation and conducting of gaming activities authorized by this Act. The Gaming Commission shall have the right to access such records or to secure a court order to seize records or property not surrendered.
- B. No applicant, licensee or employee thereof shall neglect or refuse to produce records or evidence or to give information upon proper and lawful demand by the Director of the Gaming Commission, or shall otherwise interfere, with any proper and lawful efforts by the Director of the Gaming Commission to produce such information. The Gaming Commission may conduct such hearings as deemed necessary to ensure compliance with the provisions of this Act and accountability for all monies received and spent. Failure to comply with the provisions of this Act or any rule or regulation promulgated by the Gaming Commission shall constitute grounds for denying, restricting, or revoking a gaming license or permit and/or levying sanctions or fines against gaming vendors and/or gaming facilities as determined by the Gaming

Commission.

- C. The Gaming Commission shall ensure annual independent audits of all gaming operations are conducted and shall submit the resulting annual audit report to the National Indian Gaming Commission in conformance with the NIGC's regulations, as applicable. The management and operation of any gaming facility shall be subject to all applicable provisions of the Indian Gaming Regulatory Act and any Tribal-State Compact to which the Nation may be a party.
- D. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of twenty-five thousand dollars (\$25,000.00) annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit described in the preceding paragraph.

**§ 41. Certification of Gaming Systems and Equipment**

All gaming systems and/or equipment purchased, leased or otherwise acquired and utilized by a licensed gaming facility must meet all standards promulgated by the Gaming Commission. The Gaming Commission shall maintain records of all gaming equipment located at any gaming facility or storage facility approved by the Gaming Commission.

**§ 42. Age Limit for All Gaming**

No person who is under the age of eighteen (18) shall operate, engage, or participate in any manner in the operation of any class of gaming activity. It shall be the responsibility of the manager of all licensed gaming operations of the Cherokee Nation to ensure compliance with this age limit requirement.

**§ 43. Oversight of Fiscal Affairs**

The Gaming Commission shall promulgate regulations for internal controls and fiscal audits of all gaming activities operated by the Nation. At a minimum, those regulations shall:

- A. Require minimum procedures for safeguarding the gaming operation's gaming assets and revenues, including recording of cash and evidences of indebtedness and mandatory count procedures. Such procedures shall establish a control environment, gaming accounting system, and gaming control procedures that safeguard the assets of the organization, assures that operating transactions are properly recorded, and encourage adherence to prescribed policies;
- B. Require minimum reporting requirements to the Gaming Commission;
- C. Shall promulgate regulations for internal controls and fiscal audits of the gaming facilities. At a minimum, those regulations shall require external and

internal audits by Gaming Commission, Cherokee Nation Businesses Internal Audit or External Certified Public Accountants that meet federal requirements;

- D. Ensure that an adequate accounting system and uniform code of accounts and accounting classifications are in place to assure consistency, comparability, and effective disclosure of financial information;
- E. Require intervals at which such information shall be furnished;
- F. Provide for the maintenance of documentation to evidence all internal work performed as it relates to the requirements of this section, and;
- G. Provide that all financial statements and documentation referred to in section (F) be maintained for a minimum of five (5) years.

#### **§ 44. Prohibition Against Embezzlement**

Any delay, maneuver or action of any kind which is caused by any non-gaming employee, Key Employee, Primary Management Official, and/or vendor to unlawfully divert gaming or other proceeds properly belonging to the Nation shall constitute grounds for taking sanctions against that licensee. If the Gaming Commission finds an unlawful diversion was conducted or attempted, it shall sanction the licensee, report the matter to the appropriate law enforcement agency for further action and may take such other action as it deems necessary or appropriate. Sanctions may include the imposition of fines and/or the revocation, suspension, or limitation of, or refusal to renew, any license.

#### **§§ 45. – 49. Reserved for Future Use**

#### **§ 50. Gaming Permits and Licenses – General**

- A. The Gaming Commission shall ensure that the following rules and regulations as prescribed by the IGRA, as amended, 25 CFR §556 and §558, as amended, and any Tribal-State Compact to which the Nation may be a party, are implemented with respect to Key Employees and Primary Management Officials employed at any gaming facility under the jurisdiction of the Gaming Commission.
- B. The Gaming Commission shall ensure that rules and regulations are developed and implemented for the licensure of all non-gaming employees of a gaming facility that are not Key Employees or Primary Management Officials.
- C. The Gaming Commissioners and Gaming Commission staff shall be subject to the licensing standards for Primary Management Officials.

**§ 51. Standard for Licenses and Permits**

- A. Licenses issued to Key Employees and Primary Management Officials hereunder shall comply with and incorporate all standards and requirements enumerated in 25 CFR and any amendments thereto, and also according to all standards and requirements enumerated in any Tribal-State Compact to which the Nation may be a party.

**§ 52. Application Forms**

- A. The following notice shall be placed on the application form for Key Employees or a Primary Management Official before that form is filled out by an applicant:

“In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §§ 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with ~~the~~ the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe’s being unable to license you ~~in~~for a Primary Management Official or Key Employee position.”

“The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors on processing your application.”

- B. The following notice shall be placed on the application form for a Key Employee or a Primary Management Official before that form is filled out by an applicant:

“A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment. (U.S. Code, Title 18, Section 1001.)”

- C. The Gaming Commission shall request the following information from each applicant for a Key Employee and Primary Management Official license:

1. Full name, other names used (oral or written), social security number(s), date

- of birth, place of birth, citizenship, gender, all languages (spoken or written);
2. Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addressed, and driver's license numbers(s);
  3. The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph 2 of subsection A of this section;
  4. Current business and residence telephone numbers;
  5. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
  6. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
  7. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
  8. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the Court involved, and date and disposition, if any;
  9. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten (10) years of the date of the application, the name and address fo the Court involved, and the date and disposition, if any;
  10. For each criminal charge (excluding minor traffice charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraphs 7 or 8 of this subsectio, the criminal charge, the name and address of the Court involved, and the date and disposition, if any;
  11. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
  12. A current photograph;
  13. Any other information the Gaming Commission deems relevant; and,
  14. Fingerprints consistent with procedures adopted by the Gaming Commission in accordance with 25 C.F.R. § 522.2(h).
- D. The Gaming Commission shall determine the information required from and the content of a non-gaming employee license application.
- E. The Gaming Commission shall notify in writing existing vendors that they shall complete an application for licensure by the Gaming Commission.

### **§ 53. Background Investigations**

- A. The Gaming Commission shall conduct a background investigation of all applicants, including Key Employees and Primary Management Officials,

sufficient to make a determination under 4 CNCA § 56 of the applicant's eligibility for continued employment in a gaming operation. In conducting a background investigation, the Gaming Commission and/or an agent acting on its behalf will keep confidential the identity of each person contacted in the course of the investigation.

- B. The Gaming Commission shall ensure that all records and information obtained as a result of a background investigation shall remain confidential and shall not be disclosed to persons who are not directly involved in the licensing process. Under no circumstances shall information obtained during the background investigation be disclosed to members of management, human resources personnel or others employed by the gaming facility without a signed and notarized release from the individual.
- C. Section B above does not apply to requests for such information or records from any Tribal, Federal or State law enforcement or regulatory agency, or for the use of such information or records by the Gaming Commission and staff in the performance of their official duties.

#### **§ 54. Continuing Duty to Provide Information**

All applicants and licensees shall have a continuing duty to provide any materials, assistance or other information required by the Gaming Commission, and to fully cooperate in any investigation conducted by or on behalf of the Gaming Commission. If any information provided on the application changes or becomes inaccurate in any way, the applicant or licensee shall promptly notify the Gaming Commission or the Director of the Gaming Commission of such changes or inaccuracies.

#### **§ 55. Terms and Parameters of Licenses and Permits**

- A. Terms
  1. The terms for licenses issued to persons under this Act shall be provided for in regulations promulgated by the Gaming Commission.
  2. The terms for facility licenses shall be one year and shall expire on December 31<sup>st</sup> of each year.
  3. The terms for licenses issued to vendors under this Act shall be provided for in regulations promulgated by the Gaming Commission.
  4. Any license issued pursuant to the provisions of this chapter is valid only for the person, entity, or facility shown on the face thereof. It is not assignable or otherwise transferable to any other person, entity, or facility without the express written approval of the Gaming Commission.
- B. Violations of any provision of this Act or rules adopted by the Gaming Commission, any Tribal-State Compact, or relevant license provisions, by a licensee shall be deemed contrary to the public health, safety, morals, good

order and general welfare of the Nation and shall be deemed grounds for refusing to grant or renew a license, or restrict, suspend, or revoke a license. Acceptance of a license, or renewal thereof by a licensee, constitutes an agreement on the part of the of the licensee to be bound by the provisions of this Act and the rules of Gaming Commission, now and in the future, and to cooperate fully with the Gaming Commission. It is the responsibility of the licensee to remain informed of the contents of this chapter, the rules and other applicable regulations, amendments, provisions, and condition, and ignorance thereof will not excuse violations. A license issued hereunder is a privilege and no right shall attach thereto.

#### **§ 56. Eligibility Determination**

- A. The Gaming Commission shall review a person's prior activities, criminal record, if any, and reputation, habits, and associations to make a finding concerning the eligibility of an applicant for obtaining and maintaining a gaming license or permit. If the Gaming Commission determines that licensure or a business relationship with an individual poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, no gaming facility under the jurisdiction of the Gaming Commission shall employ that person in a position requiring a gaming license nor conduct any business with that vendor.
- B. The Gaming Commission shall review a vendor's business history, history of the vendor's principals, as applicable, reputation, and associations to make a finding concerning the vendor's eligibility to receive a vendor license. If the Gaming Commission determines that the vendor poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not conduct business with that vendor.

#### **§ 57. Federal Review of Gaming Applicants**

- a. Report to the National Indian Gaming Commission
  - 1. When a gaming facility employs a Key Employee or a Primary Management Official, the Gaming Commission shall ~~forward to the National Indian Gaming Commission~~ maintain a completed application containing the information listed in 4 CNCA § 52.
  - 2. Prior to issuing a license to a Key Employee or Primary Management Official, and pursuant to the procedures set out in 4 CNCA § 53, the Gaming Commission shall create and maintain an investigative report on each background investigation that includes all of the

- ~~following prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation conducted for each Key Employee and Primary Management Official. An investigative report shall include all of the following:~~
- a. Steps taken in conducting a background investigation;
  - b. Results obtained;
  - c. Conclusions reached; and
  - d. The basis for those conclusions.
  - e. The Gaming Commission shall submit with the report a copy of the eligibility determination made under 4 CNCA § 56.
3. No later than sixty (60) days after the applicant begins work, the Gaming Commission shall submit a notice of results of the applicant's background investigation to the NIGC, which shall contain:
- a. Applicant's name, date of birth, and social security number;
  - b. Date on which applicant began or will begin work as a Key Employee or Primary Management Official;
  - c. A summary of the information presented in the investigative report, which shall at a minimum include a listing of licenses that have been previously denied; gaming licenses that have been revoked, even if subsequently reinstated; every known criminal charge brought against the applicant within the last 10 years of the date of application; and every felony of which the applicant has been convicted or any ongoing prosecution;
  - d. A copy of the eligibility determination made under 4 CNCA § 56.
4. All notices under this Section shall be provided to the NIGC through the appropriate Oklahoma regional NIGC office.
- ~~5.3.~~ If a license is not issued to an applicant for a Key Employee or Primary Management Official position, the Nation or Gaming Commission:
- a. Shall notify the National Indian Gaming Commission; and
  - b. ~~May~~ Shall forward copies of its eligibility determination and ~~investigative report (if any)~~ notice of results to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Record System.
6. ~~e.~~ With respect to Key Employees and Primary Management Officials, the Gaming Commission shall retain applications for employmentlicensing, eligibility determination, and investigative reports (if any) of background investigations for inspection by the Chairman of the NIGC or his/her designee for no less than three (3) years from the date of termination of employment.



- B. The gaming operation shall not employ as a Key Employee or Primary Management Official a person who does not have a license after ninety (90) days. Procedures for forwarding applications and reports for Key Employees and Primary Management Officials to the NIGC.
1. ~~When a Key Employee or Primary Management Official begins work at a gaming operation authorized by this ordinance, the Gaming Commission shall forward to the NIGC a completed application for employment and shall conduct the background investigation and make the determination referred to in 4 CNCA § 56.~~
  2. ~~The Gaming Commission shall forward the report referred to in 4 CNCA § 57 (A) to the NIGC within sixty (60) days after an employee begins work or within sixty (60) days of the approval of this ordinance by the Chairman of the NIGC.~~
  3. ~~The gaming operation shall not employ as a Key Employee or Primary Management Official a person who does not have a license after ninety (90) days.~~
  4. ~~The provisions outlined in sub-section 1 above shall not apply to any background investigations conducted and reported to the NIGC under any agreement with the NIGC for reduced reporting of background investigation results.~~
- C. The process in section ~~B~~A above does not apply to Non-Gaming Employees or Vendor principals/management officials as defined in this Title. The retention period for such records shall be defined by the Gaming Commission.

#### **§ 58. Granting a Gaming License or Permit**

- A. ~~If, within a thirty (30) day period after the NIGC receives a report, the NIGC notifies the Gaming Commission that it has no objection to the issuance of a license pursuant to a license application filed by a Key Employee or a Primary Management Official for whom the Gaming Commission has provided an investigative report to the NIGC, the Gaming Commission may issue a license to such applicant. Once the notice of results of an applicant's background investigation has been submitted to the NIGC, the Gaming Commission may issue the license to the applicant.~~
- B. ~~The Gaming Commission shall respond to a request for additional information from the Chairman of the NIGC concerning a Key Employee or a Primary Management Official who is the subject of a report. Such a request shall suspend the thirty (30) day period under paragraph A of this section until the Chairman of the NIGC receives the additional information. Upon issuance of the license, the Gaming Commission shall notify the NIGC of such issuance within thirty (30) days.~~
- C. ~~If, within the thirty (30) day period described above, the NIGC provides the Gaming Commission with a statement itemizing objections to the issuance of a~~

~~license to a Key Employee or to a Primary Management Official for whom the Gaming Commission has provided an application and investigative report to the NIGC; the Gaming Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Gaming Commission shall make the final decision whether to issue a license to such applicant. The Gaming Commission shall respond to a request for additional information from the Chair of the NIGC concerning a Key Employee or Primary Management Official who is the subject of the report.~~

- D. If, within the thirty (30) day period described above in 4 CNCA § 58(B), the NIGC provides the Gaming Commission with a statement itemizing objections to the issuance of a license, the Gaming Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Gaming Commission shall make the final decision whether to issue a license to such applicant.

#### **§ 59. Preliminary Determination & License Suspension**

- A. Whenever, upon preliminary factual finding, the Gaming Commission determines that any person has failed to comply with the provision of this Act or any regulations promulgated hereunder, the Gaming Commission shall make a certification of findings with a copy thereof to the subject or subjects of that determination.
- B. If, after the issuance of a gaming license ~~or permit to a gaming facility employee, the Gaming Commission receives from the NIGC, for a Key Employee or Primary Management Official, or the Gaming Commission separately receives reliable information from the NIGC~~ indicating that ~~such a~~ licensee is not eligible for employment under 4 CNCA § 56, the Gaming Commission shall suspend such license and shall notify the licensee in writing of the suspension and proposed revocation.
- C. The Gaming Commission shall provide at least five (5) days notice to the licensee and the gaming facility of a time and place for a hearing on the proposed revocation of a license or permit, to be held within thirty (30) days of a preliminary determination.
- D. After a revocation hearing, the Gaming Commission shall decide to deny, revoke, reinstate, or set conditions for retention of a gaming license or permit. The Gaming Commission shall notify the NIGC of its decision concerning a Key Employee or Primary Management Official license within forty-five (45) days of receiving notification from the NIGC pursuant to 4 CNCA § 59(B) above ~~for a Key Employee or Primary Management Official.~~

## **§ 60. Scope**

This Chapter provides procedures for hearings and appeals to the Gaming Commission for:

- A. Violation(s) of Gaming Commission rules, regulations, policies and/or procedures;
- B. Violation(s) of any Tribal-State Compact to which the Nation is a party;
- C. Violation(s) of any applicable Cherokee Nation law, rule, or regulations;
- D. Violation(s) of any applicable federal law, rule, or regulation;
- E. Patron disputes with a gaming facility;
- F. Citations and/or exclusions resulting from violations of federal and/or tribal statutes, and/or any provision of a Tribal-State Compact to which the Nation may be a party; or
- G. Any act that, in the view of the Gaming Commission, may affect an individual's ability to obtain or maintain a gaming license.

## **§ 61. Opportunities for Hearing**

- A. The Gaming Commission shall afford an applicant for a license an opportunity for hearing prior to any final action denying such application and shall afford a licensee or any other person subject to this ordinance the opportunity for a hearing prior to taking final action resulting in denying, terminating, revoking, suspending, or limiting a license or any other adverse action the Gaming Commission deems appropriate; provided, the Director may temporarily suspend or extend suspension of licenses for up to sixty (60) days in those cases where such action is deemed appropriate by the Gaming Commission.
- B. In cases where a license is suspended prior to hearing, an opportunity for a hearing shall be provided promptly after suspension at the request of the licensee.
- C. The Gaming Commission is authorized to adopt rules and regulations, consistent with this Act, governing the conduct of any and all hearings before the Gaming Commission as well as the process of issuing, modifying, conditioning, suspending, or revoking any license.

## **§ 62. Hearing**

At such hearing it shall be the obligation of the applicant or licensee to show cause why the preliminary determination is incorrect, why the application in question should not be denied,

why the license or licenses in question shall not be revoked or suspended, why the period of suspension should not be extended, or to show cause why special conditions or limitations upon a license should not be imposed, to show cause why any other action regarding any other person or persons subject to any action should not be taken.

### **§ 63. Appearance Through Counsel**

1. Parties to all hearings governed by this Act may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the Gaming Commission.
2. When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.
3. When a party is represented by an attorney, the attorney shall sign all motions, notices, requests, and other papers on behalf of the party.
4. Any attorney appearing before the Gaming Commission must be duly admitted and licensed by, and be a member of good standing before the Cherokee Nation Bar.

### **§ 64. Hearing Procedures**

The Gaming Commission is vested with the authority to develop and implement such hearing procedures it deems necessary to carry out its responsibilities to hear any issue raised under this Act or under any term or condition of any Tribal-State Compact to which the Nation may be a party.

### **§ 65. Determinations by the Commission**

- A. The Gaming Commission shall make all determinations of issues before it by a majority vote of the Gaming Commissioners.
- B. All determinations made by the Gaming Commission involving the granting, denial, cancellation or revocation of a license; a finding of a violation of the gaming ordinance, the Gaming Commission rules and regulations, the IGRA, or any Tribal-State Compact to which the Nation may be a party; the conditions of any license issued by the Gaming Commission; any order by the Gaming Commission; or any other applicable laws, regulations or agreements, and the imposition of any sanctions or penalties shall be made by motion and on the record.
- C. A copy of any determination shall be served upon the licensee by registered or certified mail, or may be served personally. Refusal of service by the licensee

shall constitute service.

**§ 66. Request for Re-Hearing**

- A. For permit or license determinations, the Gaming Commission may, in its discretion, grant a rehearing upon written request from a licensee, only upon a showing of substantial new evidence affecting the outcome of the decision, provided such request is made within fourteen (14) days of receipt of the initial decision rendered by the Gaming Commission.
- B. For disputes, the decision rendered by the Gaming Commission is not subject to a rehearing and shall follow the procedure outlined in §67 of this Act.

**§ 67. Appeals**

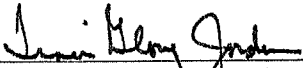
- A. The Cherokee Nation District Court shall have exclusive jurisdiction to hear appeals from final decision of the Gaming Commission denying, modifying, conditioning, or revoking any license.
- B. Any affected party may appeal any final decision of the Gaming Commission within thirty (30) days after such decision by filing a notice of appeal with the District Court and serving a copy to the Gaming Commission. Thereafter the Gaming Commission shall promptly file the full record of the proceeding with the District Court.
- C. In all appeals, the District Court shall give proper deference to the administrative findings of the Gaming Commission. The District Court shall not set aside, modify or remand any determination by the Gaming Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The District Court shall issue a written decision on all appeals.
- D. The District Court may, in its discretion, award costs and attorneys' fees to the Gaming Commission against any appellant whose appeal was frivolous, malicious, or in bad faith. Such fees shall be assessed and collected as a tax imposed under this Act.

**§ 68. Finality of Gaming Commission or Cherokee Nation District Court Action**

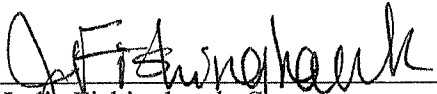
Any final finding or determination of the Gaming Commission which is not timely appealed, and any final determination of the Courts of the Cherokee Nation of an appeal of a decision rendered by the Gaming Commission in proceedings pursuant to 4 CNCA § 67 shall be final and binding in any other proceeding against or by the same person before the Gaming Commission or the Courts of the Cherokee Nation.

**§ 69. Reserved for Future Use**

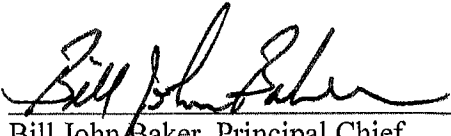
Enacted by the Council of the Cherokee Nation on the 14<sup>th</sup> day of July, 2014.

  
Tina Glory Jordan, Speaker  
Council of the Cherokee Nation


**ATTEST:**

  
Jodie Fishinhawk, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 18<sup>th</sup> day of July, 2014.

  
Bill John Baker, Principal Chief  
Cherokee Nation

**ATTEST:**

*For*   
Chuck Hoskin, Jr., Secretary of State  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Tina Glory Jordan	<u>Yea</u>	Janees Taylor	<u>Yea</u>
David Walkingstick	<u>Yea</u>	Dick Lay	<u>Nay</u>
Joe Byrd	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinhawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Fullbright	<u>Yea</u>	Frankie Hargis	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Victoria Vazquez	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Harley L. Buzzard	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		