

An Act

Legislative Act ____-11

A LEGISLATIVE ACT REPEALING THE CHEROKEE NATION LIMITED MIXED BEVERAGES SALES ACT-LEGISLATIVE ACT #41-03 AS AMENDED BY LEGISLATIVE ACT #09-04 AND #13-08 AND ENACTING INTOXICATING AND NON-INTOXICATING BEVERAGE CONTROL ACT

BE IT ENACTED BY THE CHEROKEE NATION:

Section (code section) 1. TITLE AND CODIFICATION

Example: This act shall be known as the Intoxicating and Non-Intoxicating Beverage Control Act and codified as _____ (Title) _____ (Section) _____ of the Cherokee Nation Code Annotated.

Section (code section) 2. AUTHORITY

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

Section (code section) 3. PURPOSE

The purpose of this Act is:

- A. To repeal Legislative Act 41-03, as amended by Legislative Acts 09-04 and 13-08, and replace it in its entirety.
- B. To authorize corporate entities wholly owned by the Cherokee Nation, a person or entity designated by corporate entities wholly owned by the Cherokee Nation and the employees thereof to apply for a license from the Cherokee Nation Tax Commission to establish retail liquor sales at designated locations on Indian Country within the jurisdiction of the Cherokee Nation.
- C. To regulate and control the possession and sale of intoxicating and non-intoxicating beverages at limited and designated areas of Indian County within the jurisdiction of the Cherokee Nation.
- D. To set an excise tax that will raise revenue for the treatment of substance abuse and fund programs to mental health.

Section (code section) 4. LEGISLATIVE HISTORY

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

Section (code section) 5. APPLICATION OF 18 U.S.C. SECTION 1161

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

Section (code section) 6. DEFINITIONS

When used in the Act, the following words and phrases shall have the following meaning:

1. "Alcohol" means and includes hydrated oxide of ethyl, ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced. It does not include wood alcohol or alcohol which has been denatured or produced as denatured in accordance with Acts of Congress and regulations promulgated thereunder;
2. "Alcoholic Beverage" includes mixed beverages and all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid or other substances, which contains more than one half of one percent of alcohol; however this definition excludes low-point beer as it is defined in this title.
3. "Applicant" means any individual, legal or commercial business entity, or any individual involved in any legal or commercial business entity allowed to hold any license issued in accordance with the Intoxicating Beverage Sales Act;
4. "Convicted" and "conviction" mean and include a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court or magistrate or the verdict of a jury, irrespective of the pronouncement of judgment or the suspension thereof;
5. "Administrator" means the Administrator of the Cherokee Nation Tax Commission under the supervision of said Commission;
6. "Hotel" shall mean an establishment which is licensed to sell alcoholic beverages by the individual drink and which contains guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial;

7. "Indian Country" shall include those areas defined by 18 U.S.C. § 1151.
8. "License" means any person holding a license under the Intoxicating and Non-Intoxicating Beverage Control Act, and any agent, servant, or employee of such licensee while in the performance of any act or duty in connection with the licensed business or on the licensed premises;
9. "Low-point beer" means and includes beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar products;
10. "Mini-bar" means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, and access to the interior of which is (1) restricted by means of a locking device which requires the use of a key, magnetic card, or similar device, or (2) controlled at all times by the licensee;
11. "Mixed beverages" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, caterer, or hotel license;
12. "Patron" means any person, customer, or visitor who is not employed by a licensee or who is not a licensee, except that natural persons who are licensees or employed by a licensee who are on the premises of a licensed establishment for recreational purposes without compensation shall also be included within the definition of patron.
13. "Person" means an individual, any type of partnership, corporation, association, limited liability company or any individual involved in the legal structure of any such business entity;
14. "Premises" means the grounds and all buildings and appurtenances pertaining to the grounds, including any adjacent premises if under the direct or indirect control of the licensee and the rooms and equipment under the control of the licensee and used in connection with or in furtherance of the business covered by a license. Provided that the Cherokee Nation Tax Commission shall have the authority to designate areas within the premises and to exclude areas from the licensed premises to: a) allow the presence and consumption of alcoholic beverages, by private parties which are closed to the general public, or b) allow the services of a caterer serving alcoholic beverages provided by a private party or for other purposes. This exception shall in no way limit the licensee's concurrent responsibility for any violations of the Intoxicating and Non-Intoxicating Beverage Control Act occurring on the licensed premises;
15. "Regulation" or "rule" means a formal rule of general application promulgated by the Cherokee Nation Tax Commission as herein required;

16. "Restaurant" means an establishment that is licensed to sell alcoholic beverages by the individual drink for on-premises consumption and where food is prepared and sold for immediate consumption on the premises;
17. "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever, and includes and means all sales made by any person, whether as principal, proprietor or as an agent, servant or employee. The term "sale" is also declared to be and include the use or consumption within the Nation of any alcoholic beverage obtained within or imported from without the Nation, upon which the excise tax levied by the Intoxicating and Non-Intoxicating Beverage Control Act has not been paid or exempted;
18. "Tax Commission" or "Commission" means the Cherokee Nation Tax Commission.

Section (code section) 7. ROLE OF THE TAX COMMISSION

1. Powers and duties of Cherokee Nation Tax Commission

The Cherokee Nation Tax Commission shall have the following powers and duties:

1. To supervise, inspect, and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, distributing, and possessing for the purpose of sale, all alcoholic beverages and low-point beer which shall be necessary and proper to carry out the purposes of the Intoxicating and Non-Intoxicating Beverage Control Act;
2. To promulgate rules and regulations, in the manner herein provided, to carry out the purposes of Intoxicating and Non-Intoxicating Beverage Control Act;
3. To have the sole authority to issue any license provided for in the Intoxicating and Non-Intoxicating Beverage Control Act;
4. To refuse to issue any license provided for in the Intoxicating and Non-Intoxicating Beverage Control Act for cause provided for in said act;
5. To revoke or suspend, for cause after hearing, any license issued under the authority of the Intoxicating and Non-Intoxicating Beverage Control Act;
6. To prescribe the forms of applications for licenses and the information to be shown thereon, and of all reports which it deems necessary in administering the Intoxicating and Non-Intoxicating Beverage Control Act;
7. To fix standards, not in conflict with those prescribed by any law of the Cherokee

Nation, or of the United States, to secure the use of proper ingredients and methods of manufacture and dispensing of alcoholic beverages and low-point beer;

8. To make seizures of alcoholic beverages and low-point beer manufactured, sold, possessed, imported, or transported in violation of the Intoxicating and Non-Intoxicating Beverage Control Act, and apply for the confiscation thereof whenever required by said act, and cooperate in the prosecution of offenders before any court of competent jurisdiction;
9. To inspect or cause to be inspected any premises where alcoholic beverages or low-point beer are manufactured, stored, distributed, sold, dispensed or served;
10. In the conduct of any hearing authorized to be held by the Cherokee Nation Tax Commission, to examine or cause to be examined, under oath, any person, and to examine or cause to be examined books and records of any licensee; to hear testimony and take proof material for the Tax Commission's information and the discharge of its duties hereunder; to administer, or cause to be administered, oaths; and for any such purposes to issue subpoenas for the attendance of witnesses and the production of books or records which shall be effective in any part of the Nation; and any district court or any judge thereof, either in term or vacation, may by order duly entered require the attendance of witnesses and the production of relevant books or records subpoenaed by the Tax Commission, and the court or judge may compel obedience to its or his order by proceedings for contempt;
11. To prescribe the kind and size of retail containers of alcoholic beverages and low-point beer which may be purchased, possessed and sold by a licensee;
12. To prescribe by regulations, in addition to those herein required, the kinds of records to be kept and reports to be rendered by licensees, and the information to be shown therein; provided, that the period for which all such records and reports be retained shall not be less than five (5) years;
13. To educate persons employed by licensees to serve alcoholic beverages or low-point beer as to the provisions of Intoxicating and Non-Intoxicating Beverage Control Act and other applicable laws, with emphasis on recognizing and preventing intoxication and particular emphasis on those provisions prohibiting the serving of alcoholic beverages to minors. The Tax Commission may contract with one or more persons to perform the duties specified in this paragraph; and
14. To exercise all other powers and duties conferred by the Intoxicating and Non-Intoxicating Beverage Control Act, and all powers incidental, convenient or necessary to enable it to administer or carry out any of the provisions of the Intoxicating and Non-Intoxicating Beverage Control Act.

Section (code section) 8. MIXED BEVERAGE, CATERING AND HOTEL BEVERAGE AND EMPLOYEE LICENSING

1. License types

A. A mixed beverage license shall authorize the holder thereof: To purchase alcohol, spirits, and beer and other alcoholic beverages from any wholesaler as provided by law and to sell, offer for sale and possess alcoholic beverages for on-premises consumption only. Sales and service of mixed beverages by holders of mixed beverage licenses shall be limited to the licensed premises of the licensee unless the holder of the mixed beverage license also obtains a caterer license. A mixed beverage license shall only be issued if the premises are located within a county that otherwise authorizes the sale of alcoholic beverages by the individual drink for on-premises consumption. A separate license shall be required for each distribution point.

B. A caterer license shall authorize the holder thereof: To sell mixed beverages for on-premises consumption incidental to the sale or distribution of food at particular functions, occasions, or events which are temporary in nature. A caterer license shall not be issued in lieu of a mixed beverage license. A caterer license shall only be issued if the function, occasion, or event is located on premises within a county that otherwise authorizes the sale of alcoholic beverages by the individual drink for on-premises consumption. A separate license shall be required for each distribution point.

C. A mixed beverage/caterer combination license shall authorize the holder thereof: to purchase or sell mixed beverages as specifically provided by law for the holder of a mixed beverage license or caterer license. All provisions of the Intoxicating and Non-Intoxicating Beverage Control Act applicable to mixed beverage licenses or caterer licenses, or the holders thereof, shall also be applicable to mixed beverage/caterer combination licenses or the holders thereof, except where specifically otherwise provided. A mixed beverage/caterer combination license shall only be issued in if the premises where mixed beverages are sold and served are within a county that otherwise authorizes the sale of alcoholic beverages by the individual drink for on-premises consumption. A separate license shall be required for each distribution.

D. A hotel beverage license shall authorize the holder thereof: To sell or serve alcoholic beverages in 50 milliliter spirits, 187 milliliter wine, and 12-ounce malt beverage containers which are distributed from a hotel room mini-bar. A hotel beverage license shall only be issued if the hotel premises where the alcoholic beverages are sold is located within a county that otherwise authorizes the sale of alcoholic beverages by the individual drink for on-premises consumption. A hotel beverage license shall only be issued to a hotel as defined by this title which is also the holder of a mixed beverage or mixed beverage/caterer combination license. Provided, that application may be made simultaneously for both such licenses. A separate license shall be required for each place of business.

E. An employee license shall authorize the holder thereof: To work in a mixed beverage, caterer or hotel establishment where alcohol or alcoholic beverages are sold, mixed or served. Persons employed by a licensee who do not participate in the service, mixing, or sale of mixed

beverages shall not be required to have an employee license. Provided, however, that a manager employed by a mixed beverage licensee shall be required to have an employee license whether or not the manager participates in the service, mixing or sale of mixed beverages. Persons employed by a hotel licensee who participate in the stocking of hotel room mini-bars or in the handling of alcoholic beverages to be placed in such devices shall be required to have an employee license.

F. A retail low-point beer license may be issued to any tribally chartered corporation wholly owned by the Cherokee Nation, and to any such person a tribally chartered corporation may designate. Every retail dealer, before offering low-point beer for sale to the public, must obtain from the Tax Commission a permit to engage in such sales, and must pay to the Tax Commission any fee required in advance of the issuance of the permit. Such retail permit shall allow the licensee to sell low-point beer for on premises consumption only.

G. A special event license may be issued to an organization, association or nonprofit corporation organized for political, fraternal, charitable, religious or social purposes. The holder of a special event license is authorized to sell and distribute alcoholic beverage on the premises for which the license issued. The Cherokee Nation Tax Commission may adopt rules and regulations governing the application for and the issuance of special event licenses. The restrictions and regulations which apply to the sale of mixed beverages on the premises of a mixed beverage licensee also apply to the sale of such beverages under the authority of a special event license. Any act which if done on the premises of a mixed beverage licensee would be a ground for revocation or suspension of a mixed beverage license is a ground for revocation or suspension of a special event license. No special event license may be issued for any premises already licensed by the Cherokee Nation Tax Commission.

2. Issuance of license - requirements

A. A. No license provided for in the Intoxicating and Non-Intoxicating Beverage Control Act shall be issued except pursuant to an application filed with the Cherokee Nation Tax Commission. Only tribally chartered corporations wholly owned by the Cherokee Nation or other persons or entities designated by a tribally chartered corporation shall be permitted to apply for any license under the Intoxicating and Non-Intoxicating Beverage Control Act, except for an employee license. Any of a person or entity designated by a tribally chartered corporation wholly owned by the Cherokee Nation to apply for a license must be so designated by the Board of Directors of said tribally chartered corporation. All individuals applying for an employee license must show proof of employment with a tribally chartered corporation wholly owned by the Cherokee Nation, or proof of employment with a person or entity designated by a tribally chartered corporation. The Cherokee Nation Tax Commission may, however, provide for a form of simplified application for renewal of license. Payment of any prescribed fee shall accompany each application for a license.

B. Every applicant for an original license, except applicants for an employee beverage

license, shall also furnish the following:

1. Organization documents, corporate charters, tribal council resolutions and/or other evidence that the Applicant is a wholly owned tribally chartered corporation or a designee of a wholly owned tribally chartered organization;
2. A list of all corporate officers, directors, executive committee members or members of a similar governing body and their addresses.

C. Any licensee, except an employee licensee, who fails to renew his license prior to the expiration date of said license, shall be subject to a late renewal penalty as provided by Tax Commission rules and regulations. Further, any licensee, except an employee licensee, who fails to renew his license within sixty (60) days of the expiration of said license shall be required to submit a new license application. An employee licensee who fails to renew prior to the expiration of the license shall be required to submit a new license application; provided, however, that under no circumstances shall any licensee, including an employee licensee, whose license to serve or sell alcoholic beverages has expired, continue to serve or sell alcoholic beverages.

3. Denial of license

The Cherokee Nation Tax Commission shall refuse to issue a mixed beverage, caterer, special event or employee license, either on an original application or a renewal application, if it has reasonable grounds to believe and finds any of the following to be true:

1. That the applicant, in the case of a natural person seeking a mixed beverage, caterer or special event license, is under twenty-one (21) years of age;
2. That the applicant, in the case of a natural person seeking an employee license, is under eighteen (18) years of age;
3. That the applicant, in the case of a natural person, has been convicted of a felony;
4. That the applicant has made false statements to the Cherokee Nation Tax Commission;
5. That the applicant within twelve (12) months after being issued a license, either on an original application or a renewal application, has violated any provision of the Intoxicating and Non-Intoxicating Beverage Control Act or regulation of the Cherokee Nation Tax Commission issued pursuant hereto. Provided, however, that if the Tax Commission, during said twelve-month period, has suspended any license sought to be renewed, such renewal application may be approved if the term of the suspension has been completed and the applicant has complied with any special conditions imposed in connection with the suspension.

4. Revocation or suspension of a license

A. Any license issued pursuant to the provisions of the Intoxicating and Non-Intoxicating Beverage Control Act, by order of the Cherokee Nation Tax Commission, after due notice and

hearing, may be revoked or suspended if the Cherokee Nation Tax Commission finds or has grounds to believe that the licensee has:

1. Violated any rule adopted by the Cherokee Nation Tax Commission;
2. Procured a license through fraud, or misrepresentation, or concealment of a material fact;
3. Made any false representation or statement to the Cherokee Nation Tax Commission in order to prevent or induce action by said commission;
4. Maintained an unsanitary establishment or has supplied impure or otherwise deleterious beverages or food;
5. Stored, possessed, mixed or served on the premises any alcoholic beverage upon which the tax levied by this title has not been paid as provided for in the Intoxicating and Non-Intoxicating Beverage Control Act;
6. Misrepresented to a customer or the public any alcoholic beverage sold by the licensee.

B. The Cherokee Nation Tax Commission shall revoke the license of any licensee if said Commission finds that the licensee knowingly sold alcoholic beverages or allowed such beverages to be sold, delivered or furnished to any person under the age of twenty-one (21) years, or to any person visibly intoxicated or adjudged insane or mentally deficient.

C. All licensees have an affirmative duty to report any violations of the Intoxicating and Non-Intoxicating Beverage Control Act to the Administrator of the Cherokee Nation Tax Commission. Willful failure to report violations of the Act may result in adverse action being taken against said licensee, including suspension or revocation after due notice and hearing.

D. The Cherokee Nation Tax Commission shall have the authority to promulgate rules and regulations to establish a penalty schedule for violations of any provision of the Intoxicating and Non-Intoxicating Beverage Control Act or any rule or regulation of the Cherokee Nation Tax Commission. The schedule shall provide for suspension or revocation of any license for violations as determined by the Cherokee Nation Tax Commission. Penalties shall be increasingly severe with each violation by a licensee.

E. The Cherokee Nation Tax Commission may impose a reasonable monetary penalty in lieu of or in addition to suspension of a license.

F. The failure of any licensee to pay a fine or serve a suspension imposed by the Cherokee Nation Tax Commission shall result in the revocation of the license of said licensee.

5. Notice of denial, suspension or revocation of license

In the case of denial of an application for an original license, the Cherokee Nation Tax Commission shall give written notice to the applicant either by registered mail directed to his last-known address or by delivery, stating the reason for such denial. If the Cherokee Nation Tax Commission proposes to deny renewal of any license or to suspend or revoke a license, it shall give written notice to the licensee addressed to his licensed premises by

registered mail, by personal delivery, or by posting of said notice on the outside entrance to the licensed premises, notifying said licensee of such contemplated denial, suspension or revocation, and of the time and place at which the licensee may be accorded a hearing before the Cherokee Nation Tax Commission on the matter, which time shall not be less than fifteen (15) days from the date of mailing, delivery or posting of such notice. Such notice shall set forth the grounds for the proposed denial, suspension or revocation. The Cherokee Nation Tax Commission may delegate any part of this function to the Administrator or his assistants in his department, but any person aggrieved by any order shall have the right to be heard by the Cherokee Nation Tax Commission and the Cherokee Nation Tax Commission shall provide adequate procedure to protect the right of persons desiring to do so.

6. Hearing for aggrieved parties

A. Any person aggrieved by the action of the Cherokee Nation Tax Commission in denying an application for an original license may, within fifteen (15) days after receipt of notice thereof, file with the Cherokee Nation Tax Commission a written request for a hearing, and the Cherokee Nation Tax Commission shall, pursuant to such request, set a time and place for a hearing on a denial of an application for an original license. At the time and place set in a notice by the Commission of contemplated denial of the renewal of a license or of a proposed suspension or revocation of a license, the Commission shall afford the applicant or the licensee an opportunity to be heard and to present evidence in his behalf. Said hearing shall be conducted within fifteen (15) days after receipt of the request by the Cherokee Nation Tax Commission. In the conduct of any such hearing, the Cherokee Nation Tax Commission shall have power to administer oaths, examine witnesses, and subpoena records and documents pertaining to the issues involved.

B. Upon request of and at the expense of the aggrieved party, the Cherokee Nation Tax Commission shall make or cause to be made a complete record of all testimony and other evidence taken or introduced at such hearing. Within fifteen (15) days after conclusion of any such hearing, unless the time shall be extended by the parties thereto in writing, the Cherokee Nation Tax Commission shall enter an order affirming or modifying its denial of an original application, an order dismissing its notice of contemplated denial of renewal of license or affirming same, or an order dismissing its notice of contemplated suspension or revocation of a license or an order suspending or revoking same. The Cherokee Nation Tax Commission shall, by written notice mailed to the applicant or licensee by certified mail or by delivery in person to the applicant or licensee, or their attorney of record, advise of its action pursuant to the hearing.

7. Administrator or hearing officer to conduct hearing—Report— Recommendation— Notice—Review

A. The Administrator shall have the authority to conduct an initial hearing when a hearing before the Commission is required by law. The Administrator may employ such hearing

officers and assistants as are necessary to conduct the hearings. If a hearing is conducted by a hearing officer, the hearing officer shall issue a report to the Administrator. The report of the hearing officer shall include findings of fact and conclusions of law. After conducting a hearing or after receiving the report of the hearing officer, the Administrator shall issue a recommendation to the Commission. Notice of the recommendation of the Administrator shall be sent to the last-known address of the licensee.

B. If the licensee disagrees with the recommendation of the Administrator, he may request a hearing before the Commission for a review of the record. If the licensee fails to request a review of the record within fifteen (15) days after the date of the notice of the Administrator's decision, the recommendation of the Administrator shall become a final order of the Commission. A failure to request a review of the record by the Commission in a timely manner shall constitute a failure to exhaust administrative remedies.

8. Appeal to district court

A. Within thirty (30) days after a final order of the Cherokee Nation Tax Commission, pursuant to a hearing as provided in this title, an applicant or licensee may appeal the order of the Cherokee Nation Tax Commission to the District Court of the Cherokee Nation. The appeal shall be taken by filing with the clerk of the district court a written notice stating that the party appeals from the action of the Cherokee Nation Tax Commission and stating the pertinent grounds on which the appeal is founded. Such appeal shall consist of a hearing and review of the record only as set forth in the Administrative Procedures Act. The district court may affirm, reverse or modify the order of the Cherokee Nation Tax Commission. Appeals may be taken from a final order of the district court to the Supreme Court of the Cherokee Nation by the applicant, licensee or by the Cherokee Nation Tax Commission. The order of the Tax Commission may not be stayed unless ordered by the judge of the district court. Permission to stay the order of the Cherokee Nation Tax Commission shall not be granted by any court unless an application therefore be made in the written notice of the applicant's or licensee's intention to appeal from the order of the Cherokee Nation Tax Commission, and then only after a hearing before the court upon notice to both parties wherein the court determines by a preponderance of the evidence that in denying a license or in ordering the suspension or a revocation of a license the Cherokee Nation Tax Commission acted without legal cause or upon insufficient evidence

9. Prohibitions.

No licensee of the Cherokee Nation Tax Commission shall:

1. Receive, possess, or sell any alcoholic beverage except as authorized by the Intoxicating and Non-Intoxicating Beverage Control Act and by the license or permit which the licensee holds;
2. Employ any person under the age of twenty-one (21) in the selling or handling of

alcoholic beverages. Provided, that a mixed beverage, hotel or caterer licensee may employ servers who are at least eighteen (18) years of age, except persons under twenty-one (21) years of age may not serve in designated bar or lounge areas, and a mixed beverage, hotel or caterer licensee may employ or hire musical bands who have musicians who are under twenty-one (21) years of age;

3. Permit or allow any patron or person to exit the licensed premises with an open container of any alcoholic beverage. Provided, that this prohibition shall not be applicable to alcoholic beverages in the original wine containers from being removed from the premises of restaurants, hotels, and motels, provided that the bottle was opened and partially consumed on the licensed premises, or to closed original containers of alcoholic beverages transported to and from the place of business of a licensed caterer by the caterer or an employee of the caterer; or

4. Serve or sell alcoholic beverages with an expired license issued by the Cherokee Nation Commission.

10. Mixed beverage, caterer or hotel licensee or their officer or agent—Prohibited acts

No mixed beverage, caterer or hotel licensee or any employee, manager, operator or agent thereof shall:

1. Consume or be under the influence of alcoholic beverages during the hours he is on duty. For the purposes of this section, licensees will be deemed to be on duty from the time he first comes on duty until the time he goes off duty at the end of the shift, including any break periods permitted by management;

2. Permit or tolerate any conduct or language which is intended to threaten another with physical harm or any fighting or offensive physical contact, in or upon the licensed premises or areas just outside the licensed premises which are controlled by the licensee;

3. Permit any illegal gambling activity, violations of the tribal or federal narcotic and dangerous drug laws, or prostitution activity or any other criminal conduct to occur on the licensed premises;

4. Refuse or fail to promptly open a door to the licensed premises upon request of an agent or inspector of the Cherokee Nation Tax Commission or any other peace officer to enter the premises, when the licensee or employee knows or should know that such request is made by an agent or inspector of the Cherokee Nation Tax Commission or any other peace officer. This provision shall not be construed to deny agents of the Cherokee Nation Tax Commission or any other peace officer access at any time to any licensed premises;

5. Permit a sealed or unsealed container of alcoholic beverage to be removed from the licensed premises. Provided that restaurants, hotels and motels may permit the removal of closed original wine containers the contents of which have been partially consumed. The provisions of this paragraph shall not be construed to prohibit or restrict hotels or motels who are holders of mixed beverage licenses from allowing alcoholic beverages to be served away from the bar area anywhere on the licensed premises; or

6. Destroy, damage, alter, remove or conceal potential evidence, or attempt to do so, or refuse to surrender evidence when lawfully requested to do so by an inspector, agent or any other peace officer or incite another person to do any of the above.

11. Penalties

A. Any person who shall file false or fraudulent information in connection with any tax imposed by the Intoxicating and Non-Intoxicating Beverage Control Act, or willfully evade, or attempt to evade, any tax herein levied shall be guilty of a crime and upon conviction shall be fined not be less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), or imprisoned for not more than three (3) years, or both such fine and imprisonment.

B. Any person who shall knowingly engage in any activity or perform any transaction or act for which a license is required under the Intoxicating and Non-Intoxicating Beverage Control Act, not having such license, shall be guilty of a crime and for the first offense be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00) and imprisoned for not more than six (6) months, and for a second or subsequent offense shall be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00), or imprisoned for not more than one (1) year, or both such fine and imprisonment.

C. Any person holding a license issued pursuant to the Intoxicating and Non-Intoxicating Beverage Control Act who shall sell or deliver alcoholic beverage to any person not entitled to purchase or receive same, or who shall possess for sale any alcoholic beverage which he is not entitled to sell under his license, or any person who buys any alcoholic beverage, either retail or wholesale, from any person other than a licensed dealer under the terms of the Intoxicating and Non-Intoxicating Beverage Control Act, shall be guilty of a crime and upon conviction be fined not more than One Thousand Five Hundred Dollars (\$1,500.00), or imprisoned for not more than six (6) months, or both such fine and imprisonment.

D. Upon request by a licensee, every individual requesting an alcoholic beverage, requesting access to a hotel mini-bar containing alcoholic beverages or being served alcohol in a group must present official documentation bearing the holder's age, signature and photograph before being served. Official documentation includes a driver's license or identification card issued by any state department of motor vehicles or a foreign nation, a United States Military identification or an official passport issued by any nation and accepted by the United States Department of State for entry into the United States.

E. Any person under twenty-one (21) years of age who shall misrepresent his age in writing or by presenting false documentation of age for the purpose of inducing any person to sell or serve him alcoholic beverage or who enters or attempts to enter a separate or enclosed bar area as designated by the Cherokee Nation Tax Commission, shall be guilty of a crime and fined not more than Fifty Dollars (\$50.00).

F. Any person who shall knowingly sell, furnish or give alcoholic beverage to a person under twenty-one (21) years of age shall be guilty of a crime and shall be fined not be less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), or imprisoned for not more than five (5) years, or both such fine and imprisonment. The Cherokee Nation Tax Commission shall revoke the license of any person convicted of a violation of this subsection.

G. Any person who shall knowingly sell, furnish or give alcoholic beverage to an insane, mentally deficient, or intoxicated person shall be guilty of a crime, and shall be fined not be less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than one (1) year, or both such fine and imprisonment.

H. Any person operating a cafe, restaurant, club or any place of recreation who permits any person to be drunk or intoxicated in said place of business shall be guilty of a crime, and shall be fined not more than One Hundred Dollars (\$100.00), or imprisoned for not more than thirty (30) days or by both such fine and imprisonment.

12. Suspension of license during natural disaster or civil disturbance

In case of natural disaster or civil disturbance the Principal Chief may, for the duration of such natural disaster or civil disturbance thereof, immediately suspend without notice any license granted under the provisions of the Intoxicating and Non-Intoxicating Beverage Control Act.

13. Law enforcement officers to notify Cherokee Nation Tax Commission of violations of act

All law enforcement officers upon arrest of any holder of a license issued by the Cherokee Nation Tax Commission for a violation of any federal or tribal law or ordinance in which the violation of any alcoholic beverage law had any part, shall immediately notify the Cherokee Nation Tax Commission thereof. Such officers shall notify the Cherokee Nation Tax Commission of any acts, practices or other conduct of any such licensee which may be subversive to the general welfare or contrary to the spirit of the Intoxicating and Non-Intoxicating Beverage Control Act and shall recommend appropriate action to be taken by the Cherokee Nation Tax Commission.

14. Seizure and destruction—Forfeiture and sale

A. A The Cherokee Nation Tax Commission or its agents may inspect any licensed premises pursuant to the provisions this Act, as amended, for the purpose of searching for, seizing, destroying or holding any alcoholic beverages possessed, sold, transported, manufactured, kept, or stored in violation of the Intoxicating and Non-Intoxicating Beverage Control Act; for the purpose of searching for and seizing any apparatus, vehicle, equipment, or instrumentality used for, or intended for use in, manufacturing or transporting any alcoholic beverage in violation of the Intoxicating and Non-Intoxicating Beverage Control Act; and all such property shall be forfeited to the Cherokee Nation.

The right of entry and inspection shall be a condition on which every license shall be issued and the application for, and acceptance of, any license hereunder shall conclusively be deemed to be consent of the applicant and licensee to such entry and inspection

15. Wholesale permits—Applications

A. All wholesalers and distributors and others who sell alcoholic beverages to retailers within the Cherokee Nation shall obtain a wholesaler or distributor permit from the Cherokee Nation Tax Commission.

B. A wholesale or distributor permit may be obtained by filing a verified permit application with the Cherokee Nation Tax Commission on a form furnished by said Commission.

16. Issuance of wholesale permit—Duties of permit holders

A. The Cherokee Nation Tax Commission may issue a wholesale permit to any person who sells alcoholic beverages to a mixed beverage, hotel or caterer license holder.

B. Each wholesale permit holder shall furnish a copy of the wholesale permit to the mixed beverage, hotel or caterer license holder prior to selling alcoholic beverages to holder of a mixed beverage, hotel or caterer license.

C. Holders of wholesale permits shall maintain an itemized and verified record for the preceding calendar month of all sales or purchases of alcoholic beverages and shall transmit the verified record to the Cherokee Nation Tax Commission on or before the tenth day of each month, upon a form prescribed and furnished by the Tax Commission. Permit holders shall maintain records of sales and purchases of alcoholic beverages for three (3) years.

17. Charitable Auctions

A charitable auction, charitable wine event or charitable beer event license may be issued to a charitable organization exempt from taxation under Section 501(c)(3), (4), (5), (7), (8), (9), (10), or (19) of the United States Internal Revenue Code. The charitable wine event license or charitable beer event license shall authorize the holder thereof to conduct a wine or beer event which may consist of one or more of a wine or beer tasting event, a wine or beer dinner event or a wine or beer auction, which may be either a live auction conducted by an auctioneer or a silent auction for which:

1. Bid sheets are accepted from interested bidders at the event;
2. The holders of tickets are allowed to bid online for a period not exceeding thirty (30) days prior to the event; or
3. Both bid sheets are accepted at the event and online bids are accepted pursuant to paragraph 2 of this subsection.

A charitable wine or charitable beer event shall be conducted solely to raise funds for charitable purposes. Wine or beer used in, served, or consumed at a charitable wine or beer event may be purchased by the charitable organization or donated by any person or entity. The charitable wine event license or charitable beer event license shall be issued for a period not exceeding four (4) days. Only one such license may be issued to an organization in any twelve-month period. The charitable organization holding a charitable wine event license or charitable beer event license shall not be required to obtain a special event license. The charitable auction license shall authorize the holder thereof to auction wine purchased from a retail package store or received as a gift from an individual if the auction is conducted to raise funds for charitable purposes. The charitable auction license shall be issued for a period not to exceed two (2) days. Only one such license shall be issued to an organization in any twelve-month period. The maximum amount of wine auctioned pursuant to the charitable auction license shall not exceed fifty (50) gallons. All wines auctioned pursuant to the charitable auction license shall be registered and all fees and taxes shall be paid in accordance with applicable law.

18. Excise Tax

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

19. Unlawful Acts

A. No person shall:

1. Knowingly sell, deliver, or furnish alcoholic beverages or low-point beer to any person under twenty-one (21) years of age;
2. Sell, deliver or knowingly furnish alcoholic beverages to an intoxicated person or to any person who has been adjudged insane or mentally deficient;
3. Receive, possess, or use any alcoholic beverage in violation of the provisions of the Intoxicating and Non-Intoxicating Beverage Control Act;
4. Knowingly transport in any vehicle upon a public highway, street or alley any alcoholic beverage except in the original container which shall not have been opened and the seal upon which shall not have been broken and from which the original cap or cork shall not have been removed, unless the opened container be in the rear trunk or rear compartment, which shall include the spare tire compartment in a vehicle commonly known as a station wagon and panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion;
5. Drink intoxicating liquor in public except on the premises of a licensee who is authorized under the Intoxicating and Non-Intoxicating Beverage Control Act to sell or serve alcoholic beverages by the individual drink or be intoxicated in a public place. This provision shall be cumulative and in addition to existing law;
6. Forcibly resist lawful arrest, or by physical contact interfere with an investigation of any infringement of the Cherokee Nation Tax Commission or with any lawful search or seizure being made by an inspector or agent of the Cherokee Nation Tax Commission, when such person knows or should know that such acts are being performed by tribal law enforcement or an agent an of the Cherokee Nation Tax Commission;

B. No licensee of the Cherokee Nation Tax Commission shall:

1. Receive, possess, or sell any alcoholic beverage or low-point beer except as authorized by the Intoxicating and Non-Intoxicating Beverage Control Act and by the license or permit which the licensee holds;

2. Employ any person under the age of twenty-one (21) in the selling or handling of alcoholic beverages except as provided in this Title;

3. Give any alcoholic beverage as a prize, premium or consideration for any lottery, game of chance or skill or any type of competition;

4. Advertise or offer "happy hours" or any other means or inducements to stimulate the consumption of alcoholic beverages including:

a. delivering more than two drinks to one person at one time,

b. sell or offer to sell to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public,

c. sell or offer to sell to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public,

d. sell or offer to sell drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public,

e. increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week, or

f. encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.

Provided that the provisions of this paragraph shall not prohibit the advertising or offering of food or entertainment in licensed establishments;

5. Permit or allow any patron or person to exit the licensed premises with an open container of any alcoholic beverage. Provided, that this prohibition shall not be applicable to closed original containers of alcoholic beverages which are carried from a licensed premises by a patron, closed original wine containers removed from the premises of restaurants, hotels, and motels, or to closed original containers of alcoholic beverages transported to and from the place of business of a licensed caterer by the caterer or an employee of the caterer; or

6. Serve or sell alcoholic beverages with an expired license issued by the Cherokee Nation Tax Commission.

7. Allow any person under twenty-one (21) years of age to enter into, remain within or loiter about the designated bar area of the licensed premises, except for persons who incidentally pass through the designated area.

The prohibition in this subsection against persons under twenty-one (21) years of age entering or remaining within the designated bar area of the licensed premises shall not apply, if the licensed premises are closed to the public during a time the premises are legally permitted to be open for business and the premises are used for a private party at which alcoholic beverages may be served to persons twenty-one (21) years of age or older. Any alcoholic beverages served at a private party on the licensed premises may be purchased from the licensee at a negotiated price or purchased privately and served at the private party on the licensed premises. Any licensee who desires to conduct such a private party shall notify the Cherokee Nation Tax Commission, in writing, at least ten (10) calendar days prior to the private party. The notification shall include the date, time, and purpose of the private party and any other information the Cherokee Nation Tax Commission may deem necessary.

C. No person operating a cafe, restaurant, club, or any place of recreation shall permit any person to be drunk or intoxicated in the person's place of business.

Section (code section) 9. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section (code section) 10. 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 (code section) 11. Effective Date

The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

Section (code section) 12. 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.

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Enacted by the Council of the Cherokee Nation on the _____ day of _____, 200__.

Meredith A. Frailey, Speaker
Council of the Cherokee Nation

ATTEST:

Don Garvin, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this _____ day of _____, 200_____.

Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:

Melanie Knight, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

| | | | |
|------------------------------|-------|---------------------|-------|
| Tina Glory Jordan | _____ | Meredith A. Frailey | _____ |
| Bill John Baker | _____ | Chris Soap | _____ |
| Joe Crittenden | _____ | Cara Cowan Watts | _____ |
| Jodie Fishinghawk | _____ | Buel Anglen | _____ |
| Janelle Lattimore Fullbright | _____ | Bradley Cobb | _____ |
| David W. Thornton, Sr. | _____ | Charles Hoskin, Jr. | _____ |
| Don Garvin | _____ | Julia Coates | _____ |
| Harley L. Buzzard | _____ | Jack D. Baker | _____ |
| Curtis G. Snell | _____ | | |