

TO ENACT THE CLAIMS AND IMMUNITIES ACT OF THE CHOCTAW NATION OF OKLAHOMA

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO APPROVE and enact the Claims and Immunities Act of the Choctaw Nation of Oklahoma.

WHEREAS, in accordance with Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma, the Tribal Council (the "Council") shall enact legislation, rules and regulations consistent with the Constitution for the general good of the Choctaw Nation of Oklahoma (the "Nation");

WHEREAS, the Choctaw Nation of Oklahoma is a sovereign nation and is immune from judicial process and legal action unless explicitly waived by the Tribal Council;

WHEREAS, the Tribal Council recognizes the need to provide a limited waiver of sovereign immunity to ensure those tribal members, associates, and other persons have the ability to bring certain limited claims against the Choctaw Nation in tribal court and have rights and remedies available; and

WHEREAS, the Tribal Council finds it is in the best interest of the Nation to enact the Claims and Immunities Act of the Choctaw Nation of Oklahoma. See Exhibit A.

THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that this Bill be cited approval to enact the Claims and Immunities Act of the Choctaw Nation of Oklahoma as attached and marked as Exhibit A.

BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that the Claims and Immunities Act of the Choctaw Nation of Oklahoma be effective immediately.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Special Session of the Tribal Council at Tuskahoma, Oklahoma on August 14, 2021. I further certify that the foregoing Council Bill CB- 87 -21 was adopted at such meeting by the affirmative vote of eleven (11) members, zero (0) negative votes, and one (1) abstaining:

Ronald Perry, Secretary
Choctaw Nation Tribal Council

Thomas Williston, Speaker
Choctaw Nation Tribal Council

Gary Batton, Chief
Choctaw Nation of Oklahoma

Date 8.20.21

TO ENACT THE CLAIMS AND IMMUNITIES ACT OF THE CHOCTAW NATION OF OKLAHOMA

Purpose/Need of Council Bill: The purpose of this bill is to enact the Claims and Immunities Act of the Choctaw Nation of Oklahoma. This Act provides a limited waiver of sovereign immunity and provides certain rights and remedies in tribal court for claims against the Choctaw Nation.

Title of Council Bill: TO ENACT THE CLAIMS AND IMMUNITIES ACT OF THE CHOCTAW NATION OF OKLAHOMA

Agency: Legal and Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Brad Mallett, SEO

EXHIBIT A

Title 125 Government and Public Administration

THE CLAIMS AND IMMUNITIES ACT OF THE CHOCTAW NATION OF OKLAHOMA

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Section 1. Title

This act shall be known and may be cited as the “Claims and Immunities Act of the Choctaw Nation of Oklahoma.”

Section 2. Purpose and Authority

A. The Choctaw Nation of Oklahoma is a sovereign nation, enjoys immunity from suit at law or in equity for any and all act or omission. This Act is not a general waiver of the Choctaw Nation of Oklahoma’s immunity, and it shall be narrowly and strictly construed.

B. The purpose of the Claims and Immunities Act of the Choctaw Nation is to provide a limited waiver of the Choctaw Nation of Oklahoma’s sovereign immunity.

C. The Choctaw Nation of Oklahoma’s limited waiver of sovereign immunity is conditioned upon the claimant’s compliance with all of the procedures contained in this Act.

D. The liability of the Choctaw Nation of Oklahoma under this Act shall be exclusive and shall constitute the sole basis and extent of any liability.

E. The Choctaw Nation of Oklahoma shall not be liable under the provisions of this Act for any act or omission of an employee acting outside the scope of the employee’s employment or the Tribal Council’s duties.

F. This Act does not alter the Choctaw Nation of Oklahoma Workers’ Compensation Code, which is the exclusive remedy for claims against the Nation by employees of the Nation injured at work.

Section 3. Definitions

As used in this Act, unless the context requires otherwise:

1. “Act” means the Claims and Immunities Act of the Choctaw Nation of Oklahoma;
2. “Action” means a civil action for money damages in the District Court of the Choctaw Nation in which the Nation is a defendant;
3. “Claim” means any written demand presented by a claimant or an authorized representative of a claimant in accordance with this Act to recover money damages from the Nation for an injury;
4. “Claimant” means a person or an authorized representative who files notice of a claim in accordance with this Act. Only the following persons may be claimants:
 - a. Any person holding an interest in real or personal property which suffers a loss, provided that the claim of said person shall be aggregated with claims of all other persons

which are derivative of the loss, and provided that multiple claimants shall be considered a single claimant;

b. Any person who suffers a loss to the body or to rights of the person, provided that the individual shall be aggregated in the claim the losses of all other persons which are derivative of the loss; or

c. In the case of a claim for death of a person, an administrator, special administrator or personal representative of the person who shall be aggregated in the claim all losses of all persons which are derivative of the death;

d. A “claimant” does not mean an employee of the Nation who suffers a Loss or Injury while in their scope of employment; and

e. A volunteer may be a “claimant” unless the volunteer is compensated for a loss on some other basis;

5. “District Court” means the District Court of the Choctaw Nation of Oklahoma, created by Section 1.102 of CB-65-2009, as amended, establishing the Court of General Jurisdiction;

6. “Employee” means any person authorized to act on behalf of the Nation, whether that person is acting on a permanent or temporary basis, with or without being compensated, or on a full- or part-time basis. Employee does not mean a person while acting in the capacity of an independent contractor or an employee of an independent contractor. For the purposes of this act, physicians acting in an administrative capacity are employees of the Nation, regardless of the place where the duties as employees are performed; however, in no event shall the Nation be held liable for the tortious conduct of any physician, resident physician, or intern while practicing medicine or providing medical treatment to patients;

7. “Judgment” means the final decision of the District Court on a claim under this Act;

8. “Loss” or “Injury” means death or harm to the body or rights of a person or damage to real or personal property or rights therein;

9. “Nation” means the Choctaw Nation of Oklahoma. When used in this act, the term includes all Tribal Entities and any arm of the tribe;

10. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal, artificial or commercial entity;

11. “Products Liability” means the liability of a manufacturer or seller of a product for damages for bodily injury, death, or property damage, (i) caused by or resulting from the manufacture, construction, design, formulation, installation, preparation, assembly, testing, packaging, labeling, sale, use, or consumption of a product; (ii) caused by the failure to warn or protect against a danger or hazard in the use or misuse of a product; or (iii) the failure to provide adequate instructions for the use or consumption of a product;

12. “Scope of Employment” means performance by an employee acting in good faith within the duties of an office or employment or of tasks lawfully assigned by a competent authority of the Nation, including the operation or use of a Tribal vehicle or equipment with actual or implied consent of an officer or employee of the Nation, but shall not include corruption or fraud;

13. “Tort” means a legal, civil wrong, independent of contract, involving violation of a duty imposed by law or otherwise resulting in a loss to any person, association, corporation, or other legal entity, as the proximate result of an act or omission of the Nation or Tribal employee acting within the scope of employment; and

14. “Tribal Entity” means any entity created or owned by the Nation for business, economic development, or governmental purposes, and any entity which is controlled by the Tribal Council if a majority of the persons serving on the body which governs the entity are chosen by the Tribal Council or are required to be members of the Tribal Council.

Section 4. Immunity From Certain Liability for Certain Torts

A. The Choctaw Nation of Oklahoma is a sovereign nation which is immune from every claim or cause of action in tort, contract, or otherwise, unless its immunity is specifically waived. The Nation, Tribal Officers and Tribal employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be immune from all forms of liability, unless otherwise provided in this Act or by the Tribal Council.

B. The Nation, to the extent and in the manner provided in this Act, waives its sovereign immunity. This waiver is subject to all the restrictions, limitations, and procedures set forth in this Act. This Act is to be strictly construed, and all procedures, restrictions, and limitations are to be adhered to strictly. No waiver of any kind is made or implied beyond the scope or outside the limitations and restrictions of this Act.

C. The Nation consents to civil actions in the District Court based on tort claims under this Act. The Nation does not consent to any action in any other forum for such claims and specifically preserves and retains its sovereign immunity to any liability in any other forum. The District Court shall have jurisdiction over all claims arising under this Act.

D. The Nation shall not be liable under the provisions of this Act for any act or omission of an employee which is outside the scope of employment.

Section 5. Limits of Liability – Punitive Damages – Multiple Claimants

A. The total liability of the Nation on claims within the scope of this Act arising from a loss or injury after the effective date of this Act shall not exceed:

1. One Hundred Seventy-Five Thousand Dollars (\$175,000) for any and all injury to or loss of property arising out of a single act or occurrence, regardless of the number of owners or holders of an interest in the property;

2. One Hundred Seventy-Five Thousand Dollars (\$175,000) for all personal injury to any person arising out of a single accident or occurrence; and

3. Two Hundred Fifty Thousand Dollars (\$250,000) for any number of claims for personal injury arising out of a single occurrence or accident.

B. The Nation shall not be liable for punitive or exemplary damages and no award for damages in an action or for any claim against the Nation shall include punitive or exemplary damages.

C. In an action based on negligence, the liability of the Nation under this Act shall be separate from that of any other person or entity, and the Nation shall only be liable for that percentage of total damages that corresponds to the Nation's percentage of total negligence. Nothing in this Section shall be construed as increasing the liability of the Nation.

Section 6. Apportionment

A. In a civil action under this Act involving fault of more than one person, including third party defendants and nonparties, the District Court shall determine the following:

1. The total amount of each claimant's damages.

2. The percentage of the total fault of all persons that contributed to the injury, including each claimant and each person released from liability under Section 9, regardless of whether the person was or could have been named as a party to the action.

B. In determining the percentages of fault under subsection A, the District Court shall consider both the nature of the conduct of each person at fault and the extent of the causal relation between the conduct and the damages claimed.

C. The District Court shall determine the amount of damages to each claimant in accordance with the findings under this Section, subject to any reduction under Section 7 or 8 of this Act and shall enter judgment against each party, including a third-party defendant, except that judgment shall not be entered against a person who has been released from liability as provided for in Section 9 of this Act.

D. Liability in a civil action to which this Section applies is several and not joint. A person shall not be required to pay damages in an amount greater than his or her percentage of fault.

E. As used in this Section, "fault" includes an act, omission, conduct, including intentional or negligent conduct, a breach of warranty, or a breach of legal duty, or any conduct that could have given rise to the imposition of strict liability, that is a proximate cause of damage sustained by a person. This subsection shall not be construed as expanding the liability of the Nation as limited by this Act.

F. Assessment of percentage of fault for nonparties are used only to accurately determine the fault of named parties. If fault is assessed against a nonparty, a finding of fault does

not subject the nonparty to liability in that action and shall not be introduced as evidence of liability in another action.

Section 7. Contributory Fault Does Not Bar Recovery

Subject to Section 8 of this Act, in a civil action under this Act, a claimant's contributory fault does not bar that claimant's recovery of damages.

Section 8. Reduction or Disallowance of Damages for Claimant's Fault

In a civil action under this Act, the District Court shall reduce the damages by the percentage of comparative fault or negligence of the person upon whose personal injury the damages are based as provided in the District Court's Order of Judgment. If that person's percentage of fault or negligence is greater than the aggregate fault or negligence of the other person or persons, whether or not parties to the action, the District Court shall reduce damages by the percentage of comparative fault or negligence of the person upon whose personal injury the damages are based as provided in the District Court's Order of Judgment.

Section 9. Subrogation and Contribution from Joint and Several Tortfeasors

If a judgment has been entered against the Nation pursuant to this Act, the Nation may seek subrogation where it is available by law or by contract and recover contribution from each co-defendant and each joint or several tortfeasor where appropriate. Nothing in this Section shall be construed as consent by the Nation to suit in any other forum other than the District Court as provided in this Act.

Section 10. Exclusions

The Nation shall not be liable for the following:

1. Legislative functions;
2. Judicial, quasi-judicial, or prosecutorial functions;
3. Execution or enforcement of the lawful orders of any court;
4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, ordinance, or written policy;
5. Any claims that arise out of cross deputization agreements between the Nation and another law enforcement agency or sovereign;
6. Performance of or failure to exercise or perform any act or service which is in the discretion of the Nation or employee;
7. An act or omission of an independent contractor or consultant or an employee, agent, subcontractor or supplier of such a person, other than an employee of the Nation;

8. Any act or omission resulting in injury caused by a dangerous condition on property of the Nation that was not caused by the negligent or other wrongful conduct of an employee;
9. Any act or omission resulting in injury caused by a dangerous condition on property of the Nation of which the Nation did not have notice, either actual or constructive, and adequate opportunity to protect or warn against;
10. Any act or omission resulting in loss or injury that was not caused by the negligent or other wrongful conduct of the Nation or employee;
11. Theft by a third person of money in the custody of an employee unless the loss was sustained because of the negligence or omission of the employee;
12. Participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the Nation;
13. Any claim or action based on the theory of manufacturer's product liability or breach of warranty, either expressed or implied;
14. Any claim or action based on absolute or strict liability;
15. Any claim or action based on indemnification or subrogation;
16. Any claim based on an act or omission of an employee in the placement of children;
17. Acts or omissions done in conformance with then currently recognized industry standards;
18. Any claim or action based on medical malpractice;
19. Any claim which is subject to the Federal Tort Claims Act, codified in part as 28 U.S.C. § 2671 *et seq.*, because it resulted from the performance of programs carried out under Pub. L. 638 contracts or grants or was otherwise covered by the Act. In all such cases, the Federal Tort Claims Act shall provide the sole and exclusive remedy;
20. Any claim which is subject to the Oklahoma Governmental Tort Claims Act, codified in part as 51 Okla. Stat. § 151 *et seq.* shall be subject to the Oklahoma Governmental Tort Claims Act, which shall provide the sole and exclusive remedy; and
21. Any claim which is subject to the Workers Compensation Code, codified in CB-05-21, as amended, shall be subject to the Workers Compensation Code, which provides the sole and exclusive remedy for that claim.

Section 11. Maintenance of Roads

A. Nothing contained in this act shall be construed as allowing an action or recovery against the Nation on a claim or cause of action founded upon any loss occurring from a defect or dangerous condition of any road, street, or highway.

B. To the extent that the Nation is required by federal law to maintain a road, street, or highway within its territorial limits, the Nation shall not be liable for any loss occurring from a defect or dangerous condition in the road, street, or highway.

Section 12. Claim for Relief – Time for Filing Claim

A. Any person having a claim against the Nation within the scope of this Act shall present a claim to the Department of Risk Management in writing within one (1) year of the date of the incident giving rise to the loss.

B. A claim against the Nation shall forever be barred unless notice thereof is presented within one (1) year after the date of the incident giving rise to the loss occurs.

C. The Department of Risk Management shall immediately conduct a diligent investigation of the validity of the claim within the time specified for approval or denial of claims in Section 13 of this Act. A claim may be filed by certified mail with return receipt requested. A claim which is mailed shall be considered filed upon receipt by the Department of Risk Management.

D. A claim under this Act shall state the date, time, place, and circumstances and as much detail as possible of the claim, the identity of the Tribal Entity or employee involved, if known, the amount of compensation requested, the name, address, and telephone number of the Claimant, and the name, address, and telephone number of any agent of the Claimant authorized to settle the claim, the identity of any persons known to have information regarding the incident, and the basis for the claim. Failure to state either the date, time, place, circumstances, and amount of compensation demanded, shall not invalidate the notice unless the claimant declines or refuses to furnish such information after demand by the Department of Risk Management. The time for giving written notice of claim pursuant to the provisions of this Section does not include the time during which the person injured is unable due to incapacitation from the injury to give such notice, not exceeding ninety (90) days of incapacity.

E. If the Department of Risk Management furnishes a form to the Claimant to complete and return, failure to properly and completely do so within thirty (30) days will be considered a withdrawal of the Claim.

F. When the claim is one for death by wrongful act or omission, notice may be presented by the personal representative within one (1) year after the incident giving rise to the alleged injury or loss resulting in such death. If the person for whose death the claim is made has presented notice that would have been sufficient had he or she lived, an action for wrongful death may be brought without any additional notice.

Section 13. Time for Approval or Denial of Claim – Denial Requirements for Suit

A. A claim is deemed denied if the Department of Risk Management fails to approve the claim in its entirety within ninety (90) days of receipt, unless the interested parties have reached a settlement before the expiration of that period. A person may not initiate a suit against the Nation

unless the claim has been denied in whole or in part. The claimant and the Nation may continue attempts to settle a claim, however, settlement negotiations do not extend the date of denial unless agreed to in writing by the claimant and the Nation.

B. No action for any cause arising under this act shall be maintained unless valid notice has been given to the Nation and the action is commenced within ninety (90) days after denial of the claim as set forth in this Section. The claimant and the Nation may agree in writing to extend the time to commence an action for the purpose of continuing to attempt settlement of the claim except no such extension shall be for longer than two (2) years from the date of the incident giving rise to the alleged injury or loss.

Section 14. Settlement of Claims – Liability Insurance

A. The Nation, may settle or defend against a claim or suit brought against it or its employee under this Act and may appropriate money for the payment of settlement or defense costs.

B. If an insurance policy or contract of liability insurance covering the Nation or employee is applicable, the terms of the policy govern the rights and obligations of the Nation and the insurer with respect to the investigation, settlement, payment, and defense of claims or suits against the Nation or its employees covered by the policy.

C. The Nation shall not be liable for any costs, judgments, or settlements paid through an applicable contractor policy of insurance, but shall be entitled to set-off those payments against liability of the Nation arising from the same claim.

D. The Nation shall have the right of subrogation against the insurer issuing any applicable contractor policy of insurance to the monetary limit of said policy of insurance or contract, if judgment or settlement of any claim arising pursuant to this Act results in the imposition of monetary liability upon the Nation.

Section 15. Collection of Judgments – Insurance Policy

A. Judgments recovered against the Nation under the provisions of this Act shall be enforced in the manner as provided for under the provisions of this Act.

B. If a judgment is obtained against the Nation that is covered by a contract or policy of liability or indemnity insurance, the holder of the judgment may use the methods of collecting the judgment which are provided by the policy or contract or law to the extent of the limits of coverage provided.

C. Nothing in this Act shall allow a lien on Tribal property.

Section 16. Liability for Employees' Acts and Omissions – Recovery from Employee Exclusive Remedy

The Nation shall have the right to recover from an employee for any claim or action under this Act, or any other claim, any payments made by it for any judgment or settlement, or portion thereof, and for costs or fees incurred on behalf of an employee's defense if it is shown that the conduct of the employee which gave rise to the claim or action was outside the employee's scope of employment, or if the employee fails to cooperate in good faith in the defense of the claim or action. A judgment or settlement in an action or claim under this Act shall constitute a complete bar to any action by the claimant against the Nation or an employee whose conduct gave rise to the claim resulting in that judgment or settlement.

Section 17. Attorney Fees

A. The Nation shall not be liable for an award for attorney fees and costs and a judgment against the Nation under this Act shall not include an award of attorney fees and costs.

B. No attorney representing a Claimant under this Act shall charge, demand, receive, or collect for services rendered, fees in excess of twenty-five percent (25%) of any judgment rendered under this act, or in excess of twenty percent (20%) of any award, compromise, or settlement made pursuant to this Act. An attorney representing a claimant shall certify at the time of presentation of the claim that the attorney's fee arrangement with the claimant complies with this Section.

Section 18. Counsel to Defend

When the Nation has a duty to defend any action pursuant to the provisions of this Act, it shall be the duty of counsel appointed by the Chief and confirmed by the Tribal Council to defend all such actions. When an insurer has a duty to defend any action pursuant to this Act, the insurer may engage counsel to defend the Nation.

Section 19. Venue – Parties – Service of Summons – Insurance

A. The Choctaw Nation of Oklahoma courts shall have exclusive jurisdiction for all actions against the Nation.

B. Actions instituted pursuant to the provisions of this Act shall name as defendant the Choctaw Nation of Oklahoma. In no instance shall an employee acting within the scope of employment be named as a defendant.

C. All actions filed against the Nation shall be filed in the name of the real party or parties in interest, and, in no event, shall any claim be presented nor recovery be made from the Nation under the right of subrogation.

D. In all actions against the Nation, service shall be perfected by mailing, via certified mail, postage prepaid, return receipt requested, a summons and a copy of the petition to the Clerk of the District Court.

E. No attempt shall be made in the trial of any action brought against the Nation within the scope of this Act to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff.

Section 20. Civil Procedure

The Rules of Civil Procedure, as promulgated and adopted by the Tribal Council insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this Act, shall apply to and govern all actions brought under the provisions of this Act.

Section 21. Prospective Application

A. This Act does not apply to any claim against the Nation arising before the effective date of this Act. Any such claim may be presented and enforced to the same extent and subject to the same procedures and restrictions as if this Act had not been adopted.

B. The Nation's sovereign immunity existed in full force and effect prior to the enactment of this Act.

Section 22. Distinctions Between Functions Preserved – Application of Act to Both

The distinction existing between governmental functions and proprietary functions of the Nation shall not be affected by the provisions of this Act; however, the provisions of this Act shall apply to both governmental and proprietary functions.

Section 23. Administrative Process

A. These rules and regulations shall only govern those proceedings brought under this Act.

B. All actions commenced under this Act shall be tried by a Judge of the District Court without a jury.

C. The District Court has jurisdiction over a Claim only after said Claim has been denied by the Department of Risk Management pursuant to this Act.

D. A judgment of the District Court may not be appealed.