

Cherokee Nation Code Annotated

Title 73: Sovereignty

Chapter 1: Sovereign Immunity

§ 5. Delegation of authority as to business entities

Cite as: 73 CNCA § 5

The Principal Chief is authorized to execute a waiver of sovereign immunity and/or to agree not to raise the defense of sovereign immunity as to a business entity only as follows:

1. All waivers shall be in writing and signed by the Principal Chief and verified by the Secretary of State. A copy shall be filed and indexed in the Office of the Principal Chief and with the office of the Tribal Council. This signature authority shall not be delegated.
2. A waiver may be included in an agreement or contract containing other terms.
3. Except as provided in subdivision 5, all waivers shall contain provisions limiting:
 - a. Who may bring a claim. Only parties to a contract shall be eligible to bring a claim.
 - b. Type of claims allowed. Any waiver shall be limited to obligations or rights arising under a written contract or agreement in a breach of contract claim.
 - c. Types of relief or damages. The waiver shall be specifically limited to an award of actual or liquidated damages under the terms of the agreement. The waiver shall not allow recovery from the business entity for punitive or exemplary damages, nor shall the waiver allow recovery from any elected officials, officers or employees of Cherokee Nation for monetary damages, punitive or exemplary damages, court costs or attorney fees.
 - d. Choice of forum. Preference for jurisdiction of lawsuits pursuant to a waiver shall be filed, subject to a court asserting jurisdiction, first in Cherokee Nation courts, second in federal courts, third in state court.
 - e. Choice of law. Preference of applicable law shall be prioritized as follows: Nation law first, federal law second, and state law third.
 - f. Duration of the waiver. Waivers shall be limited to the duration of the contract.
4. Any waiver granted under this section shall not be canceled, terminated, or withdrawn except by agreement of the party entitled to the waiver.
5. A waiver conforming to the minimum "sue and be sued" requirements of the Small Business Administration for participation in the 8(a) Business Development program, 13 C.F.R. § 123.109(c)(1), as amended, is exempt from the limits of subdivision 3.

Historical Data

LA 23-04, eff. June 17, 2004. Amended LA 16-05, eff. April 20, 2005.