

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: MAY 03 2018

ORDINANCE NO.: 206 (2018)

WHEREAS, Cherokee Code Chapter 22 was established in Ordinance No. 790 (2001) and expresses the statutes of limitations for actions brought in the Cherokee Court; and

WHEREAS, Chapter 22 has not been amended since 2001 and will be improved, and Tribal sovereignty will be enhanced, by clarifying some language, by expanding the time in which the Tribal government can bring an action, and by expressing that the Federal Tort Claims Act and the Indian Self-Determination and Education Assistance Act apply to limit the liability of the Tribe in certain actions; and

WHEREAS, in particular, the six-year statute of limitations expressed in Chapter 22 for actions brought by the Tribe may hinder the Tribe's ability to perform important governmental functions for the benefit of Tribal members and community; and

WHEREAS, Chapter 22 should be amended to reflect the policy that, to fully exercise and protect the Tribe's inherent sovereignty, the Tribe should at all times have access to the remedies available in the Tribal Court.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in council assembled, at which a quorum is present, that Cherokee Code Chapter 22 is hereby amended as follows:

Sec. 22-4. - One year.

The following actions must be brought within one year after the cause of action accrues:

- (1) All actions against the Tribe or its officers acting in their official capacity, regardless of the form or grounds for the action and regardless of any other expression in this chapter.
- (2) Actions for libel, slander, assault, battery or false imprisonment.
- (3) For the year's allowance of a surviving spouse or children.
- (4) For a deficiency judgment on any debt, promissory note, bond or other evidence of indebtedness.

Sec. 22-6. - Six years.

The following actions must be brought within six years after the cause of action accrues:

- ~~(1) Any action brought by the Tribe, notwithstanding any other provision of this chapter.~~
- ~~(2) Actions for the prosecution of all crimes prohibited by the Tribe.~~

1 ~~(3)~~ (1) For injury to any intangible right in land, such as an easement.

2 ~~(4)~~ (2) Actions on an express or implied contract or in tort for damages based upon or arising
3 out of the defective or unsafe condition of an improvement to real property.

4 a. The actions must be brought within six years from the last act or omission of the
5 defendant giving rise to the cause of action or substantial completion of the
6 improvement, whichever is later. For purposes of this subdivision, "substantial
7 completion" means that degree of completion of a project or improvement upon
8 which the owner can use the project or improvement for the purpose for which it was
9 intended. The date of substantial completion may be established by written
10 agreement.

11 b. For actions for personal injury based on or arising out of the defective or unsafe
12 condition of an improvement to real property shall not accrue until the injury, loss,
13 defect or damage becomes apparent or ought reasonably to have become apparent to
14 the plaintiff. However, no action may be brought more than seven years from the
15 later of the specific last act or omission or substantial completion.

16 ~~(5)~~ (3) Actions based on or arising out of any alleged defect or any failure in relation to a
17 product. The action must be brought within six years after the date of initial purchase of
18 the product for use or consumption.

19
20 **Sec. 22-7. - Seven years for all actions not expressly articulated.**

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22 All actions not expressly articulated in this chapter or other chapter of the Cherokee Code
23 must be commenced within seven years after the cause of action accrues.

24
25 **Sec. 22-7A 8. - Ten years upon a court judgment or decree.**

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27 The following actions must be brought within ten years: actions upon a judgment or decree
28 rendered by a court or a justice of the peace, measured from the date of rendition of the judgment
29 or decree. No such action may be brought more than once, or have the effect to continue the lien
30 of the original judgment.

31
32 **Sec. 22-9. – No statute of limitations.**

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34 There shall be no statute of limitations on actions brought by the Tribe arising out of or
35 related to a governmental function.

36
37 **Sec. 22-8 10. - Conflicts with federal law—Federal law prevails.**

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39 If federal law provides a different limitation for an action than is provided in this chapter or
40 other chapter of the Cherokee Code, the limitation in the federal law shall prevail. The Federal
41 Tort Claims Act and the Indian Self-Determination and Education Assistance Act, as amended,
42 shall act as a limitation on all tort claims brought in the Cherokee Court and shall require
43 exhaustion of remedies under federal law prior to subject matter jurisdiction in the Cherokee Court.

1 **Sec. 22-9 11. - Disabilities.**

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3 A person who is entitled to commence an action and who, at the time the cause of action
4 accrued, is under a disability such as minority, insanity, incompetency or other disability
5 recognized by the Cherokee Court, may bring an action within the periods provided in this chapter,
6 after the disability is removed. For those persons under a disability on July 1, 2001, as a result of
7 being imprisoned on a criminal charge, or in execution under sentence for a criminal offense, the
8 statute of limitations shall commence to run and no longer be tolled from July 1, 2001.

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10 **Sec. 22-~~10~~ 12. - Cumulative disabilities; disability must exist when right of action accrues.**

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12 (a) If two or more disabilities coexist at the time the right of action accrues, or if one disability
13 supervenes an existing one, the limitation does not attach until both disabilities are removed.
14 (b) A person may not avail himself of a disability unless the disability existed when the right of
15 action accrued, except as authorized in this section for cumulative disabilities.

16
17 **Sec. 22-~~11~~ 13. - Death before limitation expires; action by or against personal**
18 **representative or collector.**

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20 (a) If a person entitled to bring an action dies before the expiration of the period of limitation
21 for bringing the action, and the cause of action survives, an action may be commenced by his
22 personal representative or collector after the expiration of that time, and within one year from
23 the person's death.
24 (b) If a person against whom an action may be brought dies before the expiration of the time for
25 bringing the action, and the cause of action survives, an action may be begun against his
26 personal representative or collector after the expiration of that time. Provided, the action must
27 be brought or notice of the claim upon which the action is based must be presented to the
28 personal representative or collector within two years of the date of death.
29 (c) The time that elapses during a controversy on the probate of a will or granting of letters of
30 administration is not counted when calculating time under this section, until an administrator
31 is duly appointed, with authority to sue or be sued.

32
33 **Sec. 22-~~12~~ 14. - Transition provision.**

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35 The limitation periods established herein apply to all actions filed on or after the effective date
36 of this chapter. Actions that accrued before the effective date of this chapter and are not already
37 barred by a pre-existing statute of limitations must be filed within: (a) The limitation period
38 established by this chapter; or (b) one year after the effective date of this chapter, whichever is
39 later.

40
41 **Sec. 22-~~13~~ 15. - New promise must be in writing.**

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43 No acknowledgment or promise is evidence of a new or continuing contract, from which the
44 period of limitations runs, unless it is contained in a writing signed by the party to be charged
45 thereby. However, this section does not alter the effect of any payment of principal or interest.

1 **Sec. 22-14 16. - Actions stayed by injunction or prohibition.**

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3 When the commencement of an action is stayed by an injunction or prohibition imposed by
4 ordinance of the Tribe or an order of the Cherokee Court, the time during which the injunction or
5 prohibition exists is not counted as part of the time for which the commencement of the action is
6 limited.

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9 BE IT FURTHER ORDAINED, that all ordinances and resolutions inconsistent with this
10 ordinance are rescinded, and this ordinance shall become effective upon ratification
11 by the Principal Chief.
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17 *Submitted by the Office of the Attorney General*