

TABLED

**CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA**

Date: OCT 22 2015

ORDINANCE NO. 38 (2015)

WHEREAS, The Tribal Council of the Eastern Band of Cherokee Indians has the authority and responsibility to enact laws for the protection and best interests of its enrolled member children; and

WHEREAS, the Minors Trust Fund has been established to keep and safeguard per capita shares of gaming revenue for enrolled member children and then to release those funds when those children are eligible based on defined circumstances defined by tribal law; and

WHEREAS, the amount of an enrolled child's share of per capita distributions safeguarded in the Minors Trust Fund has accumulated to the point that the distributions of the entire fund allocation upon eligibility is no longer a responsible and prudent course of action for this government to make in the best interests of these enrolled member children.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Annual Council assembled, at which a quorum is present, that Chapter 16-C of the Cherokee Code be amended to include a staggered distribution from the Minors Trust Fund to read as follows:

Sec. 16C-6. - Minors and other legal incompetents.

The interests of minor and legally incompetent members otherwise entitled to receive per capita payments shall be protected as follows:

(a)

Trust Fund for enrolled minor and incompetent members.

- (1) Within 60 days after approval of this section by the Secretary of Interior, the Tribe shall establish a legal trust (hereinafter "the Minors Trust Fund") for the benefit of all minor members and legally incompetent members who shall be eligible for per capita payments.

- (2) Members of the Investment Committee shall serve as the Trustees of the Minors Trust Fund, provided that there shall be no fewer than three Trustees. The Trustees shall select an institutional Manager and such other advisors as they deem necessary, with suitable expertise and discretion to administer the Minors Trust Fund and invest its assets. The Minors Trust Fund shall be invested in a reasonable and prudent manner so as to protect the principal and seek a reasonable return.
- (3) The Minors Trust Fund shall be established as a "grantor" trust, under which the Tribe is the grantor and owner of the trust for the benefit of its enrolled minor and incompetent members
- (4) The Minors Trust Fund shall comply with all applicable Internal Revenue Code provisions and Internal Revenue Service (IRS) regulations, revenue procedures, revenue rulings, or other guidance in force from time to time, to ensure that amounts contributed to and held in the fund shall not be taxable to the individual enrolled member until they are actually distributed, or made available for distribution pursuant to this section, to the individual enrolled member. The necessary provisions to achieve these goals shall be included in the trust documents.
- (5) *Contingent Provisions.* To the extent that applicable law and IRS guidance allows the following trust provisions to be included without triggering adverse tax consequences to the individual trust beneficiaries (e.g., taxation prior to actual distribution of the trust funds), the following shall be included in, or later added by amendment to, the trust documents. To the extent that the tax consequences of including these provisions is unclear or uncertain under applicable law or IRS guidance, the Trustees of the Minors Trust Fund are authorized to request an IRS private letter ruling and to act in accordance with any IRS guidance received pursuant to such a request.
- ~~(A) Prior to receiving a distribution, an enrolled member who reaches the age of 18 years must submit the following documentation: (1) the original or a certified copy of their high school diploma or GED; (2) if the member has been home schooled, a writing from the state agency in the state in which the member was home schooled indicating that the member has successfully passed the state-wide test accepted by the state for such students. The enrolled member must submit the documentation to the Trustees prior to receiving any funds from the Minors Trust Fund. If the Tribe determines that the diploma, GED or other writing is questionable, the Tribe may require other proof. Proof of completion of a course of studies from a correspondence school is not acceptable; a student or graduate of a correspondence school must also prove that they have successfully passed the same or a similar state-wide test as required in this subsection of home school graduates. Effective April 1, 2011, any minor member will be required to complete the online Manage Your EBCI Money Course and include his/her Certificate of Completion to be entitled to receive~~

~~any monies. Any minor member, who fails to submit the appropriate information as described above shall not be entitled to any monies held on their behalf in the Minors Trust Fund until (1) the minor member has provided evidence of attaining such a degree and Certificate of Completion for the online Manage Your EBCI Money Course or (2) the minor member reaches the age of 21 years, whichever occurs first. Minor members with learning disabilities or other disabilities may present a certificate of attendance showing that the student has attended a full 12 years of school and that certificate shall be deemed to be an equivalent degree for purposes of this section.~~

(A) There shall be four (4) staggered distributions from the minor's trust fund to eligible members reaching the age of majority as follows:

- 1) The first distribution shall be in an amount which is the lesser of \$25,000.00 or one fourth (¼) the amount of the total amount held in trust for the eligible member, and shall be made upon meeting the following eligibility criteria:
 - a. Prior to receiving the first distribution, an enrolled member who reaches the age of 18 years must submit the following documentation: (1) the original or a certified copy of their high school diploma or GED; (2) if the member has been home schooled, a writing from the state agency in the state in which the member was home schooled indicating that the member has successfully passed the state-wide test accepted by the state for such students. The enrolled member must submit the documentation to the Trustees prior to receiving any funds from the Minors Trust Fund. If the Tribe determines that the diploma, GED or other writing is questionable, the Tribe may require other proof. Proof of completion of a course of studies from a correspondence school is not acceptable; a student or graduate of a correspondence school must also prove that they have successfully passed the same or a similar state-wide test as required in this subsection of home school graduates. Effective April 1, 2011, any minor member will be required to complete the online Manage Your EBCI Money Course and include his/her Certificate of Completion to be entitled to receive any monies. Any minor member, who fails to submit the appropriate information as described above shall not be entitled to any monies held on their behalf in the Minors Trust Fund until (1) the minor member has provided evidence of attaining such a degree and Certificate of Completion for the online Manage Your EBCI Money Course or;
 - b. the minor member reaches the age of 21 years, whichever occurs first. Minor members with learning disabilities or other disabilities may present a certificate of attendance showing that the student has attended a full 12 years of school and that certificate shall be deemed to be an equivalent degree for purposes of this section;

- 2) The second distribution shall be in an amount which is the lesser of \$25,000.00 or one fourth ($\frac{1}{4}$) the amount of the total amount remaining after the first distribution held in trust for the eligible member, and shall be made when the member reaches the age of 21 years. If the first distribution occurs under 1(b) above, then the eligible member shall be distributed both amounts of the first and second disbursements, at the same time, totaling the lesser of \$50,000.00 or one half ($\frac{1}{2}$) the total of the total amount held in trust for the eligible member.
- 3) The third distribution shall be in an amount of the lesser of \$25,000.00 or one fourth ($\frac{1}{4}$) the amount of the total amount held in trust for the eligible member and shall be made when the eligible member reaches the age of 25 years.
- 4) The fourth distribution shall be in an amount totaling the entire remaining amount held in trust for the eligible member and shall be made when the eligible member reaches the age of 30 years.

BE IT FURTHER ORDAINED that all other sections of Section 16C-6 remain unchanged.

BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief.

Submitted by: Principal Chief Patrick Lambert