TABLED

Cherokee Council House
Cherokee, North Carolina

OCT 13 2025
Date

ORDINANCE NO. 3 (2025)

ORDINANCE APPROVING AMENDMENTS TO THE UCC ORDINANCE CODIFIED AT CHAPTER 16D OF THE CHEROKEE CODE TO INCLUDE THE TRIBAL BINGO ENTERPRISE

WHEREAS, The Eastern Band of Cherokee Indians (the "Tribe") is a federally recognized Indian tribe; and

WHEREAS, the Charter and Governing Document of the Tribe provides that the Tribal Council of the Tribe (the "Tribal Council") has the power to promulgate ordinances and resolutions for the economic advancement of the Tribe; and

WHEREAS, the Tribal Bingo Enterprise (the "TBE") is authorized by ordinance of the Tribal Council as an instrumentality of the Tribe to conduct all forms of gaming as defined in 25 U.S.C. 2703(70 ("Class II Gaming"); and

WHEREAS, the COVID-19 global pandemic cause the TBE Class II operation to close; and

WHEREAS, pursuant to Resolution 521(2025) the Tribal Council authorized the TBE to construct a Class II gaming facility with related amenities on Parcel 342, Upper Cherokee Community Parcel, Cherokee, North Carolina and to secure financing for the construction of the new Class II Gaming facility through a loan or funds available under the Class III loan agreement in an amount not to exceed $35,000,000.00; and

WHEREAS, the TBE is currently negotiating with the lenders under the Tribal Casino Gaming Enterprise ("TCGE") Class III Loan Agreement to secure the funds required for the construction of the new Class II facility and to induce lenders (both now and in the future) to extend credit to the TBE to finance the construction, development and operations of the TBE's Class II facility, it is necessary to establish certainty with respect to the rights and obligations of creditors of the TBE for the TBE to be included as an instrumentality of the Tribe covered by the UCC Ordinance codified at Chapter 16D of the Cherokee; and

NOW THEREFORE, BE IT ORDAINED by the Tribal Council in council assembled in which a quorum is present, that pursuant to the authority vested in the Tribal Council by its Governing Document and its inherent tribal sovereign authority to oversee, protect and preserve the assets and benefits of the Tribe together with its capacity and authority to conduct both governmental and business activities by and on behalf of the Tribe, the Tribal Council hereby adopts the following Ordinance to amend the current UCC Ordinance codified at Chapter 16D to include the TBE in addition to the TCGE as follows:

1. The title of Chapter 16D of the Cherokee Code is amended as follows:

Chapter 16D UCC ORDINANCE FOR TRIBAL CASINO GAMING ENTERPRISE ("TCGE") AND TRIBAL BINGO ENTERPRISE ("TBE")

2. Section 16D-1of the Cherokee Code is hereby amended as follows:

Sec. 16D-1. Adoption of articles 1 and 9.

(a) Except as otherwise provided or modified by this chapter, all provisions of article 1 and article 9 of the Uniform Commercial Code, as set forth in the 1999 Official Text of the Uniform Commercial Code drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws (the "UCC"), are adopted as the law of this Tribe applicable to the Tribe, the TCGE, the TBE and any other instrumentality of the Tribe who succeeds to the ownership or operation of ~~the Permanent Casino~~Class II and/or Class III gaming operations and assets of the TCGE or TBE with respect to the creation, attachment, perfection, the effect of perfection or nonperfection, priority, rights after default and enforcement of security interests in the personal property assets (other than fixtures) of the ~~Permanent Casino~~TCGE or TBE (but the provisions of this chapter shall not be applicable to any other assets or transactions of the Tribe or any other instrumentality of the Tribe).

(b) To the extent that article 1 and article 9 incorporate definitional provisions from articles 2, 2A, 3, 4, 5, 6, 7 or 8 of the UCC, such definitions as set forth in articles 2, 2A, 3, 4, 5, 6, 7 or 8 of the UCC are adopted.

(c) To the extent that article 1 and article 9 refer to nondefinitional provisions of articles 2, 2A, 3, 4, 5, 6, 7 or 8 of the UCC, any court interpreting this chapter shall be guided by such provisions of articles 2, 2A, 3, 4, 5, 6, 7 or 8 to the extent necessary to give the intended effect to article 1 and article 9, but such provisions of articles 2, 2A, 3, 4, 5, 6, 7 or 8 are not specifically adopted as the law of this Tribe.

(d) As adopted by this chapter, all references in article 1 and article 9 to "this State" are modified to refer to the Tribe or TCGE or TBE, or to lands under the jurisdiction of the TCGE or TBE or the Tribe, as the context requires.

(e) As used in this chapter, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico, including lands under the jurisdiction of this Tribe.

3. Section 16D-2 of the Cherokee Code is amended as follows:

Sec. 16D-2. Amendments to article 1 of the Uniform Commercial Code.

Article 1 of the UCC, as adopted by this chapter, is amended as follows:

(1) Section 1-101 is deleted and all references in article 1 to this "Act" shall be deemed to refer to this chapter.

(2) Section 1-102(2) is deleted.

(3) Section 1-103 is modified to provide as follows: "Unless displaced by the particular provisions of this chapter, the principles of law and equity as developed in this Tribe and, where required to supplement Tribal law, the individual states of the United States, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions."

(4) Section 1-105 is modified to provide as follows:

(a) "Except as provided hereafter in this section, when a transaction bears a reasonable relation to the Tribe, TCGE, the TBE or any other instrumentality of the Tribe who succeeds to the ownership and operation of the ~~Permanent Casino~~Class II and/or Class III gaming operations and assets of the TCGE or TBE, and also to another nation or state within such other nation, including but not limited to an individual state of the United States, the parties may agree that the law either of this Tribe or such other nation or state within such nation shall govern their rights and duties."

(b) Where the perfection provisions of article 9 specify the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified."

4. Section 16D-3 of the Cherokee Code is amended as follows:

Sec. 16D-3. Amendments to article 9 of the Uniform Commercial Code.

Article 9 of the UCC, as adopted by this chapter, is amended as follows:

(1) Section 9-101 is modified and all references in article 9 to the Uniform Commercial Code shall be deemed to refer to this chapter.

(2) Section 9-109(c)(2) and (3) are deleted.

(3) Section 9-201(b), (c) and (d)(1) are deleted.

(4) Section 9-301 is amended to read in its entirety as follows:

"Except as otherwise provided in Sections 9-303 through 9-306, in any transaction or matter to be covered as provided in Section 1(a) of this chapter in which the Eastern Band of Cherokee Indians, the Tribal Casino Gaming Enterprise, the Tribal Bingo Enterprise or any other instrumentality of the Eastern Band of Cherokee Indians is a debtor, the law of the Eastern Band of Cherokee Indians governs

perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral."

(5) Section 9-305(c) is amended to read in its entirety as follows:

"(c) When perfection governed by law of Eastern Band of Cherokee Indians. The law of the Eastern Band of Cherokee Indians governs:

(1) perfection of a security interest in investment property by filing;

(2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary."

(6) Section 9-311(a)(2) is deleted.

(7) Section 9-312(a) is amended to read in its entirety as follows:

"(a) Perfection by filing permitted. A security interest in chattel paper, negotiable documents, instruments, investment property or money may be perfected by filing."

(8) Section 9-312(b) is amended to read in its entirety as follows:

"(b) Control or possession of certain collateral. Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 9-314; and

(2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314."

(9) Except as specifically provided in subsections (j) and (k) below, Part 5 of article 9 of the UCC is deleted, and Part 5 of article 9, in the form now enacted in the State of North Carolina (the "State") is adopted as the law of this Tribe for purposes of this chapter, with such changes to the numbering of the sections in Part 5 of article 9 of the Uniform Commercial Code adopted in North Carolina as are appropriate to conform the numbering of such sections to the numbering of the sections in Part 5 of article 9 of the UCC.

(10) Section 9-501 is amended to read in its entirety as follows:

"§ 9-501. Filing Office.

(a) Filing offices. Except as otherwise provided in subsection (b) of this section, the office in which to file a financing statement to perfect a security interest or agricultural lien is:

(1) The office designated in the State of North Carolina for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures."

(11) As adopted by subsection (i) above, Part 5 of article 9 is modified as follows:

"As adopted by this chapter, all references in Part 5 to (i) "State" are to the State of North Carolina and (ii) the offices of the Secretary of State, the county recorder or other offices shall be interpreted to refer to such offices as established from time to time by the State of North Carolina or its political subdivisions."

5. Section 16D-4 is amended as follows:

Sec. 16D-4. Miscellaneous.

(a) All tribal laws and parts of tribal laws inconsistent with this chapter are hereby repealed.

(b) Nothing contained in this chapter shall be construed as a waiver of the sovereign immunity of the Tribe or the TCGE or the TBE, as an instrumentality of the Tribe, or any of their respective officers, agents or instrumentalities.

(c) This chapter amends, restates and supersedes the prior UCC Ordinances ~~387(1996~~914 (2001) and ~~654~~993 (200~~1~~3) in their entirety and chapter 16D of the Cherokee Code is restated in its entirety in accordance with this chapter and is intended to apply to all transactions of the TCGE since the date of adoption of the original UCC Ordinance 387 (1996) on October 7, 1996 and to apply to all transactions of the TBE since the date of adoption on July 10, 2025 of Resolution 521 (2025).

(d) This chapter shall remain in force and shall not be amended or repealed so long as ~~there are any assets of the Permanent Casino~~ Class II or Class III gaming assets owned or operated by the Tribe, the TCGE, the TBE or any other instrumentality of the Tribe.

Submitted by: Tribal Bingo Enterprise Board of Advisors