



Legislation Text

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Committee #
Assigned: 6/14/04 Committee: Council Mtg.

Sponsor: Linda O'Leary
Author: Todd Hembree

An Act

Legislative Act 26-04

AN ACT AMENDING TITLE 44 OF THE
CHEROKEE NATION MARRIAGE AND FAMILY ACT, PROVIDING FOR
SEVERABILITY AND DECLARING EMERGENCY

BE IT ENACTED by the Cherokee Nation:

Section 1. Title and Codification

This Act shall be titled as "The Cherokee Nation Marriage and Family Protection Act of 2004" and codified as Title 43, of the Cherokee Code Annotated.

Section 2 Purpose

The purpose of this Act is to define Marriage as one man and one woman to protect the traditional definition of Marriage in the Cherokee Nation and define other crimes of moral character.

Section 3. Legislative History

Title 43 of the Cherokee Nation Code Annotated, Legislature Act ; and Article V,
Section 7 of the Cherokee Nation Constitution.

Section 4. Substantive Provisions

Amend Title 43 ♦♦ 1-9 of the Cherokee Nation Code Annotated to add new substantive language:

♦1: Marriage as a civil contract-Consent of parties

Marriage, so far as its validity in law is concerned, is a civil contract between one man and one woman, to which the consent of the parties, capable in law of contracting, is essential.

2: Who may be married

Every person who shall have attained the age of eighteen years shall be capable in law of contracting marriage, if otherwise competent. But in all cases where the person is less than eighteen years of age, the consent of the mother, father, or guardian of such minor shall be given; otherwise such marriage shall be null and void unless it shall appear that the parties have no parent or guardian then living, and at the time of marriage are self-dependent.

♦ 3: Who may not be married

No marriage shall be contracted whilst either of the parties has a husband or wife living; nor between parties who are nearer of kin than first cousins whether of the half or of the whole blood; nor between parties who are insane or idiotic nor between parties of the same gender.

♦ 4: Who may perform marriages

Marriages may be solemnized by any of the judges of the courts of this Nation, or by any ordained minister of the Gospel in regular communion with any religious society, or by religious leaders of the Keetoowah Society or the Four Mothers Society. Judges, ministers or religious leaders shall obtain a license from the court clerk of the Nation. A thirty (30) day notice and objection period will follow the application for the license. If there are no objections, the license will be granted at the close of the period. If there are objections, the license will not be granted until the District Court of the Cherokee Nation has ruled on the validity of the objections. The court clerk may charge a reasonable fee for the license.

♦ 5: Form of marriage

No particular form of marriage shall be required in the solemnization of marriages, except that the parties shall solemnly declare in the presence of the judge, minister, or religious leader officiating, that they take each other as husband and wife.

♦6: Report

It shall be the duty of all persons who shall, within the Nation, join two citizens thereof in wedlock, or who shall so join a citizen thereof with a citizen of any other government, to report the same to the court clerk for registration, giving the full names of the contracting parties, their ages and previous places of residence on the certificate obtained by the contracting parties from the court clerk. The clerk shall at once make a record of the same, in a book to be kept for that purpose.

♦7: Violation of preceding section

Every person who shall, within the Nation, violate the provisions of this act by joining minors in the bonds of matrimony without the consent of the father, mother or guardian, except as hereinbefore expressly provided, shall be liable to a fine or to imprisonment at the discretion of the Court.

♦8: Prohibited marriages declared void

All marriages which are herein prohibited on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall be absolutely void in this Nation, without any judgment of divorce or other legal proceeding.

♦9: Common law marriage

The Cherokee Nation shall recognize that a "common law marriage" exists when parties, capable of entering into a marital relation, agree to become husband and wife without a formal ceremony, and thereafter publicly maintain such relation.

♦10: Adultery defined- Who may institute prosecution

Adultery is the unlawful voluntary sexual intercourse of a married person with one of the opposite sex; and when the crime is between persons, only one of whom is married both are guilty of adultery. Prosecution for adultery can be commenced and carried on against either of the parties

to the crime only by his or her own husband or wife as the case may be, or by the husband or wife of the other party to the crime: Provided, that any person may make complaint when persons are living together in open and notorious adultery.

◆11: Punishment for adultery

Every person guilty of the crime of adultery shall be punished by imprisonment in the penitentiary not exceeding one (1) year or by fine not exceeding Five Hundred Dollars (\$500.00), or both such fine and imprisonment.

◆12: Bigamy defined

Every person who having been married to another who remains living, marries any other person except in the cases specified in the next section is guilty of bigamy.

◆13: Exceptions to the rule of bigamy The last preceding section does not extend;

1. To any person whose husband or wife by a former marriage has been absent for five (5) successive years without being known to such person within that time to be living; nor,
2. To any person whose husband or wife by a former marriage as absented himself or herself from his wife or husband and has been continually remaining without the United States for a space of five (5) years together; nor,
3. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court; nor,
4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

◆14: Punishment of bigamy

Every person guilty of bigamy is punishable by imprisonment in the penitentiary not exceeding one (1) year.

Section 5. Provisions as cumulative

The provisions of this act shall be cumulative to existing law. Section 6. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 7. Emergency declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Enacted by the Council of the Cherokee Nation on the 14th day of June, 2004.

Joe Grayson, Jr. President Council of the Cherokee Nation

ATTEST: Bill John Baker, Secretary Council of the Cherokee Nation

Approved and signed by the Principal Chief this 18th day of JUNE, 2004.

Chadwick Smith, Principal Chief Cherokee Nation

ATTEST: Callie Catcher, Secretary/Treasurer Cherokee Nation

YEAS AND NAYS AS RECORDED:

Bill John Baker	YEA	Melvina Shotpouch		YEA
Audra Smoke-Connor	YEA	Meredith Frailey	YEA	
S. Joe Crittenden	YEA	John F. Keener	YEA	
Jackie Bob Martin	YEA	Cara Cowan		YEA
Phyllis Yargee	YEA	Buel Anglen		YEA
David W. Thornton, Sr	YEA	William G. "Bill" Johnson	YEA	
Don Garvin		YEA Charles "Chuck" Hoskin		YEA
Linda Hughes-O'Leary	YEA			