

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0195-19

**DATE:** July 3, 2019

**TITLE OF RESOLUTION:** RELATING TO THE LAW AND ORDER, AND HEALTH, EDUCATION & HUMAN SERVICES COMMITTEES, AND THE NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING UNITED STATES SENATE BILL NO. 788 - "EQUALITY ACT" WHICH WILL EXPAND AND CLARIFY THE PROTECTIONS AND REMEDIES AGAINST DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION, GENDER IDENTITY, AND SEX IN THE AREAS OF EMPLOYMENT, HOUSING, PUBLIC ACCOMODATIONS, PUBLIC, PUBLIC EDUCATION, FEDERAL FUNDING, AND THE JURY SYSTEM.

**PURPOSE:** The purpose of the resolution is to support US Senate Bill S. 788 – "Equality Act" and to authorize the Speaker of Navajo Nation, President of Navajo Nation, and the Navajo Nation Washington office, and their designees, to advocate Navajo Nation's support.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None  
Website Posting Time/Date: \_\_\_\_\_  
Posting End Date: 7/15/19  
Eligible for Action: 7/16/19

Law & Order Committee  
Thence  
Health, Education & Human Services Committee  
Thence  
Naabik'iyáti' Committee

PROPOSED STANDING COMMITTEE RESOLUTION  
24<sup>th</sup> NAVAJO NATION COUNCIL—FIRST YEAR, 2019

INTRODUCED BY



Primary Sponsor

TRACKING NO. 0195-19

AN ACTION

RELATING TO THE LAW AND ORDER, AND HEALTH, EDUCATION & HUMAN  
SERVICES COMMITTEES, AND THE NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING  
UNITED STATES SENATE BILL NO. 788 - "EQUALITY ACT" WHICH WILL  
EXPAND AND CLARIFY THE PROTECTIONS AND REMEDIES AGAINST  
DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION, GENDER  
IDENTITY, AND SEX IN THE AREAS OF EMPLOYMENT, HOUSING, PUBLIC  
ACCOMODATIONS, PUBLIC, PUBLIC EDUCATION, FEDERAL FUNDING, AND  
THE JURY SYSTEM.

WHEREAS:

**Section One. Authority**

- A. The Navajo Nation established the Law and Order Committee ("LOC") as a Navajo Nation Council standing committee and as such empowered LOC to review and recommend resolutions relating to public safety within the Navajo Nation. 2 N.N.C. § 600.
- B. The Navajo Nation established the Health, Education, and Human Services Committee ("HEHSC") as a Navajo Nation Council standing committee and as such empowered HEHSC to review and recommend resolutions relating to health within the Navajo Nation 2 N.N.C. § 400(C)(1).

- 1 C. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation  
2 Council standing committee. 2 N.N.C. § 700 (A) (2012) *see also* CJA-03-13.
- 3 D. The Naabik'íyáti Committee has the power to coordinate all federal, county and state  
4 programs with other standing committees and branches of the Navajo Nation  
5 government to provide the most efficient delivery of services to Navajo Nation. 2  
6 N.N.C. § 701(A)(4).
- 7 E. The Navajo Nation has a government-to-government relationship with the United  
8 States of America, Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.
- 9

10 **Section Two. Findings**

- 11 A. Senator Jeff Merkley (D-Oregon) introduced Senate Bill No. 788 “to expand as well  
12 as clarify, confirm, and create greater consistency in the protections and remedies  
13 against discrimination on the basis of all covered characteristics and to provide  
14 guidance and notice to individuals, organizations, corporations, and agencies  
15 regarding their obligations under the law.” *See Exhibit A.*
- 16 B. U.S. Senate Bill S. 788 - “Equality Act,” proposes updating the Civil Rights Act of  
17 1964. *See Exhibit A.*
- 18 C. Upon passage, Senate Bill S. 788 will expand and clarify the protections and  
19 remedies against discrimination on the basis of sexual orientation, gender identity,  
20 and sex in the areas of employment, housing, public accommodations, public  
21 education, federal funding, credit, and the jury system.
- 22 D. US Senate Bill S. 788 will define and include sex, sexual orientation, and gender  
23 identity among the prohibited categories of discrimination or segregation based on  
24 actual or perceived membership in the class, or association with members of a  
25 protected class. *See Exhibit A.*
- 26 E. Further, Senate Bill S. 788 will modernize the federal definition of “public  
27 accommodations” to include places or establishments that provide (1) exhibitions,  
28 recreation, exercise, amusement, gatherings, or displays; (2) goods, services, or  
29 programs; and (3) transportation services. It will also prohibit an individual from  
30



1 being denied access to a shared facility such as a restroom, locker room, or dressing  
2 room based on the individual's gender identity. This will extend discrimination  
3 protections in the public sphere, thereby providing discrimination-free access and use  
4 of social and public spaces to protected classes. *See Exhibit A.*

5 F. Since time immemorial, Navajo Two-Spirit LGBTQ people have held a sacred place  
6 within Navajo society.

7 G. The Navajo Nation through the Naabik'íyáti Committee, finds US Senate Bill 788  
8 aligns with the Navajo Nation's compassion and respect for LGBTQ people, and  
9 finds it is in Navajo Nation's best interest to support US Senate Bill 788 as a step in  
10 allowing LGBTQ communities, including our Two-Spirit LGBTQ communities, the  
11 freedom from discrimination, protection from injurious practices, and the full pursuit  
12 of happiness as citizens.  
13

14  
15 NOW THEREFORE, BE IT RESOLVED:

16 A. The Navajo Nation hereby supports US Senate Bill 788 - "Equality Act," and urges  
17 the United States Congress to pass and enact US Senate Bill 788 - "Equality Act."

18 B. The Navajo Nation hereby authorizes the Speaker of the Navajo Nation Council,  
19 President of the Navajo Nation, the Navajo Nation Washington Office, and their  
20 respective designees, to advocate on the behalf of the Navajo Nation to support the  
21 passage and enactment of Senate Bill S. 788 - "Equality Act."  
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116TH CONGRESS  
1ST SESSION

# S. 788



To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

## IN THE SENATE OF THE UNITED STATES

MARCH 13, 2019

Mr. MERKLEY (for himself, Ms. COLLINS, Ms. BALDWIN, Mr. BOOKER, Mr. MARKEY, Mr. JONES, Mr. WHITEHOUSE, Mr. BLUMENTHAL, Mr. LEAHY, Ms. HARRIS, Ms. CANTWELL, Mr. VAN HOLLEN, Ms. STABENOW, Mrs. MURRAY, Ms. WARREN, Mr. WYDEN, Ms. CORTEZ MASTO, Ms. KLOBUCHAR, Mr. CARDIN, Ms. ROSEN, Mr. CASEY, Mr. SANDERS, Mr. PETERS, Mr. BROWN, Mr. MENENDEZ, Ms. SMITH, Mr. REED, Mrs. SHAHEEN, Mr. COONS, Mr. KAINE, Mr. HEINRICH, Ms. HASSAN, Mr. BENNET, Mr. MURPHY, Mr. CARPER, Mr. UDALL, Mr. TESTER, Mr. DURBIN, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. SCHATZ, Ms. DUCKWORTH, Mr. KING, Mr. WARNER, Ms. HIRONO, Mr. SCHUMER, and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

## A BILL

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Equality Act".

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Discrimination can occur on the basis of the  
4 sex, sexual orientation, gender identity, or preg-  
5 nancy, childbirth, or a related medical condition of  
6 an individual, as well as because of sex-based stereo-  
7 types. Each of these factors alone can serve as the  
8 basis for discrimination, and each is a form of sex  
9 discrimination.

10 (2) A single instance of discrimination may  
11 have more than one basis. For example, discrimina-  
12 tion against a married same-sex couple could be  
13 based on the sex stereotype that marriage should  
14 only be between heterosexual couples, the sexual ori-  
15 entation of the two individuals in the couple, or  
16 both. Discrimination against a pregnant lesbian  
17 could be based on her sex, her sexual orientation,  
18 her pregnancy, or on the basis of multiple factors.

19 (3) Lesbian, gay, bisexual, transgender, and  
20 queer (referred to as “LGBTQ”) people commonly  
21 experience discrimination in securing access to pub-  
22 lic accommodations—including restaurants, senior  
23 centers, stores, places of or establishments that pro-  
24 vide entertainment, health care facilities, shelters,  
25 government offices, youth service providers including  
26 adoption and foster care providers, and transpor-



1       tation. Forms of discrimination include the exclusion  
2       and denial of entry, unequal or unfair treatment,  
3       harassment, and violence. This discrimination pre-  
4       vents the full participation of LGBTQ people in so-  
5       ciety and disrupts the free flow of commerce.

6           (4) Women also have faced discrimination in  
7       many establishments such as stores and restaurants,  
8       and places or establishments that provide other  
9       goods or services, such as entertainment or transpor-  
10      tation, including sexual harassment, differential pric-  
11      ing for substantially similar products and services,  
12      and denial of services because they are pregnant or  
13      breastfeeding.

14          (5) Many employers already and continue to  
15      take proactive steps, beyond those required by some  
16      States and localities, to ensure they are fostering  
17      positive and respectful cultures for all employees.  
18      Many places of public accommodation also recognize  
19      the economic imperative to offer goods and services  
20      to as many consumers as possible.

21          (6) Regular and ongoing discrimination against  
22      LGBTQ people, as well as women, in accessing pub-  
23      lic accommodations contributes to negative social  
24      and economic outcomes, and in the case of public ac-

1       commodations operated by State and local govern-  
2       ments, abridges individuals' constitutional rights.

3           (7) The discredited practice known as "conver-  
4       sion therapy" is a form of discrimination that harms  
5       LGBTQ people by undermining individuals sense of  
6       self worth, increasing suicide ideation and substance  
7       abuse, exacerbating family conflict, and contributing  
8       to second class status.

9           (8) Both LGBTQ people and women face wide-  
10       spread discrimination in employment and various  
11       services, including by entities that receive Federal fi-  
12       nancial assistance. Such discrimination—

13           (A) is particularly troubling and inappro-  
14       priate for programs and services funded wholly  
15       or in part by the Federal Government;

16           (B) undermines national progress toward  
17       equal treatment regardless of sex, sexual ori-  
18       entation, or gender identity; and

19           (C) is inconsistent with the constitutional  
20       principle of equal protection under the Four-  
21       teenth Amendment to the Constitution of the  
22       United States.

23           (9) Federal courts have widely recognized that,  
24       in enacting the Civil Rights Act of 1964, Congress  
25       validly invoked its powers under the Fourteenth



1 Amendment to provide a full range of remedies in  
2 response to persistent, widespread, and pervasive  
3 discrimination by both private and government ac-  
4 tors.

5 (10) Discrimination by State and local govern-  
6 ments on the basis of sexual orientation or gender  
7 identity in employment, housing, and public accom-  
8 modations, and in programs and activities receiving  
9 Federal financial assistance, violates the Equal Pro-  
10 tection Clause of the Fourteenth Amendment to the  
11 Constitution of the United States. In many cir-  
12 cumstances, such discrimination also violates other  
13 constitutional rights such as those of liberty and pri-  
14 vacy under the due process clause of the Fourteenth  
15 Amendment.

16 (11) Individuals who are LGBTQ, or are per-  
17 ceived to be LGBTQ, have been subjected to a his-  
18 tory and pattern of persistent, widespread, and per-  
19 vasive discrimination on the bases of sexual orienta-  
20 tion and gender identity by both private sector and  
21 Federal, State, and local government actors, includ-  
22 ing in employment, housing, and public accommoda-  
23 tions, and in programs and activities receiving Fed-  
24 eral financial assistance. An explicit and comprehen-  
25 sive national solution is needed to address such dis-

1       crimination, which has sometimes resulted in vio-  
2       lence or death, including the full range of remedies  
3       available under the Civil Rights Act of 1964.

4       (12) Numerous provisions of Federal law ex-  
5       pressly prohibit discrimination on the basis of sex,  
6       and Federal agencies and courts have correctly in-  
7       terpreted these prohibitions on sex discrimination to  
8       include discrimination based on sexual orientation,  
9       gender identity, and sex stereotypes. In particular,  
10      the Equal Employment Opportunity Commission  
11      correctly interpreted title VII of the Civil Rights Act  
12      of 1964 in *Macy v. Holder*, *Baldwin v. Foxx*, and  
13      *Lusardi v. McHugh*.

14      (13) The absence of explicit prohibitions of dis-  
15      crimination on the basis of sexual orientation and  
16      gender identity under Federal statutory law has cre-  
17      ated uncertainty for employers and other entities  
18      covered by Federal nondiscrimination laws and  
19      caused unnecessary hardships for LGBTQ individ-  
20      uals.

21      (14) LGBTQ people often face discrimination  
22      when seeking to rent or purchase housing, as well as  
23      in every other aspect of obtaining and maintaining  
24      housing. LGBTQ people in same-sex relationships  
25      are often discriminated against when two names as-

1       sociated with one gender appear on a housing appli-  
2       cation, and transgender people often encounter dis-  
3       crimination when credit checks or inquiries reveal a  
4       former name.

5           (15) National surveys, including a study com-  
6       missioned by the Department of Housing and Urban  
7       Development, show that housing discrimination  
8       against LGBTQ people is very prevalent. For in-  
9       stance, when same-sex couples inquire about housing  
10      that is available for rent, they are less likely to re-  
11      ceive positive responses from landlords. A national  
12      matched-pair testing investigation found that nearly  
13      one-half of same-sex couples face adverse, differen-  
14      tial treatment when seeking elder housing. Accord-  
15      ing to other studies, transgender people have half  
16      the homeownership rate of non-transgender people  
17      and about 1 in 5 transgender people experience  
18      homelessness.

19          (16) As a result of the absence of explicit prohi-  
20      bitions against discrimination on the basis of sexual  
21      orientation and gender identity, credit applicants  
22      who are LGBTQ, or perceived to be LGBTQ, have  
23      unequal opportunities to establish credit. LGBTQ  
24      people can experience being denied a mortgage, cred-  
25      it card, student loan, or many other types of credit



1 simply because of their sexual orientation or gender  
2 identity.

3 (17) Numerous studies demonstrate that  
4 LGBTQ people, especially transgender people and  
5 women, are economically disadvantaged and at a  
6 higher risk for poverty compared with other groups  
7 of people. For example, older women in same-sex  
8 couples have twice the poverty rate of older dif-  
9 ferent-sex couples.

10 (18) The right to an impartial jury of one's  
11 peers and the reciprocal right to jury service are  
12 fundamental to the free and democratic system of  
13 justice in the United States and are based in the  
14 Bill of Rights. There is, however, an unfortunate  
15 and long-documented history in the United States of  
16 attorneys discriminating against LGBTQ individ-  
17 uals, or those perceived to be LGBTQ, in jury selec-  
18 tion. Failure to bar peremptory challenges based on  
19 the actual or perceived sexual orientation or gender  
20 identity of an individual not only erodes a funda-  
21 mental right, duty, and obligation of being a citizen  
22 of the United States, but also unfairly creates a sec-  
23 ond class of citizenship for LGBTQ victims, wit-  
24 nesses, plaintiffs, and defendants.

1           (19) Numerous studies document the shortage  
2 of qualified and available homes for the 437,000  
3 youth in the child welfare system and the negative  
4 outcomes for the many youth who live in group care  
5 as opposed to a loving home or who age out without  
6 a permanent family. Although same-sex couples are  
7 7 times more likely to foster or adopt than their dif-  
8 ferent-sex counterparts, many child placing agencies  
9 refuse to serve same-sex couples and LGBTQ indi-  
10 viduals. This has resulted in a reduction of the pool  
11 of qualified and available homes for youth in the  
12 child welfare system who need placement on a tem-  
13 porary or permanent basis. Barring discrimination  
14 in foster care and adoption will increase the number  
15 of homes available to foster children waiting for fos-  
16 ter and adoptive families.

17           (20) LGBTQ youth are overrepresented in the  
18 foster care system by at least a factor of two and  
19 report twice the rate of poor treatment while in care  
20 compared to their non-LGBTQ counterparts.  
21 LGBTQ youth in foster care have a higher average  
22 number of placements, higher likelihood of living in  
23 a group home, and higher rates of hospitalization for  
24 emotional reasons and juvenile justice involvement  
25 than their non-LGBTQ peers because of the high

1 level of bias and discrimination that they face and  
2 the difficulty of finding affirming foster placements.  
3 Further, due to their physical distance from friends  
4 and family, traumatic experiences, and potentially  
5 unstable living situations, many youth involved with  
6 child welfare are at risk for being targeted by traf-  
7 fickers seeking to exploit children. Barring discrimi-  
8 nation in child welfare services will ensure improved  
9 treatment and outcomes for LGBTQ foster children.

10 (b) PURPOSE.—It is the purpose of this Act to ex-  
11 pand as well as clarify, confirm and create greater consist-  
12 ency in the protections and remedies against discrimina-  
13 tion on the basis of all covered characteristics and to pro-  
14 vide guidance and notice to individuals, organizations, cor-  
15 porations, and agencies regarding their obligations under  
16 the law.

17 **SEC. 3. PUBLIC ACCOMMODATIONS.**

18 (a) PROHIBITION ON DISCRIMINATION OR SEGREGA-  
19 TION IN PUBLIC ACCOMMODATIONS.—Section 201 of the  
20 Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

21 (1) in subsection (a), by inserting “sex (includ-  
22 ing sexual orientation and gender identity),” before  
23 “or national origin”; and

24 (2) in subsection (b)—



1 (A) in paragraph (3), by striking “sta-  
2 dium” and all that follows and inserting “sta-  
3 dium or other place of or establishment that  
4 provides exhibition, entertainment, recreation,  
5 exercise, amusement, public gathering, or public  
6 display;”;

7 (B) by redesignating paragraph (4) as  
8 paragraph (6); and

9 (C) by inserting after paragraph (3) the  
10 following:

11 “(4) any establishment that provides a good,  
12 service, or program, including a store, shopping cen-  
13 ter, online retailer or service provider, salon, bank,  
14 gas station, food bank, service or care center, shel-  
15 ter, travel agency, or funeral parlor, or establish-  
16 ment that provides health care, accounting, or legal  
17 services;

18 “(5) any train service, bus service, car service,  
19 taxi service, airline service, station, depot, or other  
20 place of or establishment that provides transpor-  
21 tation service; and”.

22 (b) PROHIBITION ON DISCRIMINATION OR SEGREGA-  
23 TION UNDER LAW.—Section 202 of such Act (42 U.S.C.  
24 2000a-1) is amended by inserting “sex (including sexual

1 orientation and gender identity),” before “or national ori-  
2 gin”.

3 (c) **RULE OF CONSTRUCTION.**—Title II of such Act  
4 (42 U.S.C. 2000a et seq.) is amended by adding at the  
5 end the following:

6 **“SEC. 208. RULE OF CONSTRUCTION.**

7 “A reference in this title to an establishment—

8 “(1) shall be construed to include an individual  
9 whose operations affect commerce and who is a pro-  
10 vider of a good, service, or program; and

11 “(2) shall not be construed to be limited to a  
12 physical facility or place.”.

13 **SEC. 4. DESEGREGATION OF PUBLIC FACILITIES.**

14 Section 301(a) of the Civil Rights Act of 1964 (42  
15 U.S.C. 2000b(a)) is amended by inserting “sex (including  
16 sexual orientation and gender identity),” before “or na-  
17 tional origin”.

18 **SEC. 5. DESEGREGATION OF PUBLIC EDUCATION.**

19 (a) **DEFINITIONS.**—Section 401(b) of the Civil Rights  
20 Act of 1964 (42 U.S.C. 2000c(b)) is amended by inserting  
21 “(including sexual orientation and gender identity),” be-  
22 fore “or national origin”.

23 (b) **CIVIL ACTIONS BY THE ATTORNEY GENERAL.**—  
24 Section 407 of such Act (42 U.S.C. 2000c-6) is amended,  
25 in subsection (a)(2), by inserting “(including sexual ori-

1 entation and gender identity),” before “or national ori-  
2 gin”.

3 (c) CLASSIFICATION AND ASSIGNMENT.—Section 410  
4 of such Act (42 U.S.C. 2000c-9) is amended by inserting  
5 “(including sexual orientation and gender identity),” be-  
6 fore “or national origin”.

7 **SEC. 6. FEDERAL FUNDING.**

8 Section 601 of the Civil Rights Act of 1964 (42  
9 U.S.C. 2000d) is amended by inserting “sex (including  
10 sexual orientation and gender identity),” before “or na-  
11 tional origin,”.

12 **SEC. 7. EMPLOYMENT.**

13 (a) RULES OF CONSTRUCTION.—Title VII of the  
14 Civil Rights Act of 1964 is amended by inserting after  
15 section 701 (42 U.S.C. 2000e) the following:

16 **“SEC. 701A. RULES OF CONSTRUCTION.**

17 “Section 1106 shall apply to this title except that for  
18 purposes of that application, a reference in that section  
19 to an ‘unlawful practice’ shall be considered to be a ref-  
20 erence to an ‘unlawful employment practice’.”.

21 (b) UNLAWFUL EMPLOYMENT PRACTICES.—Section  
22 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-  
23 2) is amended—



1 (1) in the section header, by striking "SEX,"  
2 and inserting "SEX (INCLUDING SEXUAL ORIENTA-  
3 TION AND GENDER IDENTITY),";

4 (2) except in subsection (e), by striking "sex,"  
5 each place it appears and inserting "sex (including  
6 sexual orientation and gender identity),";

7 (3) in subsection (e)(1), by striking "enter-  
8 prise," and inserting "enterprise, if, in a situation in  
9 which sex is a bona fide occupational qualification,  
10 individuals are recognized as qualified in accordance  
11 with their gender identity,"; and

12 (4) in subsection (h), by striking "sex" the sec-  
13 ond place it appears and inserting "sex (including  
14 sexual orientation and gender identity),".

15 (c) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—  
16 Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C.  
17 2000e-3(b)) is amended—

18 (1) by striking "sex," the first place it appears  
19 and inserting "sex (including sexual orientation and  
20 gender identity),"; and

21 (2) by striking "employment." and inserting  
22 "employment, if, in a situation in which sex is a  
23 bona fide occupational qualification, individuals are  
24 recognized as qualified in accordance with their gen-  
25 der identity.".

1 (d) CLAIMS.—Section 706(g)(2)(A) of the Civil  
2 Rights Act of 1964 (2000e-5(g)(2)(A)) is amended by  
3 striking “sex,” and inserting “sex (including sexual ori-  
4 entation and gender identity),”.

5 (e) EMPLOYMENT BY FEDERAL GOVERNMENT.—Sec-  
6 tion 717 of the Civil Rights Act of 1964 (42 U.S.C.  
7 2000e-16) is amended—

8 (1) in subsection (a), by striking “sex,” and in-  
9 serting “sex (including sexual orientation and gender  
10 identity),”; and

11 (2) in subsection (c), by striking “sex” and in-  
12 serting “sex (including sexual orientation and gender  
13 identity),”.

14 (f) GOVERNMENT EMPLOYEE RIGHTS ACT OF  
15 1991.—The Government Employee Rights Act of 1991  
16 (42 U.S.C. 2000e-16a et seq.) is amended—

17 (1) in section 301(b), by striking “sex,” and in-  
18 serting “sex (including sexual orientation and gender  
19 identity),”; and

20 (2) in section 302(a)(1), by striking “sex,” and  
21 inserting “sex (including sexual orientation and gen-  
22 der identity),”; and

23 (3) by adding at the end the following:

1 **“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.**

2 “Sections 1101(b), 1106, and 1107 of the Civil  
3 Rights Act of 1964 shall apply to this title except that  
4 for purposes of that application, a reference in that section  
5 1106 to ‘race, color, religion, sex (including sexual orienta-  
6 tion and gender identity), or national origin’ shall be con-  
7 sidered to be a reference to ‘race, color, religion, sex, sex-  
8 ual orientation, gender identity, national origin, age, or  
9 disability’.”.

10 (g) CONGRESSIONAL ACCOUNTABILITY ACT OF  
11 1995.—The Congressional Accountability Act of 1995 (2  
12 U.S.C. 1301 et seq.) is amended—

13 (1) in section 201(a)(1) (2 U.S.C. 1311(a)(1))  
14 by inserting “(including sexual orientation and gen-  
15 der identity),” before “or national origin,”; and

16 (2) by adding at the end of title II (42 U.S.C.  
17 1311 et seq.) the following:

18 **“SEC. 208. RULES OF CONSTRUCTION AND CLAIMS.**

19 “Sections 1101(b), 1106, and 1107 of the Civil  
20 Rights Act of 1964 shall apply to section 201 (and reme-  
21 dial provisions of this Act related to section 201) except  
22 that for purposes of that application, a reference in that  
23 section 1106 to ‘race, color, religion, sex (including sexual  
24 orientation and gender identity), or national origin’ shall  
25 be considered to be a reference to ‘race, color, religion,



1 sex (including sexual orientation and gender identity), na-  
 2 tional origin, age, or disability'.”.

3 (h) CIVIL SERVICE REFORM ACT OF 1978.—Chapter  
 4 23 of title 5, United States Code, is amended—

5 (1) in section 2301(b)(2), by striking “sex,”  
 6 and inserting “sex (including sexual orientation and  
 7 gender identity),”;

8 (2) in section 2302—

9 (A) in subsection (b)(1)(A), by inserting  
 10 “(including sexual orientation and gender iden-  
 11 tity),” before “or national origin,”; and

12 (B) in subsection (d)(1), by inserting “(in-  
 13 cluding sexual orientation and gender iden-  
 14 tity),” before “or national origin,”; and

15 (3) by adding at the end the following:

16 **“SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.**

17 “Sections 1101(b), 1106, and 1107 of the Civil  
 18 Rights Act of 1964 shall apply to this chapter (and reme-  
 19 dial provisions of this title related to this chapter) except  
 20 that for purposes of that application, a reference in that  
 21 section 1106 to ‘race, color, religion, sex (including sexual  
 22 orientation and gender identity), or national origin’ shall  
 23 be considered to be a reference to ‘race, color, religion,  
 24 sex (including sexual orientation and gender identity), na-

1 tional origin, age, a handicapping condition, marital sta-  
 2 tus, or political affiliation’.”.

3 **SEC. 8. INTERVENTION.**

4 Section 902 of the Civil Rights Act of 1964 (42  
 5 U.S.C. 2000h-2) is amended by inserting “(including sex-  
 6 ual orientation and gender identity),” before “or national  
 7 origin,”.

8 **SEC. 9. MISCELLANEOUS.**

9 Title XI of the Civil Rights Act of 1964 is amended—

10 (1) by redesignating sections 1101 through  
 11 1104 (42 U.S.C. 2000h et seq.) and sections 1105  
 12 and 1106 (42 U.S.C. 2000h-5, 2000h-6) as sections  
 13 1102 through 1105 and sections 1108 and 1109, re-  
 14 spectively;

15 (2) by inserting after the title heading the fol-  
 16 lowing:

17 **“SEC. 1101. DEFINITIONS AND RULES.**

18 “(a) DEFINITIONS.—In titles II, III, IV, VI, VII, and  
 19 IX (referred to individually in sections 1106 and 1107 as  
 20 a ‘covered title’):

21 “(1) RACE; COLOR; RELIGION; SEX; SEXUAL  
 22 ORIENTATION; GENDER IDENTITY; NATIONAL ORI-  
 23 GIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’ (in-  
 24 cluding ‘sexual orientation’ and ‘gender identity’), or

1       ‘national origin’, used with respect to an individual,  
2       includes—

3               “(A) the race, color, religion, sex (includ-  
4               ing sexual orientation and gender identity), or  
5               national origin, respectively, of another person  
6               with whom the individual is associated or has  
7               been associated; and

8               “(B) a perception or belief, even if inac-  
9               curate, concerning the race, color, religion, sex  
10              (including sexual orientation and gender iden-  
11              tity), or national origin, respectively, of the in-  
12              dividual.

13              “(2) GENDER IDENTITY.—The term ‘gender  
14              identity’ means the gender-related identity, appear-  
15              ance, mannerisms, or other gender-related character-  
16              istics of an individual, regardless of the individual’s  
17              designated sex at birth.

18              “(3) INCLUDING.—The term ‘including’ means  
19              including, but not limited to, consistent with the  
20              term’s standard meaning in Federal law.

21              “(4) SEX.—The term ‘sex’ includes—

22                      “(A) a sex stereotype;

23                      “(B) pregnancy, childbirth, or a related  
24              medical condition;



1                   “(C) sexual orientation or gender identity;  
2                   and

3                   “(D) sex characteristics, including intersex  
4                   traits.

5                   “(5) SEXUAL ORIENTATION.—The term ‘sexual  
6                   orientation’ means homosexuality, heterosexuality, or  
7                   bisexuality.

8                   “(b) RULES.—In a covered title referred to in sub-  
9                   section (a)—

10                  “(1) (with respect to sex) pregnancy, childbirth,  
11                  or a related medical condition shall not receive less  
12                  favorable treatment than other physical conditions;  
13                  and

14                  “(2) (with respect to gender identity) an indi-  
15                  vidual shall not be denied access to a shared facility,  
16                  including a restroom, a locker room, and a dressing  
17                  room, that is in accordance with the individual’s  
18                  gender identity.”; and

19                  (3) by inserting after section 1105 the fol-  
20                  lowing:

21       **“SEC. 1106. RULES OF CONSTRUCTION.**

22                  “(a) SEX.—Nothing in section 1101 or the provisions  
23                  of a covered title incorporating a term defined or a rule  
24                  specified in that section shall be construed—

1           “(1) to limit the protection against an unlawful  
2       practice on the basis of pregnancy, childbirth, or a  
3       related medical condition provided by section 701(k);  
4       or

5           “(2) to limit the protection against an unlawful  
6       practice on the basis of sex available under any pro-  
7       vision of Federal law other than that covered title,  
8       prohibiting a practice on the basis of sex.

9       “(b) CLAIMS AND REMEDIES NOT PRECLUDED.—  
10   Nothing in section 1101 or a covered title shall be con-  
11   strued to limit the claims or remedies available to any indi-  
12   vidual for an unlawful practice on the basis of race, color,  
13   religion, sex (including sexual orientation and gender iden-  
14   tity), or national origin including claims brought pursuant  
15   to section 1979 or 1980 of the Revised Statutes (42  
16   U.S.C. 1983, 1985) or any other law, including a Federal  
17   law amended by the Equality Act, regulation, or policy.

18       “(c) NO NEGATIVE INFERENCE.—Nothing in section  
19   1101 or a covered title shall be construed to support any  
20   inference that any Federal law prohibiting a practice on  
21   the basis of sex does not prohibit discrimination on the  
22   basis of pregnancy, childbirth, or a related medical condi-  
23   tion, sexual orientation, gender identity, or a sex stereo-  
24   type.

1 **“SEC. 1107. CLAIMS.**

2 “The Religious Freedom Restoration Act of 1993 (42  
3 U.S.C. 2000bb et seq.) shall not provide a claim con-  
4 cerning, or a defense to a claim under, a covered title,  
5 or provide a basis for challenging the application or en-  
6 forcement of a covered title.”.

7 **SEC. 10. HOUSING.**

8 (a) FAIR HOUSING ACT.—The Fair Housing Act (42  
9 U.S.C. 3601 et seq.) is amended—

10 (1) in section 802 (42 U.S.C. 3602), by adding  
11 at the end the following:

12 “(p) ‘Gender identity’, ‘sex’, and ‘sexual orientation’  
13 have the meanings given those terms in section 1101(a)  
14 of the Civil Rights Act of 1964.

15 “(q) ‘Race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual  
16 orientation’ and ‘gender identity’), ‘handicap’, ‘familial  
17 status’, or ‘national origin’, used with respect to an indi-  
18 vidual, includes—

19 “(1) the race, color, religion, sex (including sex-  
20 ual orientation and gender identity), handicap, fa-  
21 milial status, or national origin, respectively, of an-  
22 other person with whom the individual is associated  
23 or has been associated; and

24 “(2) a perception or belief, even if inaccurate,  
25 concerning the race, color, religion, sex (including  
26 sexual orientation and gender identity), handicap,



1       familial status, or national origin, respectively, of the  
2       individual.”;

3               (2) in section 804, by inserting “(including sexual  
4       orientation and gender identity),” after “sex,”  
5       each place that term appears;

6               (3) in section 805, by inserting “(including sexual  
7       orientation and gender identity),” after “sex,”  
8       each place that term appears;

9               (4) in section 806, by inserting “(including sexual  
10      orientation and gender identity),” after “sex,”;

11              (5) in section 808(e)(6), by inserting “(including sexual  
12      orientation and gender identity),” after  
13      “sex,”; and

14              (6) by adding at the end the following:

15   **“SEC. 821. RULES OF CONSTRUCTION.**

16       “Sections 1101(b) and 1106 of the Civil Rights Act  
17      of 1964 shall apply to this title and section 901, except  
18      that for purposes of that application, a reference in that  
19      section 1101(b) or 1106 to a ‘covered title’ shall be consid-  
20      ered a reference to ‘this title and section 901’.

21   **“SEC. 822. CLAIMS.**

22       “Section 1107 of the Civil Rights Act of 1964 shall  
23      apply to this title and section 901, except that for pur-  
24      poses of that application, a reference in that section 1107

1 to a 'covered title' shall be considered a reference to 'this  
2 title and section 901'."

3 (b) PREVENTION OF INTIMIDATION IN FAIR HOUS-  
4 ING CASES.—Section 901 of the Civil Rights Act of 1968  
5 (42 U.S.C. 3631) is amended by inserting "(including sex-  
6 ual orientation (as such term is defined in section 802 of  
7 this Act) and gender identity (as such term is defined in  
8 section 802 of this Act))," after "sex," each place that  
9 term appears.

10 **SEC. 11. EQUAL CREDIT OPPORTUNITY.**

11 (a) PROHIBITED DISCRIMINATION.—Section  
12 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C.  
13 1691(a)(1)) is amended by inserting "(including sexual  
14 orientation and gender identity)," after "sex".

15 (b) DEFINITIONS.—Section 702 of the Equal Credit  
16 Opportunity Act (15 U.S.C. 1691a) is amended—

17 (1) by redesignating subsections (f) and (g) as  
18 subsections (h) and (i), respectively;

19 (2) by inserting after subsection (e) the fol-  
20 lowing:

21 "(f) The terms 'gender identity', 'sex', and 'sexual  
22 orientation' have the meanings given those terms in sec-  
23 tion 1101(a) of the Civil Rights Act of 1964.

24 "(g) The term 'race', 'color', 'religion', 'national ori-  
25 gin', 'sex' (including 'sexual orientation' and 'gender iden-

1 tity'), 'marital status', or 'age', used with respect to an  
 2 individual, includes—

3           “(1) the race, color, religion, national origin,  
 4 sex (including sexual orientation and gender iden-  
 5 tity), marital status, or age, respectively, of another  
 6 person with whom the individual is associated or has  
 7 been associated; and

8           “(2) a perception or belief, even if inaccurate,  
 9 concerning the race, color, religion, national origin,  
 10 sex (including sexual orientation and gender iden-  
 11 tity), marital status, or age, respectively, of the indi-  
 12 vidual.”; and

13           (3) by adding at the end the following:

14           “(j) Sections 1101(b) and 1106 of the Civil Rights  
 15 Act of 1964 shall apply to this title, except that for pur-  
 16 poses of that application—

17           “(1) a reference in those sections to a ‘covered  
 18 title’ shall be considered a reference to ‘this title’;  
 19 and

20           “(2) paragraph (1) of such section 1101(b)  
 21 shall apply with respect to all aspects of a credit  
 22 transaction.”.

23           (c) RELATION TO STATE LAWS.—Section 705(a) of  
 24 the Equal Credit Opportunity Act (15 U.S.C. 1691d(a))



1 is amended by inserting “(including sexual orientation and  
2 gender identity),” after “sex”.

3 (d) CIVIL LIABILITY.—Section 706 of the Equal  
4 Credit Opportunity Act (15 U.S.C. 1691e) is amended by  
5 adding at the end the following:

6 “(l) Section 1107 of the Civil Rights Act of 1964  
7 shall apply to this title, except that for purposes of that  
8 application, a reference in that section to a ‘covered title’  
9 shall be considered a reference to ‘this title’.”

10 **SEC. 12. JURIES.**

11 (a) IN GENERAL.—Chapter 121 of title 28, United  
12 States Code, is amended—

13 (1) in section 1862, by inserting “(including  
14 sexual orientation and gender identity),” after  
15 “sex,”;

16 (2) in section 1867(e), in the second sentence,  
17 by inserting “(including sexual orientation and gen-  
18 der identity),” after “sex,”;

19 (3) in section 1869—

20 (A) in subsection (j), by striking “and” at  
21 the end;

22 (B) in subsection (k), by striking the pe-  
23 riod at the end and inserting a semicolon; and

24 (C) by adding at the end the following:

1       “(l) ‘gender identity’, ‘sex’, and ‘sexual orientation’  
 2 have the meanings given such terms under section 1101(a)  
 3 of the Civil Rights Act of 1964; and

4       “(m) ‘race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual  
 5 orientation’ and ‘gender identity’), ‘economic status’, or  
 6 ‘national origin’, used with respect to an individual, in-  
 7 cludes—

8               “(1) the race, color, religion, sex (including sex-  
 9 ual orientation and gender identity), economic sta-  
 10 tus, or national origin, respectively, of another per-  
 11 son with whom the individual is associated or has  
 12 been associated; and

13              “(2) a perception or belief, even if inaccurate,  
 14 concerning the race, color, religion, sex (including  
 15 sexual orientation and gender identity), economic  
 16 status, or national origin, respectively, of the indi-  
 17 vidual.”; and

18              (4) by adding at the end the following:

19   **“§ 1879. Rules of construction and claims**

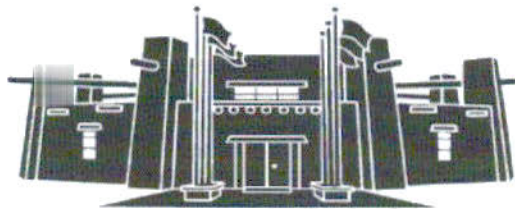
20       “Sections 1101(b), 1106, and 1107 of the Civil  
 21 Rights Act of 1964 shall apply to this chapter, except that  
 22 for purposes of that application, a reference in those sec-  
 23 tions to a ‘covered title’ shall be considered a reference  
 24 to ‘this chapter’.”.

- 1       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
2   The table of sections for chapter 121 of title 28, United  
3   States Code, is amended by adding at the end the fol-  
4   lowing:

“1879. Rules of construction and claims.”.

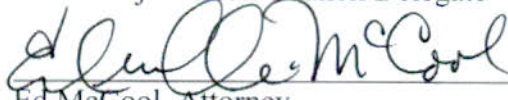







## MEMORANDUM

TO: Honorable Nathaniel Brown  
24<sup>th</sup> Navajo Nation Council Delegate

THRU:   
Ed McCool, Attorney  
Office of Legislative Counsel

FROM:   
Khrystine Wilson, Legal Intern  
Office of Legislative Counsel

DATE: July 3, 2019

RE: RELATING TO THE LAW AND ORDER, AND HEALTH,  
EDUCATION & HUMAN SERVICES COMMITTEES, AND THE  
NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING UNITED STATES  
SENATE BILL NO. 788 - "EQUALITY ACT" WHICH WILL EXPAND  
AND CLARIFY THE PROTECTIONS AND REMEDIES AGAINST  
DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION,  
GENDER IDENTITY, AND SEX IN THE AREAS OF EMPLOYMENT,  
HOUSING, PUBLIC ACCOMODATIONS, PUBLIC, PUBLIC  
EDUCATION, FEDERAL FUNDING, AND THE JURY SYSTEM.

Per your request, attached is the above-reference proposed resolution and associated legislative summary sheet. Based on existing law, the resolution drafted is legally sufficient. However, as with all legislation, the proposed resolution is subject to review by the courts in the event of a challenge.

The Office of Legislative Counsel recommends the appropriate standing committee(s) reviews based on the standing committees powers outlined in 2 N.N.C. §§ 301, 401, 501, 601, and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration. 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If you approve, please sign as "Primary Sponsor" and submit it to the Office of Legislative Services where the proposed resolution will be given a tracking number and referred to the Office of the Speaker. If the proposed legislation is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like to make to the proposed resolution.