

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0054-22_

SPONSOR: Eugene Tso

TITLE: An Act Relating to Health, Education and Human Services, Budget and Finance, Law and Order, and Naabik'iyáti' Committees and the Navajo Nation Council; Repealing 9 N.N.C. § 2(C) of the Diné Marriage Act of 2005 to Acknowledge and Recognize Marriage Equality Among All People; Amending Common-Law Marriage Criteria at 9 N.N.C. § 4(E); Amending Marriage License Form to be Gender Neutral at 9 N.N.C. § 7; Amending Husband and Wife Section at 9 N.N.C. § 201 et. seq

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0054-22

DATE: March 21, 2022

TITLE OF RESOLUTION: AN ACT RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE, LAW AND ORDER, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; REPEALING 9 N.N.C. § 2(C) OF THE DINÉ MARRIAGE ACT OF 2005 TO ACKNOWLEDGE AND RECOGNIZE MARRIAGE EQUALITY AMONG ALL PEOPLE; AMENDING COMMON-LAW MARRIAGE CRITERIA AT 9 N.N.C. § 4(E); AMENDING MARRIAGE LICENSE FORM TO BE GENDER NEUTRAL AT 9 N.N.C. § 7; AMENDING HUSBAND AND WIFE SECTION AT 9 N.N.C. § 201 ET. SEQ

PURPOSE: If approved, this resolution will repeal 9 N.N.C. § 2(C) of the Diné Marriage Act of 2005, Resolution No. CJN-34-05. This legislation also amends other necessary provisions within the Navajo Nation Code to conform with this repeal. Necessary provisions include the following: 9 N.N.C. § 4(E)—Common Law Marriage, 9 N.N.C § 7—Marriage License, and 9 N.N.C. § 201 et. seq. This repeal will acknowledge and recognize marriage equality among all people within the Navajo Nation.

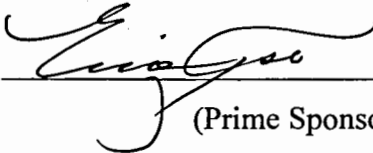
This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 03-27-22
Eligible for Action: 03-28-22

Health Education & Human Services Committee
Thence
Budget & Finance Committee
Thence
Law & Order Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1
2 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
3 24th NAVAJO NATION COUNCIL – Fourth Year, 2022

4 INTRODUCED BY

5
6 
7 (Prime Sponsor)

8
9 TRACKING NO. 0054-22

10
11 AN ACT

12 RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, BUDGET AND
13 FINANCE, LAW AND ORDER, AND NAABIK'ÍYÁTI' COMMITTEES AND THE
14 NAVAJO NATION COUNCIL; REPEALING 9 N.N.C. § 2(C) OF THE DINÉ
15 MARRIAGE ACT OF 2005 TO ACKNOWLEDGE AND RECOGNIZE MARRIAGE
16 EQUALITY AMONG ALL PEOPLE; AMENDING COMMON-LAW MARRIAGE
17 CRITERIA AT 9 N.N.C. § 4(E); AMENDING MARRIAGE LICENSE FORM TO BE
18 GENDER NEUTRAL AT 9 N.N.C. § 7; AMENDING HUSBAND AND WIFE SECTION
19 AT 9 N.N.C. § 201 *ET. SEQ*

20
21 BE IT ENACTED:

22
23 SECTION ONE. AUTHORITIES

- 24 A. The Health, Education and Human Services Committee is a standing committee of the
25 Navajo Nation Council empowered [t]o establish Navajo Nation policy, promulgate rules
26 and regulations governing health, social services, education, human services and general
27 government services of the Navajo Nation and its tribal organizations, entities, and
28 enterprises. 2 N.N.C. §§ 400(A), 401(B)(1).
- 29 B. The Budget and Finance Committee is a standing committee of the Navajo Nation
30 Council empowered to [t]o promulgate policies and regulations concerning wages,

1 expenditure reimbursement, and fringe benefits for Navajo Nation officials and
2 employees. 2 N.N.C. §§ 300(A), 301(B)(8).

3 C. The Law and Order Committee is a standing committee of the Navajo Nation Council
4 empowered [t]o review and make recommendations to the Navajo Nation Council on
5 proposed amendments to and enactments in the Navajo Nation Code. 2 N.N.C. §§
6 600(A), 601(B)(14)

7 D. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council
8 empowered to review proposed legislation which requires final action by the Navajo
9 Nation Council. 2 N.N.C. §§ 700(A), 164(A)(9).

10 E. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §
11 102(A).

12
13 **SECTION TWO. FINDINGS**

14 A. The purpose of this legislation is to repeal 9 N.N.C. § 2(C) of the Diné Marriage Act of
15 2005, Resolution No. CJN-34-05. This legislation also amends other necessary
16 provisions within the Navajo Nation Code to conform with this repeal. Necessary
17 provisions include the following: 9 N.N.C. § 4(E)—Common Law Marriage, 9 N.N.C §
18 7—Marriage License, and 9 N.N.C. § 201 *et. seq.* This repeal will acknowledge and
19 recognize marriage equality among all people within the Navajo Nation.

20 B. The Navajo Nation fully recognizes that the tribe has retained from time immemorial the
21 exclusive inherent sovereign powers to govern itself. However, over time, the Navajo
22 Nation Supreme Court and the Supreme Court of the United States have recognized limits
23 regarding tribal jurisdiction in criminal and civil cases arising within the Navajo Nation.
24 *See also, John Doe BF v. Diocese of Gallup*, No. SC-CV-06-10, 9 Nav. R. 527 (2011).
25 *Worcester v. Georgia*, 31 U.S. 515 (1832); *Willaims v. Lee*, 79 S.Ct. 269, 271 (1959);
26 *United States v. Wheeler*, 98 S.Ct. 1079, 1088 (1978); *Montana v. U.S.*, 101 S.Ct. 1245,
27 1257 (1981) (Thus, in addition to the power [of federally recognized tribes] to punish
28 tribal offenders, the Indian tribes retain their inherent power to determine tribal
29 membership, *to regulate domestic relations among members*, and to prescribe rules of
30 inheritance for members); *Ford Motor Co., v. Kayenta Dist. Ct.*, No. SC-CV-33-07, 9

1 Nav. R. 225, 226 (2008) The Navajo Nation retains civil jurisdiction over claims arising
2 within the Nation by inherent sovereignty under Article II of the Treaty. To the Navajo,
3 the Treaty is organic law [The Navajo Treaty of 1868, Aug. 12, 1868, 15 Stat. 667].

4 C. Thus, the Navajo Nation hereby exercises its inherent sovereign power in regulating
5 domestic relations by repealing the same-sex marriage prohibition enacted by the Diné
6 Marriage Act of 2005 which explicitly excluded and prohibited members of the same-
7 sex from marrying.

8 D. Although this legislation repeals the prohibition against same-sex marriage at 9 N.N.C.
9 § 2(C), the method for a traditional Navajo wedding ceremony outlined at 9 N.N.C §
10 4(D) involving a man and a woman shall remain unchanged. Traditional Navajo society
11 places a great importance upon the institution of marriage and believes that the elaborate
12 ritual of marrying using the traditional method is believed to be blessed by the “Holy
13 People.” This blessing ensures that the marriage will be stable, in harmony, and
14 perpetual. *Navajo Nation v. Murphy*, 6 Nav. R. 10, 13 (1988); See also *Begay v. Chief*,
15 No. SC-CV-08-3, 8 Nav. R. 654 (2005) which provides that common law-marriage under
16 Navajo Nation Code is different than one arising out of traditional wedding ceremony.
17 Keeping the traditional Navajo wedding the same will not prohibit nor deny same-sex
18 marriage because there are other methods for marrying under 9 N.N.C § 4.

19 E. The Navajo Nation also recognizes that in *Obergefell v. Hodges*, 135 S.Ct. 2584, 2591
20 (2015), the Supreme Court of the United States ruled that “[t]he right to marry is a
21 fundamental right inherent in the liberty of the person, and under the Due Process and
22 Equal Protection Clauses of the Fourteenth Amendment, couples of the same sex may
23 not be deprived of that right and that liberty.” The Navajo Nation, however, understands
24 that it has inherent powers to govern domestic relations and is not bound by *Obergefell*
25 *v. Hodges*. See also *Talton v. Mayes*, 163 U.S. 376 (1896).

26 F. The Navajo Nation further recognizes that Navajo society accepted multi-gendered
27 individuals prior to European arrival. European religious influence viewed
28 homosexuality as an intolerable sin. As a result, acceptance of the lesbian, gay, bisexual,
29 transgender, questioning/queer, two-spirit (LGBTQ+) declined within tribal nations.
30 Today, many tribal nations have repealed same-sex prohibition laws.

1 G. The Navajo Nation passed Resolution No. NABIS-50-19 supporting the U.S. Congress
2 to enact Senate Bill 788, "Equality Act." The Equality Act will amend the Civil Rights
3 Act of 1964, to expand and clarify the protections and remedies against discrimination
4 on the basis of sexual orientation, gender identity, and sex in the areas of employment,
5 housing, public, accommodations, public education, federal funding, credit, and the jury
6 system.

7 H. The Navajo Nation has also passed Resolution No. CJY-63-20 which established Diné
8 Pride Week to be held every third week in June as a reoccurring event. Through CJY-63-
9 20, the Navajo Nation proclaimed that the "Nation will continue to protect its citizens
10 from discrimination based on age, race, disability, ethnicity, family or marital status,
11 gender identity or expression, languages, national origin, physical and mental ability,
12 religion, sexual orientation, veteran status and other characteristics that make our citizens
13 unique under the law."

14 I. Data has also shown that LGBTQ+ members experience higher rates of workplace
15 discrimination and non-acceptance from family members which leads to increased
16 substance abuse and suicide attempts as well as other mental health effects. Further data
17 shows, providing support for LGBTQ+ decreases the negative effect and promotes self-
18 identity. NCAI Policy Research Center, *A Spotlight on Two Spirit (Native LGBT)*
19 *Communities*, Accessed on March 18, 2022. Weblink available at:
20 [https://www.ncai.org/policy-research-center/research-data/prc-](https://www.ncai.org/policy-research-center/research-data/prc-publications/A_Spotlight_on_Native_LGBT.pdf)
21 [publications/A_Spotlight_on_Native_LGBT.pdf](https://www.ncai.org/policy-research-center/research-data/prc-publications/A_Spotlight_on_Native_LGBT.pdf)

22 J. Navajo culture from time immemorial includes oral stories about multiple gendered
23 (LGBTQ+) people. Multiple gendered people have always been acknowledged and have
24 also played important roles in our history. It is in the best interest of the Navajo Nation
25 to repeal 9 N.N.C. § 2(C) of the Diné Marriage Act of 2005, Resolution No. CJN-34-05.
26

27 **SECTION THREE. REPEALING 9 N.N.C. § 2(C) OF THE DINÉ MARRIAGE ACT**
28 **OF 2005**

29 The Navajo Nation hereby amends 9 N.N.C. § 2(C) as set forth below.
30

1
2 **Title 9. Domestic Relations**

3 **Chapter 1. Marriage**

4 ****

5 **§ 2. Plural marriages void**

6 A. All plural marriages contracted, whether or not in accordance with Navajo custom, shall
7 be void and prohibited.

8 B. Marriage between parents and children, including grandparents and grandchildren of
9 every degree, between brothers and sisters of one-half degree, as well as whole blood,
10 and between uncles and nieces, aunts and nephews and between first cousins, is
11 prohibited and void.

12 ~~C. Marriage between persons of the same sex is void and prohibited.~~

13 ****

14
15
16 **SECTION FOUR. AMENDING, 9 N.N.C. § 4(E), COMMON-LAW MARRIAGE**
17 **CRITERIA**

18 The Navajo Nation hereby amends 9 N.N.C. §4(E) as follows:
19

20
21 **Title 9. Domestic Relations**

22 **Chapter 1. Marriage**

23 ****

24 **§ 4. Methods of contracting marriage**

25 A marriage may be contracted within the Navajo nation by any of the following procedures:

26 ****

27 E. The contracting parties establish a common-law marriage having the following features:

- 28 1. Present intention of the parties to become spouses ~~husband and wife~~;
- 29 2. Present consent between the both parties to become spouses ~~husband and wife~~;
- 30 3. Actual cohabitation;

1 4. Actual holding out of the parties within their community to be married.

2 ****

3 _____

4
5 **SECTION FIVE. AMENDING MARRIAGE LICENSE FORM TO BE GENDER**
6 **NEUTRAL AT 9 N.N.C. § 7**

7 The Navajo Nation hereby amends 9 N.N.C. §7 as follows:

8 _____

9
10 **Title 9. Domestic Relations**
11 **Chapter 1. Marriage**

12 ****

13 **§ 7. Form**

14 The form of Navajo Nation marriage licenses shall be substantially as follows:

15 **NAVAJO NATION**
16 **MARRIAGE LICENSE**

17 Authority is hereby given for the marriage of the following named persons:

18 Man Spouse 1

Woman Spouse 2

_____	Name	_____
_____	Census Number	_____
_____	Residence	_____
_____	Age	_____
_____	Mother's Clan	_____
_____	Father's Clan	_____

24
25 IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____,

26 _____

27 _____
28 _____

29 Title

30 **MARRIAGE CERTIFICATE**

1 I, ~~the man~~ spouse 1 named above, hereby take ~~the woman~~ spouse 2 named above for my
2 lawful ~~wife~~ partner; and I, ~~the woman~~ spouse 2 named above, hereby take ~~the man~~ spouse 1
3 named above for my lawful ~~husband~~ partner.

4 I hereby certify that the ~~man and woman~~ spouses named above were married this day in a
5 ceremony at which I officiated. (This *Paragraph may be crossed out if the parties are not*
6 *married before a clergyman, medicineman, or traditionalist.*)

7 IN WITNESS WHEREOF, we have hereunto set our hands this ___ day of _____ in the
8 presence of the witnesses whose names appear below.

9 _____
10 Witness Contracting party

11 _____
12 Address of Witness

13 _____
14 Witness Contracting party

15 _____
16 Address of Witness

17 _____
18 Clergyman/Medicineman
19 Traditionalist

20 _____
21 Address of Clergyman person
22 Medicineman /Traditionalist

23 RETURNED AND FILED FOR RECORD this ___ day of _____, and recorded in
24 Book _____ of Marriage Licenses and Certificates on page ___, Number _____.

25 _____
26 Navajo Agency Census Clerk

27 ****

28 **SECTION SIX. AMENDING HUSBAND AND WIFE SECTION AT 9 N.N.C. § 201 ET.**
29 **SEQ.**

30 The Navajo Nation hereby amends 9 N.N.C. § 201 *et. seq.* as follows:

1
2 **Title 9. Domestic Relations**

3 **Chapter 3. ~~Husband and Wife~~ Property and Liability**

4 ****

5 **§ 202. Separate property—Definitions**

6 A. All property, real and personal, of ~~both spouses the husband~~, owned or claimed by him or
7 her before marriage, and that acquired afterward by gift, devise or descent, and also the
8 increase, rents, issues and profits thereof, is his or her separate property.

9 ~~B. All property, both real and personal, of the wife, owned or claimed by her before~~
10 ~~marriage, and that acquired afterward by gift, devise or descent, and also the increase,~~
11 ~~rents, issues and profits thereof, is her separate property.~~

12 ~~CB.~~ The earnings and accumulations of the ~~wife~~ spouse and the minor children in his or her
13 custody while he or she lives separate and apart from his or her spouse ~~husband~~ are the
14 separate property ~~of the wife~~.

15 **§ 203. Liability for debts**

16 The separate property of ~~the husband or wife~~ either spouse is not liable for the debts of the
17 other contracted before marriage or contracted after separation.

18
19 **§ 204. Married women couples**

20 Married ~~women~~ couples have the sole and exclusive control of their separate property. The
21 separate property of a married ~~woman~~ spouse is not liable for the debts or obligations of the
22 other spouse ~~husband~~, and it may be sold, mortgaged, conveyed or bequeathed by ~~the woman~~
23 either spouse who owns it as if he/she were not married

24
25 **§ 205. Community property—Definition**

26 A. All property acquired by either ~~husband or wife~~ spouse during the marriage, except that
27 which is acquired by gift, devise or descent, or earned by ~~the wife~~ either spouse and her
28 ~~minor children~~ while he or she lives separate and apart from his or her husband spouse, is
29 the community property ~~of the husband and wife~~.

30

1 B. Separate property comingled with community property is still separate if it can be clearly
2 traced and identified.

3 ****

4 **§ 207. Personal property; disposition**

5
6 During ~~coverture~~ marriage, community personal property may be disposed of by both parties
7 consenting the husband only.

8
9 **§ 208. Liability for community debts**

10 The community property of ~~the husband and wife~~ either spouse is liable for the community
11 debts contracted by his or her spouse ~~the husband~~ during marriage unless specially excepted
12 by law.

13 **§ 209. Legal capacity of ~~married women~~—Generally**

14 Married women of the age of 21 years and upwards have the same legal rights and are subject
15 to the same legal liabilities as men of the age of 21 years and upwards ~~except the right to make~~
16 ~~contracts binding the common property of the husband and wife.~~

17
18 **§ ~~210~~. Necessaries—~~Power of wife to contract debts~~**

19 ~~The wife may contract debts for necessaries for herself and her children upon the credit of her~~
20 ~~husband.~~

21
22 **§ ~~210~~. Action to collect debt; order of execution**

23 In an action to collect a debt ~~for necessaries for the wife and her children, the~~ both spouse'
24 ~~wife and her husband~~ shall be sued jointly and the court shall decree that execution be levied
25 first upon the common property, second upon the separate property of both spouse, ~~the husband~~
26 ~~and third upon the separate property of the wife.~~

27
28 ****

29 _____
30 **SECTION SEVEN. DIRECTIVES**

1 All divisions, departments, programs, and offices of the Navajo Nation government shall
2 amend their policies, including but not limited to employee benefits, to reflect and include
3 changes set forth in this legislation within ninety (90) days after enactment of this legislation.
4

5 **SECTION EIGHT. EFFECTIVE DATE**

6 This legislation and the Navajo Nation Code amendments enacted herein shall become
7 effective pursuant to 2 N.N.C. § 221(B).
8

9 **SECTION NINE. CODIFICATION**

10 The provisions of this legislation which amend or adopt new sections of the Navajo Nation
11 Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel
12 shall incorporate such amended provisions in the next codification of the Navajo Nation Code.
13

14 **SECTION TEN. SAVINGS CLAUSE**

15 Should any provisions of this legislation be determined invalid by the Navajo Nation Supreme
16 Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation
17 Supreme Court, those portions of this legislation which are not determined invalid shall remain
18 the law of the Navajo Nation.
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