TITLE: 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

Date posted: March 22, 2022 at 2:43 PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 et. seq.
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 DINE 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.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Fourth Year, 2022

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0054-22

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

BE IT ENACTED:

SECTION ONE. AUTHORITIES

A. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council empowered to establish Navajo Nation policy, promulgate rules and regulations governing health, social services, education, human services and general government services of the Navajo Nation and its tribal organizations, entities, and enterprises. 2 N.N.C. §§ 400(A), 401(B)(1).

B. The Budget and Finance Committee is a standing committee of the Navajo Nation Council empowered to promulgate policies and regulations concerning wages,
expenditure reimbursement, and fringe benefits for Navajo Nation officials and employees. 2 N.N.C. §§ 300(A), 301(B)(8).

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

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

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

SECTION TWO. FINDINGS

A. The purpose of this legislation is to 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.

B. The Navajo Nation fully recognizes that the tribe has retained from time immemorial the exclusive inherent sovereign powers to govern itself. However, over time, the Navajo Nation Supreme Court and the Supreme Court of the United States have recognized limits regarding tribal jurisdiction in criminal and civil cases arising within the Navajo Nation. See also, John Doe BF v. Diocese of Gallup, No. SC-CV-06-10, 9 Nav. R. 527 (2011). Worcester v. Georgia, 31 U.S. 515 (1832); Willaims v. Lee, 79 S.Ct. 269, 271 (1959); United States v. Wheeler, 98 S.Ct. 1079, 1088 (1978); Montana v. U.S., 101 S.Ct. 1245, 1257 (1981) (Thus, in addition to the power [of federally recognized tribes] to punish tribal offenders, the Indian tribes retain their inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members); Ford Motor Co., v. Kayenta Dist. Ct., No. SC-CV-33-07, 9
Nav. R. 225, 226 (2008) The Navajo Nation retains civil jurisdiction over claims arising within the Nation by inherent sovereignty under Article II of the Treaty. To the Navajo, the Treaty is organic law [The Navajo Treaty of 1868, Aug. 12, 1868, 15 Stat. 667].

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

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

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

F. The Navajo Nation further recognizes that Navajo society accepted multi-gendered individuals prior to European arrival. European religious influence viewed homosexuality as an intolerable sin. As a result, acceptance of the lesbian, gay, bisexual, transgender, questioning/queer, two-spirit (LGBTQ+) declined within tribal nations. Today, many tribal nations have repealed same-sex prohibition laws.
G. The Navajo Nation passed Resolution No. NABIS-50-19 supporting the U.S. Congress to enact Senate Bill 788, “Equality Act.” The Equality Act will amend the Civil Rights Act of 1964, to 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, accommodations, public education, federal funding, credit, and the jury system.

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

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

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

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

The Navajo Nation hereby amends 9 N.N.C. § 2(C) as set forth below.
§ 2. Plural marriages void

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

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

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

SECTION FOUR. AMENDING, 9 N.N.C. § 4(E), COMMON-LAW MARRIAGE CRITERIA

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

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

1. Present intention of the parties to become spouses husband-and-wife;

2. Present consent between the both parties to become spouses husband-and-wife;

3. Actual cohabitation;
4. Actual holding out of the parties within their community to be married.

****

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

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

Title 9. Domestic Relations

Chapter 1. Marriage

****

§ 7. Form

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

NAVAJO NATION

MARRIAGE LICENSE

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

Man Spouse 1

Name

Census Number

Residence

Age

Mother's Clan

Father's Clan

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

_____.

______________________________

______________________________

Title

MARRIAGE CERTIFICATE

Page 6

21-504-1
I, the man spouse 1 named above, hereby take the woman spouse 2 named above for my lawful wife partner; and I, the woman spouse 2 named above, hereby take the man spouse 1 named above for my lawful husband partner.

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

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

_________________________  ________________
Witness  Contracting party

_________________________
Address of Witness

_________________________
Witness  Contracting party

_________________________
Address of Witness

_________________________
Clergyman/Medicineman
Traditionalist

_________________________
Address of Clergyman person
Medicineman/Traditionalist

RETURNED AND FILED FOR RECORD this ___ day of ________, and recorded in Book _________ of Marriage Licenses and Certificates on page __, Number _________.

_________________________
Navajo Agency Census Clerk

****

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

The Navajo Nation hereby amends 9 N.N.C. § 201 et. seq. as follows:
Title 9. Domestic Relations

Chapter 3. Husband-and-Wife Property and Liability

§ 202. Separate property—Definitions

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

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

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

§ 203. Liability for debts

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

§ 204. Married women couples

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

§ 205. Community property—Definition

A. All property acquired by either husband-or-wife spouse during the marriage, except that which is acquired by gift, devise or descent, or earned by the wife either spouse and her minor children while he or she lives separate and apart from his or her husband spouse, is the community property of the husband-and-wife.
B. Separate property comingled with community property is still separate if it can be clearly traced and identified.

****

§ 207. Personal property; disposition

During coverture marriage, community personal property may be disposed of by both parties consenting the husband-only.

§ 208. Liability for community debts

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

§ 209. Legal capacity of married women—Generally

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

§ 210. Necessaries—Power of wife to contract debts

The wife may contract debts for necessaries for herself and her children upon the credit of her husband:

§ 2101. Action to collect debt; order of execution

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

****

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

SECTION EIGHT. EFFECTIVE DATE
This legislation and the Navajo Nation Code amendments enacted herein shall become effective pursuant to 2 N.N.C. § 221(B).

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

SECTION TEN. SAVINGS CLAUSE
Should any provisions of this legislation be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of this legislation which are not determined invalid shall remain the law of the Navajo Nation.