LEGISLATION NO: _0108-22_  
SPONSOR: Eugene Tso

TITLE: An Act Relating to the Health, Education and Human Services, Law and Order, Budget and Finance, and Naabik’íyááti’ Committees and the Navajo Nation Council; Repealing 9 N.N.C. § 2(C) of the Diné Marriage Act of 2005, to Equally Recognize all Marriages within the Navajo Nation; and Amending Other Provisions in Title 9 Related to Marriage within the Navajo Nation

Date posted: __June 29, 2022__ at 8:42PM

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DATE: June 29, 2022

TITLE OF RESOLUTION: AN ACT RELATING TO THE HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK’ÍYÁTI’ COMMITTEES AND THE NAVAJO NATION COUNCIL; REPEALING 9 N.N.C. § 2(C) OF THE DINE MARRIAGE ACT OF 2005, TO UNIFORMLY RECOGNIZE ALL MARRIAGES WITHIN THE NAVAJO NATION; AND AMENDING OTHER PROVISIONS IN TITLE 9 RELATED TO MARRIAGE WITHIN THE NAVAJO NATION

PURPOSE: This resolution, if approved, 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 uniformly recognize all marriages within the Navajo Nation.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Fourth Year, 2022
INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0108-22

AN ACT
RELATING TO THE HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK’ÍYÁTI’ COMMITTEES AND THE NAVAJO NATION COUNCIL; REPEALING 9 N.N.C. § 2(C) OF THE DINÉ MARRIAGE ACT OF 2005, TO UNIFORMLY RECOGNIZE ALL MARRIAGES WITHIN THE NAVAJO NATION; AND AMENDING OTHER PROVISIONS IN TITLE 9 RELATED TO MARRIAGE WITHIN THE NAVAJO NATION

BE IT ENACTED:

SECTION ONE. AUTHORITIES
A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
B. The Naabik’íyáti’ 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).
C. 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).
D. The Law and Order Committee is a standing committee of the Navajo Nation Council empowered to 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).

E. 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).

SECTION TWO. FINDINGS

A. The Navajo Nation Council enacted numerous requirements, regulations, and amendments relating to Domestic Relations, Title 9 of the Navajo Nation Code, since 1940. The following resolutions are related to domestic relations and were enacted by the Navajo Nation Council without referendum and by power delegated to them through 2 N.N.C. § 102 and 2 N.N.C. § 164(A): CJ-2-40, CJL-3-44, CF-2-54, CJ-42-56, CO-54-56, CAP-3-93, and CAP-29-05 which was vetoed by the President and overridden by CJN-34-05. In 2005, through Resolution No. CJN-34-05, 9 N.N.C. § 2(C) was established and provided that, “[m]arriage between persons of the same sex is void and prohibited” and the Navajo Nation Council now attempts to repeal this section.

B. 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 uniformly recognize all marriages within the Navajo Nation.

C. Thus, the Navajo Nation hereby exercises its inherent sovereign power in regulating domestic relations by repealing 9 N.N.C. § 2(C) which provides, “[m]arriage between persons of the same sex is void and prohibited.” The Diné Marriage Act of 2005 explicitly excluded and prohibited members of the same-sex from marrying. This legislation also
amends other necessary provisions within the Navajo Nation Code to conform with this
repeal.

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 available for marrying under 9 N.N.C § 4.

E. The Navajo Nation also recognizes that in Obergefell v. Hodges, 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
understands that it has inherent powers to govern domestic relations and is not bound by
the decision in Obergefell v. Hodges. See also Talton v. Mayes, 163 U.S. 376 (1896).
However, the Navajo Nation, through this legislation, is uniformly recognizing all
marriages for any tribal member to marry any person of their choice within the Navajo
Nation.

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. CJJY-63-20 which established Diné Pride Week to be held every third week in June as a recurring 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 of immemorial express oral stories about multiple gendered people. Multiple gendered people have always been acknowledged and have also played important roles in our history.

K. In 2005, the sponsor of the Diné Marriage Act of 2005 expressed that its purpose was to “promote strong families and strong family values, not discriminate This repeal will also ensure same-sex couples are included and recognized in promoting strong families through adoption if the same-sex couple decide to adopt. Additionally, the Naabik’íyáti’ Committee of the Navajo Nation Council passed Resolution No. NABIMY-14-22 to bring awareness of Navajo foster children being placed in foster care across tribal communities and the United States. Resolution No. NABIMY-14-22 also brought awareness that there is a need for more Navajo foster parents.
L. The Navajo Nation finds it to be in the best interest of the Navajo Nation and the Navajo People to repeal 9 N.N.C. § 2(C) so that all persons can enjoy the full benefits of legal recognition of their marriages within the Navajo Nation, whether our relatives are heterosexual, homosexual, bisexual, transgender, non-gender specific, two-spirit, nadleeh.

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.

Title 9. Domestic Relations
Chapter 1. Marriage

****

§ 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.

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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:
Title 9. Domestic Relations

Chapter 1. Marriage

****

§ 4. Methods of contracting marriage
A marriage may be contracted within the Navajo nation by any of the following procedures:

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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.

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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

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§ 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:

<table>
<thead>
<tr>
<th>Man</th>
<th>Woman</th>
</tr>
</thead>
<tbody>
<tr>
<td>______________________</td>
<td>______________________</td>
</tr>
<tr>
<td>Name</td>
<td>Census Number</td>
</tr>
<tr>
<td>______________________</td>
<td>______________________</td>
</tr>
</tbody>
</table>
IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of ______, ______.

__________________________
Title

MARRIAGE CERTIFICATE
I, the man named above, hereby take the woman named above for my lawful wife; and I, the woman named above, hereby take the man named above for my lawful husband.
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                  Address of Witness

__________________________                   ____________________________
Witness                   Contracting party

__________________________                             ____________________________
Address of Witness                  Address of Clergyman person

__________________________                             ____________________________
Clergyman/Medicineman               Medicineman /Traditionalist

__________________________
Address of Clergyman person
RETURNED AND FILED FOR RECORD this ___ day of __________, and recorded in
Book __________ of Marriage Licenses and Certificates on page __, Number __________.  

Navajo Agency Census Clerk

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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 Rights and Liability

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§ 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.

CB. 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 couple
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.

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§ 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 18 years and upwards have the same legal rights and are subject to the same legal liabilities as men of the age of 21 18 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.

§ 2104. Action to collect debt; order of execution
In an action to collect a debt for necessaries for the wife and her children, the both spouses wife and her husband shall be sued jointly and severally and the court shall decree that execution be levied first upon the common unity property, secondly upon the separate property of each spouse, the husband and third upon the separate property of the wife.

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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 thirty (30) 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.