

THE NAVAJO NATION
LEGISLATIVE BRANCH
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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'iyáti' 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

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LEGISLATIVE SUMMARY SHEET
Tracking No. 0108-22

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 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

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.

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

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 [t]o 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).

- 1 D. The Law and Order Committee is a standing committee of the Navajo Nation Council
2 empowered [t]o review and make recommendations to the Navajo Nation Council on
3 proposed amendments to and enactments in the Navajo Nation Code. 2 N.N.C. §§
4 600(A), 601(B)(14).
- 5 E. The Budget and Finance Committee is a standing committee of the Navajo Nation
6 Council empowered to [t]o promulgate policies and regulations concerning wages,
7 expenditure reimbursement, and fringe benefits for Navajo Nation officials and
8 employees. 2 N.N.C. §§ 300(A), 301(B)(8).
- 9

10 **SECTION TWO. FINDINGS**

- 11 A. The Navajo Nation Council enacted numerous requirements, regulations, and
12 amendments relating to Domestic Relations, Title 9 of the Navajo Nation Code, since
13 1940. The following resolutions are related to domestic relations and were enacted by the
14 Navajo Nation Council without referendum and by power delegated to them through 2
15 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-
16 56, CAP-3-93, and CAP-29-05 which was vetoed by the President and overridden by
17 CJN-34-05. In 2005, through Resolution No. CJN-34-05, 9 N.N.C. § 2(C) was
18 established and provided that, “[m]arriage between persons of the same sex is void and
19 prohibited” and the Navajo Nation Council now attempts to repeal this section.
- 20 B. The purpose of this legislation is to repeal 9 N.N.C. § 2(C) of the Diné Marriage Act of
21 2005, Resolution No. CJN-34-05. This legislation also amends other necessary
22 provisions within the Navajo Nation Code to conform with this repeal. Necessary
23 provisions include the following: 9 N.N.C. § 4(E)—Common Law Marriage, 9 N.N.C §
24 7—Marriage License, and 9 N.N.C. § 201 et. seq. This repeal will uniformly recognize
25 all marriages within the Navajo Nation.
- 26 C. Thus, the Navajo Nation hereby exercises its inherent sovereign power in regulating
27 domestic relations by repealing 9 N.N.C. § 2(C) which provides, “[m]arriage between
28 persons of the same sex is void and prohibited.” The Diné Marriage Act of 2005 explicitly
29 excluded and prohibited members of the same-sex from marrying. This legislation also
30

1 amends other necessary provisions within the Navajo Nation Code to conform with this
2 repeal.

3 D. Although this legislation repeals the prohibition against same-sex marriage at 9 N.N.C.
4 § 2(C), the method for a traditional Navajo wedding ceremony outlined at 9 N.N.C §
5 4(D) involving a man and a woman shall remain unchanged. Traditional Navajo society
6 places a great importance upon the institution of marriage and believes that the elaborate
7 ritual of marrying using the traditional method is believed to be blessed by the “Holy
8 People.” This blessing ensures that the marriage will be stable, in harmony, and
9 perpetual. *Navajo Nation v. Murphy*, 6 Nav. R. 10, 13 (1988); *See also Begay v. Chief*,
10 No. SC-CV-08-3, 8 Nav. R. 654 (2005) which provides that common law-marriage under
11 Navajo Nation Code is different than one arising out of traditional wedding ceremony.
12 Keeping the traditional Navajo wedding the same will not prohibit nor deny same-sex
13 marriage because there are other methods available for marrying under 9 N.N.C § 4.

14 E. The Navajo Nation also recognizes that in *Obergefell v. Hodges*, the Supreme Court of
15 the United States ruled that “[t]he right to marry is a fundamental right inherent in the
16 liberty of the person, and under the Due Process and Equal Protection Clauses of the
17 Fourteenth Amendment, couples of the same sex may not be deprived of that right and
18 that liberty.” *Obergefell v. Hodges*, 135 S.Ct. 2584, 2591 (2015). The Navajo Nation
19 understands that it has inherent powers to govern domestic relations and is not bound by
20 the decision in *Obergefell v. Hodges*. *See also Talton v. Mayes*, 163 U.S. 376 (1896).
21 However, the Navajo Nation, through this legislation, is uniformly recognizing all
22 marriages for any tribal member to marry any person of their choice within the Navajo
23 Nation.

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

29 G. The Navajo Nation passed Resolution No. NABIS-50-19 supporting the U.S. Congress
30 to enact Senate Bill 788, “Equality Act.” The Equality Act will amend the Civil Rights

1 Act of 1964, to expand and clarify the protections and remedies against discrimination
2 on the basis of sexual orientation, gender identity, and sex in the areas of employment,
3 housing, public, accommodations, public education, federal funding, credit, and the jury
4 system.

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

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

20 J. Navajo culture from time of immemorial express oral stories about multiple gendered
21 people. Multiple gendered people have always been acknowledged and have also played
22 important roles in our history.

23 K. In 2005, the sponsor of the Diné Marriage Act of 2005 expressed that its purpose was to
24 “promote strong families and strong family values, not discriminate This repeal will also
25 ensure same-sex couples are included and recognized in promoting strong families
26 through adoption if the same-sex couple decide to adopt. Additionally, the Naabik’íyáti’
27 Committee of the Navajo Nation Council passed Resolution No. NABIMY-14-22 to bring
28 awareness of Navajo foster children being placed in foster care across tribal communities and the
29 United States. Resolution No. NABIMY-14-22 also brought awareness that there is a need for
30 more Navajo foster parents.

1 L. The Navajo Nation finds it to be in the best interest of the Navajo Nation and the Navajo
2 People to repeal 9 N.N.C. § 2(C) so that all persons can enjoy the full benefits of legal
3 recognition of their marriages within the Navajo Nation, whether our relatives are
4 heterosexual, homosexual, bisexual, transgender, non-gender specific, two-spirit,
5 nadłeeh.
6

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

9 The Navajo Nation hereby amends 9 N.N.C. § 2(C) as set forth below.
10
11

12 **Title 9. Domestic Relations**

13 **Chapter 1. Marriage**

14 ****

15 **§ 2. Plural marriages void**

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

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

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

23 ****
24
25

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

28 The Navajo Nation hereby amends 9 N.N.C. §4(E) as follows:
29
30

1 **Title 9. Domestic Relations**

2 **Chapter 1. Marriage**

3 ****

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

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

6 ****

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

- 8 1. Present intention of the parties to become spouses ~~husband and wife~~;
- 9 2. Present consent between the both parties to become spouses ~~husband and wife~~;
- 10 3. Actual cohabitation;
- 11 4. Actual holding out of the parties within their community to be married.

12 ****

13 _____
14
15 **SECTION FIVE. AMENDING MARRIAGE LICENSE FORM TO BE GENDER**
16 **NEUTRAL AT 9 N.N.C. § 7**

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

18 _____

19
20 **Title 9. Domestic Relations**

21 **Chapter 1. Marriage**

22 ****

23 **§ 7. Form**

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

25 NAVAJO NATION
26 MARRIAGE LICENSE

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

28 **Man**

Woman

29 Name

30 Census Number

1
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Residence
Age
Mother's Clan
Father's Clan

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

Witness

Contracting party

Address of Witness

Clergyman/Medicineman
Traditionalist

Address of Clergyman person
Medicineman /Traditionalist

1
2 RETURNED AND FILED FOR RECORD this ____ day of _____, and recorded in
3 Book _____ of Marriage Licenses and Certificates on page ____, Number _____.

4
5 _____
6 Navajo Agency Census Clerk

7 ****
8 _____

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

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

13 **Title 9. Domestic Relations**

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

15 ****

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

- 17 A. All property, real and personal, of both spouses ~~the husband~~, owned or claimed by him or
18 her before marriage, and that acquired afterward by gift, devise or descent, and also the
19 increase, rents, issues and profits thereof, is his or her separate property.
- 20 ~~B. All property, both real and personal, of the wife, owned or claimed by her before~~
21 ~~marriage, and that acquired afterward by gift, devise or descent, and also the increase,~~
22 ~~rents, issues and profits thereof, is her separate property.~~
- 23 ~~€B.~~ The earnings and accumulations of the wife spouse and ~~the~~ minor children in his or her
24 custody while he or she lives separate and apart from his or her spouse ~~husband~~ are the
25 separate property ~~of the wife~~.

26
27 **§ 203. Liability for debts**

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

1 **§ 204. Married ~~women~~ couple**

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

6 **§ 205. Community property—Definition**

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

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

13 *****

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

15
16 During ~~coverture~~ marriage, community personal property may be disposed of by both parties
17 consenting ~~the husband only~~.

18
19 **§ 208. Liability for community debts**

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

23
24 **§ 209. Legal capacity ~~of married women~~—Generally**

25 Married women of the age of ~~21~~ 18 years and upwards have the same legal rights and are
26 subject to the same legal liabilities as men of the age of ~~21~~ 18 years and upwards ~~except the~~
27 ~~right to make contracts binding the common property of the husband and wife.~~

28
29 **§ 210. ~~Necessaries~~—~~Power of wife to contract debts~~**

1 ~~The wife may contract debts for necessities for herself and her children upon the credit of her~~
2 ~~husband.~~

3
4 **§ ~~2101~~. Action to collect debt; order of execution**

5 In an action to collect a debt ~~for necessities for the wife and her children, the~~ both spouses
6 ~~wife and her husband~~ shall be sued jointly and severally and the court shall decree that
7 execution be levied first upon the community property, secondly upon the separate property
8 of each spouse, the husband and third upon the separate property of the wife.

9
10 *****

11
12 **SECTION SEVEN. DIRECTIVES**

13 All divisions, departments, programs, and offices of the Navajo Nation government shall
14 amend their policies, including but not limited to employee benefits, to reflect and include
15 changes set forth in this legislation within thirty (30) days after enactment of this legislation.

16
17 **SECTION EIGHT. EFFECTIVE DATE**

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

20
21 **SECTION NINE. CODIFICATION**

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

25
26 **SECTION TEN. SAVINGS CLAUSE**

27 Should any provisions of this legislation be determined invalid by the Navajo Nation Supreme
28 Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation
29 Supreme Court, those portions of this legislation which are not determined invalid shall remain
30 the law of the Navajo Nation.