

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0139-23_

SPONSOR: Seth Damon

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 Uniformly Recognize All Marriages Within the Navajo Nation; and Amending Other Provisions in Title 9 of the Navajo Nation Code Related to Marriage Within the Navajo Nation

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0129-23

DATE: June 23, 2023

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 OF THE NAVAJO NATION CODE RELATED TO MARRIAGE WITHIN THE NAVAJO NATION

PURPOSE: The purpose of this legislation is to amend the Navajo Nation Code so that same sex marriages executed in other jurisdictions are recognized 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 YJV
Website Posting Time/Date _____
Posting End Date: 06-28-23
Eligible for Action: 06-29-23

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

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
25th NAVAJO NATION COUNCIL – First Year, 2023

INTRODUCED BY


(Prime Sponsor)

TRACKING NO. 0139-23

**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 OF THE NAVAJO NATION
CODE 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'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).
- 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

1 general government services of the Navajo Nation and its tribal organizations, entities,
2 and enterprises. 2 N.N.C. §§ 400(A), 401(B)(1).

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

11 12 SECTION TWO. FINDINGS

13 A. Over the past century, the Navajo Nation Council, as the Navajo Nation's governing
14 body, has exercised the Navajo Nation's inherent sovereign power to establish statutory
15 laws and regulations relating to domestic relations within the Navajo Nation, including
16 CJ-2-40, CJL-3-44, CF-2-54, CJ-42-56, CO-54-56, CAP-3-93, and CAP-29-05/CJN-
17 34-05.

18 B. In 2005, the 20th Navajo Nation Council enacted Resolution No. CJN-34-05 which
19 provided that, "[m]arriage between persons of the same sex is void and prohibited". 9
20 N.N.C. § 2(C). Almost twenty years later, the 25th Navajo Nation Council recognizes
21 that the prohibition against same sex marriage does not uniformly welcome or support
22 the well- being of *all* Diné.

23 C. The purpose of this legislation is to repeal 9 N.N.C. § 2(C) of the Diné Marriage Act
24 of 2005 to ensure that all Diné are welcome within the four sacred mountains and to
25 uniformly recognize all marriages within the Navajo Nation. This legislation also
26 amends other provisions within the Navajo Nation Code to conform with this repeal:
27 9 N.N.C. § 4(E)—Common Law Marriage, 9 N.N.C § 7—Marriage License, and 9
28 N.N.C. § 201 et. seq.

29 D. Through this legislation, the Navajo Nation will exercise its inherent sovereign power
30 in regulating domestic relations by repealing 9 N.N.C. § 2(C) which provides,

1 “[m]arriage between persons of the same sex is void and prohibited.” The Diné
2 Marriage Act of 2005 explicitly excluded and prohibited members of the same-sex
3 from marrying. This legislation also amends other necessary provisions within the
4 Navajo Nation Code to conform with this repeal.

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

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

27 G. The Navajo Nation further recognizes that Navajo society accepted multi-gendered
28 individuals prior to European arrival. European religious influence viewed
29 homosexuality as an intolerable sin. As a result, acceptance of the lesbian, gay, bisexual,
30

1 transgender, questioning/queer, two-spirit (LGBTQ+) declined within tribal nations.
2 Today, many tribal nations have repealed same-sex prohibition laws.

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

9 I. The 24th Navajo Nation Council also passed Resolution No. CJY-63-20 which
10 established Diné Pride Week to be held every third week in June as a recurring event.
11 Through CJY-63-20, the Navajo Nation proclaimed that the "Nation will continue to
12 protect its citizens from discrimination based on age, race, disability, ethnicity, family or
13 marital status, gender identity or expression, languages, national origin, physical and
14 mental ability, religion, sexual orientation, veteran status and other characteristics that
15 make our citizens unique under the law."

16 J. Data has also shown that LGBTQ+ members experience higher rates of workplace
17 discrimination and non-acceptance from family members which leads to increased
18 substance abuse and suicide attempts as well as other mental health effects. Further data
19 shows, providing support for LGBTQ+ decreases the negative effect and promotes self-
20 identity. NCAI Policy Research Center, A Spotlight on Two Spirit (Native LGBT)
21 Communities, Accessed on March 18, 2022. Weblink available at:
22 [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)
23 [publications/A_Spotlight_on_Native_LGBT.pdf](https://www.ncai.org/policy-research-center/research-data/prc-publications/A_Spotlight_on_Native_LGBT.pdf)

24 K. Navajo culture from time of immemorial express oral stories about multiple gendered
25 people. Multiple gendered people have always been acknowledged and have also played
26 important roles in our history.

27 L. In 2005, the sponsor of the Diné Marriage Act of 2005 expressed that its purpose was to
28 "promote strong families and strong family values, not discriminate." This repeal will
29 also ensure same-sex couples are included and recognized in promoting strong families
30 through adoption if the same-sex couple decide to adopt. Additionally, the Naabik'iyáti'

1 Committee of the 24th Navajo Nation Council passed Resolution No. NABIMY-14-22 to bring
2 awareness of Navajo foster children being placed in foster care across tribal communities and the
3 United States. Resolution No. NABIMY-14-22 also brought awareness that there is a need for
4 more Navajo foster parents.

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

10
11 **SECTION THREE. REPEALING 9 N.N.C. § 2(C) OF THE DINÉ MARRIAGE ACT**
12 **OF 2005**

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

14
15
16 **Title 9. Domestic Relations**
17 **Chapter 1. Marriage**

18 ****

19 **§ 2. Plural marriages void**

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

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

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

27 ****

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

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

5
6 **Title 9. Domestic Relations**
7 **Chapter 1. Marriage**

8 ****

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

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

11 ****

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

- 13 1. Present intention of the parties to become spouses ~~husband and wife~~;
- 14 2. Present consent between ~~the~~ both parties to become spouses ~~husband and wife~~;
- 15 3. Actual cohabitation;
- 16 4. Actual holding out of the parties within their community to be married.

17 ****
18 _____

19
20 **SECTION FIVE. AMENDING MARRIAGE LICENSE FORM TO BE GENDER**
21 **NEUTRAL AT 9 N.N.C. § 7**

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

24
25 **Title 9. Domestic Relations**
26 **Chapter 1. Marriage**

27 ****

28 **§ 7. Form**

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

30 **NAVAJO NATION**

MARRIAGE LICENSE

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

Man

Woman

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

~~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

1 Address of Witness

2 _____
3 Clergyman/Medicineman
4 Traditionalist

5 _____
6 Address of Clergyman person
7 Medicineman /Traditionalist

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

10 _____
11 Navajo Agency Census Clerk

12 ****
13 _____

14
15 **SECTION SIX. AMENDING HUSBAND AND WIFE SECTION AT 9 N.N.C. § 201 *ET.***
16 ***SEQ.***

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

19
20 **Title 9. Domestic Relations**

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

22 ****

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

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

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

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

4
5 **§ 203. Liability for debts**

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

8
9 **§ 204. Married women couple**

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

14
15 **§ 205. Community property—Definition**

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

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

22 ****

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

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

26
27 **§ 208. Liability for community debts**

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

1
2 **§ 209. Legal capacity of ~~married women~~—Generally**

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

6
7 **~~§ 210. Necessaries—Power of wife to contract debts~~**

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

10
11 **~~§ 210~~1. Action to collect debt; order of execution**

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

16
17 ****
18

19
20 **SECTION SEVEN. DIRECTIVES**

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

24
25 **SECTION EIGHT. EFFECTIVE DATE**

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

28
29 **SECTION NINE. CODIFICATION**

30 The provisions of this legislation which amend or adopt new sections of the Navajo Nation

1 Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel
2 shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

3
4 **SECTION TEN. SAVINGS CLAUSE**

5 Should any provisions of this legislation be determined invalid by the Navajo Nation Supreme
6 Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation
7 Supreme Court, those portions of this legislation which are not determined invalid shall remain
8 the law of the Navajo Nation.