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.

Website Posting End Eligible for A 1 2 3	Date: O7-04-22 Action: O7-05-22 PROPOSED NAVAJO NATION COUNCIL RESOLUT Budget & Finance Com 24th NAVAJO NATION COUNCIL - Fourth Year, 2022 INTRODUCED BY Naabik'íyáti' Com	Thence mittee Thence mittee Thence mittee Thence
4	Navajo Nation C	ouncii
5	- Curation	
6	(Prime Sponsor)	
7		
8	TRACKING NO. <u>0108-22</u>	
9.		
10	AN ACT	
11	RELATING TO THE HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND	
12	ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND	
13	THE NAVAJO NATION COUNCIL; REPEALING 9 N.N.C. § 2(C) OF THE DINÉ	
14	MARRIAGE ACT OF 2005, TO UNIFORMLY RECOGNIZE ALL MARRIAGES	
15	WITHIN THE NAVAJO NATION; AND AMENDING OTHER PROVISIONS IN	
16	TITLE 9 RELATED TO MARRIAGE WITHIN THE NAVAJO NATION	
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18	BE IT ENACTED:	
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20	SECTION ONE. AUTHORITIES	
21	A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §	
22	102(A).	
23	B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council	
24	empowered to review proposed legislation which requires final action by the Navajo	
25	Nation Council. 2 N.N.C. §§ 700(A), 164(A)(9).	
26	C. The Health, Education and Human Services Committee is a standing committee of the	
27	Navajo Nation Council empowered [t]o establish Navajo Nation policy, promulgate rules	
28	and regulations governing health, social services, education, human services and general	
29	government services of the Navajo Nation and its tribal organizations, entities, and	
30	enterprises. 2 N.N.C. §§ 400(A), 401(B)(1).	•
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- D. 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).
- E. The Budget and Finance Committee is a standing committee of the Navajo Nation Council empowered to [t]o 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 that liberty." *Obergefell v. Hodges*, 135 S.Ct. 2584, 2591 (2015). The Navajo Nation 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

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- 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 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."
- Data has also shown that LGBTQ+ members experience higher rates of workplace I. 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 selfidentity. NCAI Policy Research Center, A Spotlight on Two Spirit (Native LGBT) March 18. 2022. Communities, Accessed on Weblink available at: https://www.ncai.org/policy-research-center/research-data/prcpublications/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.

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	SEC	TION THREE. REPEALING 9 N.N.C. § 2(C) OF THE DINÉ MARRIAGE ACT
8	OF 2	2005
9	The	Navajo Nation hereby amends 9 N.N.C. § 2(C) as set forth below.
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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	В	. 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	SEC	TION FOUR. AMENDING, 9 N.N.C. § 4(E), COMMON-LAW MARRIAGE
27	CRI	TERIA
28	The	Navajo Nation hereby amends 9 N.N.C. §4(E) as follows:
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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 E. The contracting parties establish a common-law marriage having the following features: 7 8 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; 9 10 3. Actual cohabitation; 4. Actual holding out of the parties within their community to be married. 11 **** 12 13 14 SECTION FIVE. AMENDING MARRIAGE LICENSE FORM TO BE GENDER 15 NEUTRAL AT 9 N.N.C. § 7 16 17 The Navajo Nation hereby amends 9 N.N.C. §7 as follows: 18 19 **Title 9. Domestic Relations** 20 21 Chapter 1. Marriage *** 22 23 § 7. Form The form of Navajo Nation marriage licenses shall be substantially as follows: 24 NAVAJO NATION 25 MARRIAGE LICENSE 26 Authority is hereby given for the marriage of the following named persons: 27 28 Man Woman Name 29 Census Number 30

and the second s	Age
	Mother's Clan
	Father's Clan
N WITNESS WHEREOF, I have her	reunto set my hand this day of,
	Title
MARRIA	AGE CERTIFICATE
I, the man named above, hereby take the	he woman named above for my lawful wife; and I, the
woman named above, hereby take the m	an named above for my lawful husband.
I hereby certify that the man and won	nan spouses named above were married this day in a
ceremony at which I officiated. (This F	Paragraph may be crossed out if the parties are not
married before a clergyman, medicinem	
3	,
IN WITNESS WHEREOF we have h	nereunto set our hands this day of in the
presence of the witnesses whose names a	appear below.
Witness	Contracting north
	Contracting party
	Contracting party
Address of Witness	—
Address of Witness Witness	Contracting party Contracting party Contracting party
Witness	Contracting party
Witness	
Witness	Clergyman/Medicineman

RET	TURNED AND FILED FOR RECORD this day of, and recorded in
Boo	k of Marriage Licenses and Certificates on page, Number
***	Navajo Agency Census Clerk
SEQ	CTION SIX. AMENDING HUSBAND AND WIFE SECTION AT 9 N.N.C. § 201 ET.
The	Navajo Nation hereby amends 9 N.N.C. § 201 <i>et. seq.</i> as follows:
	Title 9. Domestic Relations
	Chapter 3. Husband and Wife Property Rights and Liability

T.	2. 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.
3.	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.
<u>⊖B</u> .	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.
§ 20	3. Liability for debts
Th	e separate property of the husband or wife either spouse is not liable for the debts of the
	ner 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.

§ 207. Personal property; disposition

During eoverture <u>marriage</u>, community personal property may be disposed of by <u>both parties</u> 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.

§ 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 spouses wife and her husband shall be sued jointly and severally and the court shall decree that execution be levied first upon the commonunity property, secondly upon the separate property of each 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 thirty (30) days after enactment of this legislation.

SECTION EIGHT. EFFECTIVE DATE

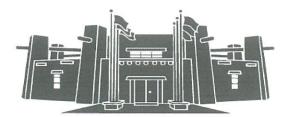
This legislation and the Navajo Nation Code amendments enacted herein shall become effective pursuant to 2 N.N.C. § 221(B).

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.



Honorable Seth Damon Speaker 24th Navajo Nation Council

MEMORANDUM

TO:

Delegate Eugene Tso, Sponsor

Law and Order Committee 24th Navajo Nation Council

FROM:

Chad Abeyta, Attorney

Office of Legislative Counsel

DATE:

June 29, 2022

SUBJECT:

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

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§300, 400, 500, 600 and 700. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please ensure that this resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction. Ahehee!

THE NAVAJO NATION LEGISLATIVE BRANCH INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0108-22__ SPONSOR: <u>Eugene Tso</u>

TITLE: 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 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

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.

THE NAVAJO NATION LEGISLATIVE BRANCH INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0108-22

SPONSOR: <u>Honorable Eugene Tso</u>

TITLE: 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 Equally Recognize all Marriages within the Navajo Nation; and Amending Other Provisions in Title 9 Related to Marriage within the Navajo Nation

Posted: June 29, 2022 at 8:42 PM

5 DAY Comment Period Ended: July 04, 2022

Digital Comments received:

Comments Supporting	None
Comments Opposing	None
Comments/Recommendations	None

Legislative Tracking Secretary Office of Legislative Services

July 05, 2022; 8:30 AM

Date/Time

THE NAVAJO NATION LEGISLATIVE BRANCH INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0108-22

SPONSOR: Honorable Eugene Tso

TITLE: 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 Equally Recognize all Marriages within the Navajo Nation; and Amending Other Provisions in Title 9 Related to Marriage within the Navajo Nation

Posted: June 29, 2022 at 8:42 PM

5 DAY Comment Period Ended: July 04, 2022

Digital Comments received:

Comments Supporting	None
Comments Opposing	1) Fannie Lookingglass
Comments/Recommendations	None

Legislative Tracking Secretary Office of Legislative Services

July 06, 2022; 8:40 AM

Date/Time

Comment on 0108-22

Fannie <flookingglass@yahoo.com>

Wed 7/6/2022 8:24 AM

To:comments <comments@navajo-nsn.gov>;

I oppose this legislation because it is culturally unheard of in my upbringing by my parents both non-English speakers brought up with strict Navajo traditional teachings. My parents told me about Ałnahji'adeezna in historical times when males and females separated. To make a long story short, Yé'iitsoh and other beings resulted from the separation because it was not natural. If this legislation passes, will that be the beginning of our own demise as a unique Navajo people. I believe we need to let this legislation rest. Maybe in another time when our Tribe no longer identifies themselves as Navajo and respect for culture becomes a thing of the past, maybe then it can be legislated.

Fannie Lookingglass

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