

## **LEGISLATIVE SUMMARY SHEET**

**Tracking No.** 0/29-23

**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 YTD  
Website Posting Time/Date 5:31 pm; 06-23-23  
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'íyáti' Committee  
Thence  
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

25<sup>th</sup> 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'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

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 20<sup>th</sup> 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 25<sup>th</sup> 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

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 Today, many tribal nations have repealed same-sex prohibition laws.

H. 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.

I. The 24<sup>th</sup> Navajo Nation Council 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."

J. 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](https://www.ncai.org/policy-research-center/research-data/prc-publications/A_Spotlight_on_Native_LGBT.pdf)

K. 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.

L. 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'

1 Committee of the 24<sup>th</sup> 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



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 Rights 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.~~

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

2       Married women of the age of ~~24~~ 18 years and upwards have the same legal rights and are  
3       subject to the same legal liabilities as men of the age of ~~24~~ 18 years and upwards ~~except the~~  
4       ~~right to make contracts binding the common property of the husband and wife.~~

5  
6       **~~§ 210. Necessaries—Power of wife to contract debts~~**

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

9  
10       **§ 210. Action to collect debt; order of execution**

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

15  
16       \*\*\*\*  
17  
18       

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19       **SECTION SEVEN. DIRECTIVES**

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

24       **SECTION EIGHT. EFFECTIVE DATE**

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

28       **SECTION NINE. CODIFICATION**

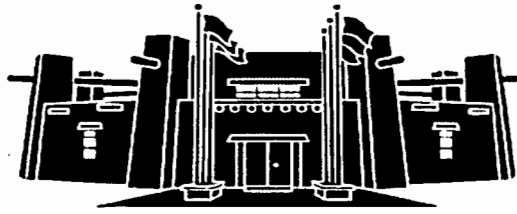
29       The provisions of this legislation which amend or adopt new sections of the Navajo Nation  
30

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.  
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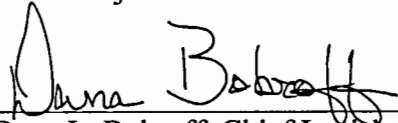
Office of Legislative Counsel  
Telephone: (928) 871-7166  
Fax No.: (928) 871-7576



Honorable Crystalyne Curley  
Speaker  
25<sup>th</sup> Navajo Nation Council

## **MEMORANDUM**

TO: Hon. Seth Damon, Council Delegate  
25<sup>th</sup> Navajo Nation Council

FROM:   
Dana L. Bobroff, Chief Legislative Counsel  
Office of Legislative Counsel

DATE: June 23, 2023

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

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. The resolution drafted is legally sufficient, although, as with all legislation, challenges are possible in the courts. You are advised and encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction. If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. As you may be aware, the Speaker is authorized to refer this proposed resolution to other committees than those stated in the title.

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.

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**

***Date posted:*** June 23, 2023 5:31 PM

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto: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.*