

**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.

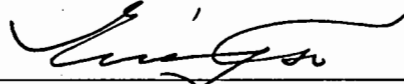
**This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.**

5-DAY BILL HOLD PERIOD: Johnson  
Website Posting Time/Date: 8:42pm; 06-29-22  
Posting End Date: 07-04-22  
Eligible for Action: 07-05-22

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  
24<sup>th</sup> 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'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 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 nadleeh.

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 \_\_\_\_\_



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# MARRIAGE CERTIFICATE

~~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.

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 ~~CB.~~ 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.  
30

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).

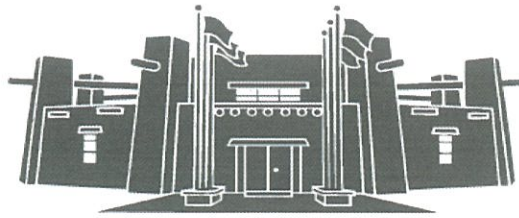
20  
21 **SECTION NINE. CODIFICATION**

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.






## MEMORANDUM

TO: Delegate Eugene Tso, Sponsor  
Law and Order Committee  
24<sup>th</sup> 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: 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**

***Date posted:*** June 29, 2022 at 8:42PM

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.*

**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'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**

**Posted: June 29, 2022 at 8:42 PM**

**5 DAY Comment Period Ended: July 04, 2022**

**Digital Comments received:**

<b>Comments Supporting</b>	<i>None</i>
<b>Comments Opposing</b>	<i>None</i>
<b>Comments/Recommendations</b>	<i>None</i>

  
**Legislative Tracking Secretary  
Office of Legislative Services**

**July 05, 2022; 8:30 AM**

**Date/Time**