ASSEMBLY, No. 2978

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JUNE 16, 2008

Sponsored by:
Assemblyman REED GUSCIORA
District 15 (Mercer)
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)
Assemblyman JOHN F. MCKEON
District 27 (Essex)
Assemblywoman MILA M. JASEY
District 27 (Essex)

Co-Sponsored by:
Assemblywomen Wagner, Spencer, Lampitt, Quigley, Pou, Watson Coleman, Assemblymen Ramos and Johnson

SYNOPSIS
Enacts the “Freedom of Religion and Equality in Civil Marriage Act.”

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 2/6/2009)
A2978 GUSCIORA, VAINIERI HUTTLE

AN ACT concerning marriage, revising various parts of the statutory law and supplementing Title 37 of the Revised Statutes, and repealing section 94 of P.L.2006, c.103.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) This act shall be known and may be cited as the “Freedom of Religion and Equality in Civil Marriage Act.”

2. (New section) The Legislature finds and declares that:
   a. Civil marriage is a legal institution recognized by the State in order to promote stable relationships and to protect individuals who are in those relationships. The institution of marriage also provides important protections for the families of those who are married, including not only children or other dependents, but members of their extended families.
   b. In Lewis v. Harris, 188 N.J. 415 (2006), the New Jersey Supreme Court held that denying rights and benefits to committed same-sex couples that are statutorily given to their heterosexual counterparts violates the equal protection guarantee of Article I, paragraph 1 of the New Jersey Constitution. The court held that to comply with this constitutional mandate, the Legislature must either amend the marriage statutes to include those couples or create a parallel statutory structure which will provide, on equal terms, the rights and benefits enjoyed and burdens and obligations borne by married couples. The Legislature responded to the Lewis v. Harris decision by enacting P.L.2006, c.103 (C.37:1-28 et al.), which established civil unions in this State.
   c. Although same-sex couples may enter into civil unions, nonetheless New Jersey’s discriminatory exclusion of these couples from marriage further harms same-sex couples and their families by denying them unique public recognition and affirmation.
   d. The Legislature has an interest in encouraging stable relationships.
   e. It is the intent of the Legislature in enacting this bill to end the pernicious practice of marriage discrimination in New Jersey.

3. (New section) “Marriage” means the legally recognized union of two consenting persons in a committed relationship. Whenever the term “marriage” occurs or the term “man,” “woman,” “husband” or “wife” occurs in the context of marriage or any reference is made thereto in any law, statute, rule, regulation or order, the same shall be deemed to mean or refer to the union of two persons pursuant to this amendatory and supplementary act.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
4. (New section) It is the intent of the Legislature that this amendatory and supplementary act be interpreted consistently with the guarantees of the First Amendment to the United States Constitution and of Article I, paragraph 4 of the New Jersey Constitution.

5. (New section) No member of the clergy of any religion authorized to solemnize marriage and no religious society, institution or organization in this State shall be required to solemnize any marriage in violation of the free exercise of religion guaranteed by the First Amendment to the United States Constitution or by Article I, paragraph 4 of the New Jersey Constitution.

6. (New section) On and after the effective date of this amendatory and supplementary act, no civil unions shall be established under P.L.2006, c.103 (C.37:1-28 et al.).

7. (New section) On and after the effective date of this amendatory and supplementary act:
   a. All partners in civil unions previously established under P.L.2006, c.103 (C.37:1-28 et al.) who have not moved for dissolution of their civil union pursuant to section 64 of P.L.2006, c.103 (C.2A:34-2.1) shall be deemed married; all civil union licenses previously issued on their behalf shall be deemed to be marriage licenses; and all certificates of civil union shall be deemed to be certificates of marriage;
   b. All partners in civil unions previously established under P.L.2006, c.103 (C.37:1-28 et al.) may apply for a marriage license in accordance with the provisions of R.S.37:1-4, section 10 of P.L., c. (C. ) (pending before the Legislature as this bill) and all other applicable provisions of law.
   c. Partners in civil unions previously established under P.L.2006, c.103 (C.37:1-28 et al.) may solemnize their marriage at any time, but partners who do not undergo the solemnization of their marriage will nonetheless be deemed married pursuant to this act.

8. R.S.37:1-4 is amended to read as follows:
   37:1-4. Issuance of marriage or civil union license, emergencies, validity.
   a. Except as provided in R.S.37:1-6 and subsection b. of this section, the marriage (or civil union) license shall not be issued by a licensing officer sooner than 72 hours after the application therefor has been made; provided, however, that the Superior Court may, by order, waive all or any part of said 72-hour period in cases of emergency, upon satisfactory proof being shown to it. Said order shall be filed with the licensing officer and attached to the application for the license.
b. The licensing officer shall issue a marriage license immediately to partners in a civil union established pursuant to P.L.2006, c.103 (C.37:1-28 et al.) who apply for such license.

c. A marriage [or civil union] license, when properly issued as provided in this article, shall be good and valid only for 30 days after the date of the issuance thereof.

(cf: P.L.2006, c.103, s.9)

9. R.S.37:1-13 is amended to read as follows:


Each judge of the United States Court of Appeals for the Third Circuit, each judge of a federal district court, United States magistrate, judge of a municipal court, judge of the Superior Court, judge of a tax court, retired judge of the Superior Court or Tax Court, or judge of the Superior Court or Tax Court, the former County Court, the former County Juvenile and Domestic Relations Court, or the former County District Court who has resigned in good standing, surrogate of any county, county clerk and any mayor or the deputy mayor when authorized by the mayor, or chairman of any township committee or village president of this State, and every [minister] member of the clergy of every religion, are hereby authorized to solemnize marriages [or civil unions] between such persons as may lawfully enter into the matrimonial relation [or civil union]; and every religious society, institution or organization in this State may join together in marriage [or civil union] such persons according to the rules and customs of the society, institution or organization.

(cf: P.L.2006, c.103, s.17)

10. (New section) Partners in a civil union established pursuant to P.L.2006, c.103 (C.37:1-28 et al.) who apply for a marriage license and present a certificate of civil union to the licensing officer shall not be charged a fee for such marriage license, including any fees set out in R.S.37:1-11 or R.S.37:1-12.


12. (New section) The Commissioner of Health and Senior Services, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1) shall adopt rules and regulations to effectuate the purposes of this amendatory and supplementary act.

13. This act shall take effect on the 60th day following enactment, except that the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of this act.
STATEMENT

This bill, titled the “Freedom of Religion and Equality in Civil Marriage Act,” would authorize same-sex marriage in the State. The bill defines “marriage” as the legally recognized union of two consenting persons in a committed relationship.

In Lewis v. Harris, 188 N.J. 415 (2006), the New Jersey Supreme Court mandated marriage equality to all consenting couples in the State. The court held that denying rights and benefits to same-sex couples that are statutorily given to their heterosexual counterparts violates the equal protection guarantee of Article I, paragraph 1 of the New Jersey Constitution. The court held that to comply with this constitutional mandate, the Legislature must either amend the marriage statutes to include same-sex couples or create a parallel statutory structure which would provide, on equal terms, the rights and benefits enjoyed and burdens and obligations borne by married couples. The Legislature first responded to Lewis v. Harris by enacting P.L.2006, c.103 (C.37:1-28 et al.), which established same-sex civil unions.

The bill’s findings and declarations provide that civil marriage is a legal institution recognized by the State in order to promote stable relationships and to protect individuals who are in those relationships. The institution of marriage also provides important protections for the families of those who are married, including not only children or other dependents, but also members of their extended families.

In addition, the bill’s findings and declarations provide that the Legislature has an interest in encouraging stable relationships, and that it is the intent of the Legislature in enacting the bill to end the pernicious practice of marriage discrimination in New Jersey.

Under the bill, “marriage” would be defined as the legally recognized union of two consenting persons in a committed relationship. The bill provides that whenever the term “marriage” occurs or the term “man,” “woman,” “husband” or “wife” occurs in the context of marriage or any reference is made thereto in any law, statute, rule, regulation or order, the same shall be deemed to mean or refer to the union of two persons pursuant to the bill.

The bill provides that it is the intent of the Legislature that the bill be interpreted consistently with the guarantees of the First Amendment to the United States Constitution and of Article I, paragraph 4 of the New Jersey Constitution.

The bill specifically provides that no member of the clergy of any religion authorized to solemnize marriage and no religious society, institution or organization in this State would be required to solemnize any marriage in violation of the free exercise of religion guaranteed by the First Amendment to the United States Constitution or by Article I, paragraph 4 of the New Jersey Constitution.
In addition, the bill updates language in current law concerning the authority to solemnize marriages, set out in R.S.37:1-13. Currently, this section of law authorizes “every minister of every religion” to solemnize marriages. The bill would change this phrase to “every member of the clergy of every religion.”

The bill also provides that on and after its effective date, no civil unions could be established. The bill takes effect on the 60th day following enactment.

In addition, the bill repeals section 94 of P.L.2006, c.103 (C.37:1-36), which had established the New Jersey Civil Union Review Commission. The function of the commission is to evaluate the operation and effectiveness of the enactment establishing civil unions, including the effect on same-sex couples, their children and other family members of being provided civil unions rather than marriage. With the enactment of this bill, the commission’s function would be obviated.

Under the bill, partners who have previously established a civil union may apply for a marriage license and would receive the license immediately, without the usual 72-hour waiting period between application for, and issuance of, the license. Civil union partners would also not be charged any fees for the issuance of a marriage license.

The bill provides that civil union partners would have 60 days following enactment to move to dissolve their civil union pursuant to applicable law (set out in section 64 of P.L.2006, c.103 (C.2A:34-2.1)). If they do not do so within the 60-day period, the bill provides that these civil union partners would be deemed married, and that all civil union licenses and certificates of civil union issued on their behalf would be deemed to be marriage licenses and certificates of marriage.

The bill also provides that civil union partners may apply for a marriage license and solemnize their marriage at any time, without a waiting period for the license and without the payment of any fees. However, civil union partners who choose not to solemnize their marriages would nonetheless be deemed married as of the effective date of the act.