

**ASSEMBLY, No. 2978**

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**STATE OF NEW JERSEY**

**213th LEGISLATURE**

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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)**

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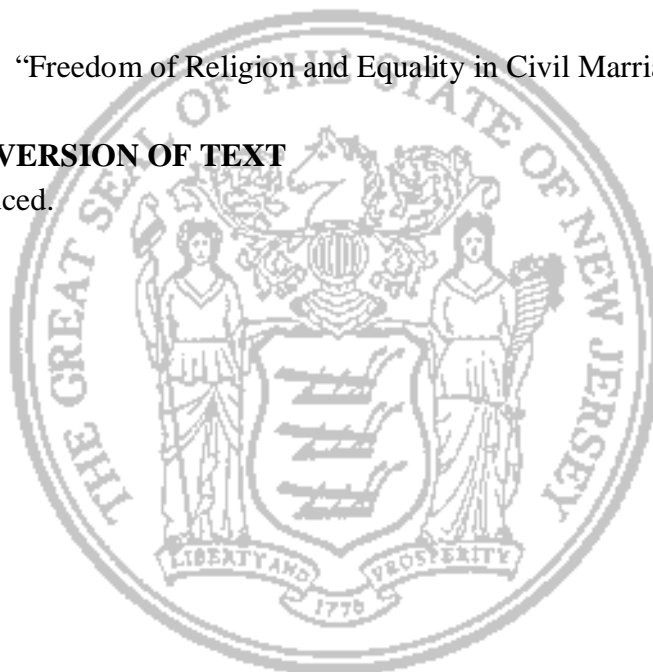
**Assemblywomen Wagner, Spencer, Lampitt, Quigley, Pou, Watson  
Coleman, Assemblymen Ramos and Johnson**

**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)**

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

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) This act shall be known and may be cited as  
9 the “Freedom of Religion and Equality in Civil Marriage Act.”

10  
11 2. (New section) The Legislature finds and declares that:

12 a. Civil marriage is a legal institution recognized by the State  
13 in order to promote stable relationships and to protect individuals  
14 who are in those relationships. The institution of marriage also  
15 provides important protections for the families of those who are  
16 married, including not only children or other dependents, but  
17 members of their extended families.

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

30 c. Although same-sex couples may enter into civil unions,  
31 nonetheless New Jersey’s discriminatory exclusion of these couples  
32 from marriage further harms same-sex couples and their families by  
33 denying them unique public recognition and affirmation.

34 d. The Legislature has an interest in encouraging stable  
35 relationships.

36 e. It is the intent of the Legislature in enacting this bill to end  
37 the pernicious practice of marriage discrimination in New Jersey.

38  
39 3. (New section) “Marriage” means the legally recognized  
40 union of two consenting persons in a committed relationship.  
41 Whenever the term “marriage” occurs or the term “man,” “woman,”  
42 “husband” or “wife” occurs in the context of marriage or any  
43 reference is made thereto in any law, statute, rule, regulation or  
44 order, the same shall be deemed to mean or refer to the union of two  
45 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.**

1 4. (New section) It is the intent of the Legislature that this  
2 amendatory and supplementary act be interpreted consistently with  
3 the guarantees of the First Amendment to the United States  
4 Constitution and of Article I, paragraph 4 of the New Jersey  
5 Constitution.

6  
7 5. (New section) No member of the clergy of any religion  
8 authorized to solemnize marriage and no religious society,  
9 institution or organization in this State shall be required to  
10 solemnize any marriage in violation of the free exercise of religion  
11 guaranteed by the First Amendment to the United States  
12 Constitution or by Article I, paragraph 4 of the New Jersey  
13 Constitution.

14  
15 6. (New section) On and after the effective date of this  
16 amendatory and supplementary act, no civil unions shall be  
17 established under P.L.2006, c.103 (C.37:1-28 et al.).

18  
19 7. (New section) On and after the effective date of this  
20 amendatory and supplementary act:

21 a. All partners in civil unions previously established under  
22 P.L.2006, c.103 (C.37:1-28 et al.) who have not moved for  
23 dissolution of their civil union pursuant to section 64 of P.L.2006,  
24 c.103 (C.2A:34-2.1) shall be deemed married; all civil union  
25 licenses previously issued on their behalf shall be deemed to be  
26 marriage licenses; and all certificates of civil union shall be deemed  
27 to be certificates of marriage;

28 b. All partners in civil unions previously established under  
29 P.L.2006, c.103 (C.37:1-28 et al.) may apply for a marriage license  
30 in accordance with the provisions of R.S.37:1-4, section 10 of  
31 P.L. , c. (C. ) (pending before the Legislature as this bill)  
32 and all other applicable provisions of law.

33 c. Partners in civil unions previously established under P.L.2006,  
34 c.103 (C.37:1-28 et al.) may solemnize their marriage at any time,  
35 but partners who do not undergo the solemnization of their marriage  
36 will nonetheless be deemed married pursuant to this act.

37  
38 8. R.S.37:1-4 is amended to read as follows:

39 37:1-4. Issuance of marriage or civil union license, emergencies,  
40 validity.

41 a. Except as provided in R.S.37:1-6 and subsection b. of this  
42 section, the marriage [or civil union] license shall not be issued by  
43 a licensing officer sooner than 72 hours after the application  
44 therefor has been made; provided, however, that the Superior Court  
45 may, by order, waive all or any part of said 72-hour period in cases  
46 of emergency, upon satisfactory proof being shown to it. Said order  
47 shall be filed with the licensing officer and attached to the  
48 application for the license.

1 b. The licensing officer shall issue a marriage license  
2 immediately to partners in a civil union established pursuant to  
3 P.L.2006, c.103 (C.37:1-28 et al.) who apply for such license.

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

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

8  
9 9. R.S.37:1-13 is amended to read as follows:

10 37:1-13. Authorization to solemnize marriages and civil unions.

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

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

29  
30 10. (New section) Partners in a civil union established pursuant  
31 to P.L.2006, c.103 (C.37:1-28 et al.) who apply for a marriage  
32 license and present a certificate of civil union to the licensing  
33 officer shall not be charged a fee for such marriage license,  
34 including any fees set out in R.S.37:1-11 or R.S.37:1-12.

35  
36 11. Section 94 of P.L.2006, c.103 (C.37:1-36) is repealed.

37  
38 12. (New section) The Commissioner of Health and Senior  
39 Services, pursuant to the “Administrative Procedure Act,” P.L.1968,  
40 c.410 (C.52:14B-1) shall adopt rules and regulations to effectuate  
41 the purposes of this amendatory and supplementary act.

42  
43 13. This act shall take effect on the 60th day following  
44 enactment, except that the Commissioner of Health and Senior  
45 Services may take such anticipatory administrative action in  
46 advance as shall be necessary for the implementation of this act.

## STATEMENT

1  
2  
3 This bill, titled the “Freedom of Religion and Equality in Civil  
4 Marriage Act,” would authorize same-sex marriage in the State.  
5 The bill defines “marriage” as the legally recognized union of two  
6 consenting persons in a committed relationship.

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

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

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

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

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

42 The bill specifically provides that no member of the clergy of  
43 any religion authorized to solemnize marriage and no religious  
44 society, institution or organization in this State would be required to  
45 solemnize any marriage in violation of the free exercise of religion  
46 guaranteed by the First Amendment to the United States  
47 Constitution or by Article I, paragraph 4 of the New Jersey  
48 Constitution.

1 In addition, the bill updates language in current law concerning  
2 the authority to solemnize marriages, set out in R.S.37:1-13.  
3 Currently, this section of law authorizes “every minister of every  
4 religion” to solemnize marriages. The bill would change this  
5 phrase to “every member of the clergy of every religion.”

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

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

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

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

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