

SENATE, No. 1967

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JUNE 9, 2008

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Co-Sponsored by:

Senators Buono, Ruiz, Cunningham and Gill

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/8/2009)

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

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

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

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

1 shall be filed with the licensing officer and attached to the
2 application for the license.

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

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

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

10

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

12 37:1-13. Authorization to solemnize marriages and civil unions.

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

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

31

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

37

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

39

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

44

45 13. This act shall take effect on the 60th day following
46 enactment, except that the Commissioner of Health and Senior

1 Services may take such anticipatory administrative action in
2 advance as shall be necessary for the implementation of this act.

3

4

5

STATEMENT

6

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

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

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

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

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

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

46 The bill specifically provides that no member of the clergy of
47 any religion authorized to solemnize marriage and no religious
48 society, institution or organization in this State would be required to

1 solemnize any marriage in violation of the free exercise of religion
2 guaranteed by the First Amendment to the United States
3 Constitution or by Article I, paragraph 4 of the New Jersey
4 Constitution.

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

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

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

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

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

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