

# ASSEMBLY, No. 1

## STATE OF NEW JERSEY

### 215th LEGISLATURE

INTRODUCED JANUARY 17, 2012

**Sponsored by:**

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**District 37 (Bergen)**

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**District 33 (Hudson)**

**Co-Sponsored by:**

**Assemblyman Diegnan, Assemblywoman Lampitt, Assemblymen Singleton, Burzichelli and Assemblywoman Spencer**

**SYNOPSIS**

Enacts the "Marriage Equality and Religious Exemption Act."

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 2/17/2012)

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 “Marriage Equality and Religious Exemption Act.”

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

12 a. Six states and the District of Columbia, together comprising  
13 35 million Americans, allow same-sex couples to marry.

14 b. In Lewis v. Harris, 188 N.J. 415 (2006), the New Jersey  
15 Supreme Court held that denying rights and benefits to committed  
16 same-sex couples that are statutorily given to their heterosexual  
17 counterparts violates the equal protection guarantee of Article I,  
18 paragraph 1 of the New Jersey Constitution. The court held that to  
19 comply with this constitutional mandate, the Legislature must either  
20 amend the marriage statutes to include those couples or create a  
21 parallel statutory structure to attempt to provide the rights and  
22 benefits enjoyed by, and burdens and obligations borne by, married  
23 couples.

24 c. The Legislature and the Governor responded to the Lewis v.  
25 Harris decision by enacting P.L.2006, c.103 (C.37:1-28 et al.),  
26 which established civil unions in this State.

27 d. In P.L.2006, c.103 the Legislature created the New Jersey  
28 Civil Union Review Commission to investigate whether  
29 “provid[ing] civil unions rather than marriage” to same-sex couples  
30 affords them equality, and empowered the Commission to present  
31 findings and make recommendations to the Legislature. In  
32 accordance with P.L.2006, c.103, the Governor, the President of the  
33 Senate, and the Speaker of the General Assembly appointed  
34 members to the Commission.

35 e. Through testimony and overwhelming evidence, the New  
36 Jersey Civil Union Review Commission found that numerous  
37 employers in New Jersey have denied equal benefits to civil union  
38 partners because of the deprivation of marriage equality, and that  
39 numerous hospitals in New Jersey have denied visitation and  
40 medical decision rights to civil union partners because of the  
41 deprivation of marriage equality.

42 f. The New Jersey Civil Union Review Commission  
43 unanimously concluded that instead of ending discrimination  
44 against same-sex couples, P.L.2006, c.103 actually “invites and  
45 encourages unequal treatment” of same-sex couples.

**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 g. The findings of the New Jersey Civil Union Review  
2 Commission were confirmed by testimony before the Senate  
3 Judiciary Committee in 2009, in which civil union couples  
4 described their difficulty in getting employers and hospitals in New  
5 Jersey to accept their civil unions as equal to marriage, thus  
6 perpetuating inequality and hardship.

7 h. Both the New Jersey Civil Union Review Commission and  
8 the Senate Judiciary Committee heard overwhelming evidence that  
9 the separate and inferior label of civil union stigmatizes children  
10 and parents in civil unions, at school and in other settings, and  
11 causes psychological harm.

12 i. The civil union enactment invades the privacy of same-sex  
13 couples and invites discrimination against them when they are  
14 forced to disclose in job interviews, on forms, and in other settings  
15 a civil union status available only to same-sex couples.

16 j. New Jersey enacted the strongest possible civil union law in  
17 order to comply with Lewis v. Harris, and therefore cannot  
18 strengthen the civil union law as an alternative to marriage equality  
19 in order to provide equality to same-sex couples.

20 k. Civil marriage is a legal institution recognized by the State  
21 in order to encourage stable relationships and to protect individuals  
22 from discrimination, and the State has an interest in encouraging  
23 stable relationships and protecting individuals from discrimination.

24 l. It is the intent of the Legislature in enacting this bill to end  
25 the pernicious practice of discrimination in civil marriage in New  
26 Jersey.

27 m. It is the intent of the Legislature in enacting this bill to leave  
28 decisions about religious marriage to religions, and to uphold the  
29 free exercise of religion guaranteed by the First Amendment to the  
30 United States Constitution and by Article I, paragraph 4 of the New  
31 Jersey Constitution.

32 n. Therefore, this bill includes a religious exemption stating  
33 that no member of the clergy of any religion authorized to  
34 solemnize marriage and no religious society, institution or  
35 organization in this State shall be required to solemnize any  
36 marriage in violation of the free exercise of religion guaranteed by  
37 the First Amendment to the United States Constitution or by Article  
38 I, paragraph 4 of the New Jersey Constitution.

39 o. This bill includes another religious exemption stating that no  
40 religious society, institution or organization in this State serving a  
41 particular faith or denomination shall be compelled to provide  
42 space, services, advantages, goods, or privileges related to the  
43 solemnization, celebration or promotion of marriage if such  
44 solemnization, celebration or promotion of marriage is in violation  
45 of the beliefs of such religious society, institution or organization.

46 p. In addition, this bill includes a religious exemption stating  
47 that no civil claim or cause of action against any religious society,  
48 institution or organization, or any employee thereof, shall arise out  
49 of any refusal to provide space, services, advantages, goods, or

1 privileges. No State action to penalize or withhold benefits from  
2 any such religious society, institution or organization, or any  
3 employee thereof, shall result from any refusal to provide space,  
4 services, advantages, goods, or privileges pursuant to this  
5 exemption.

6  
7 3. (New section) “Marriage” means the legally recognized  
8 union of two consenting persons in a committed relationship.  
9 Whenever the term “marriage” occurs or the term “man,” “woman,”  
10 “husband” or “wife” occurs in the context of marriage or any  
11 reference is made thereto in any law, statute, rule, regulation or  
12 order, the same shall be deemed to mean or refer to the union of two  
13 persons pursuant to this amendatory and supplementary act.

14  
15 4. (New section) It is the intent of the Legislature that this  
16 amendatory and supplementary act be interpreted consistently with  
17 the guarantees of the First Amendment to the United States  
18 Constitution and of Article I, paragraph 4 of the New Jersey  
19 Constitution.

20  
21 5. (New section) a. No member of the clergy of any religion  
22 authorized to solemnize marriage and no religious society,  
23 institution or organization in this State shall be required to  
24 solemnize any marriage in violation of the free exercise of religion  
25 guaranteed by the First Amendment to the United States  
26 Constitution or by Article I, paragraph 4 of the New Jersey  
27 Constitution.

28 b. No religious society, institution or organization in this State  
29 serving a particular faith or denomination shall be compelled to  
30 provide space, services, advantages, goods, or privileges related to  
31 the solemnization, celebration or promotion of marriage if such  
32 solemnization, celebration or promotion of marriage is in violation  
33 of the beliefs of such religious society, institution or organization.

34 c. No civil claim or cause of action against any religious  
35 society, institution or organization, or any employee thereof, shall  
36 arise out of any refusal to provide space, services, advantages,  
37 goods, or privileges pursuant to this section. No State action to  
38 penalize or withhold benefits from any such religious society,  
39 institution or organization, or any employee thereof, shall result  
40 from any refusal to provide space, services, advantages, goods, or  
41 privileges pursuant to this section.

42 d. Nothing in this act shall be construed to limit the effect of  
43 section 2 of P.L.1979, c.428 (C.18A:35-4.7).

44  
45 6. (New section) On and after the effective date of this  
46 amendatory and supplementary act, no civil unions shall be  
47 established under P.L.2006, c.103 (C.37:1-28 et al.).

1       7. (New section) On and after the effective date of this  
2 amendatory and supplementary act:

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

10       b. All partners in civil unions previously established under  
11 P.L.2006, c.103 (C.37:1-28 et al.) may apply for a marriage license  
12 in accordance with the provisions of R.S.37:1-4 and all other  
13 applicable provisions of law.

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

19

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

21       37:1-4. Issuance of marriage or civil union license, emergencies,  
22 validity.

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

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

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

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

38

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

40       37:1-13. Authorization to solemnize marriages and civil unions.

41       Each judge of the United States Court of Appeals for the Third  
42 Circuit, each judge of a federal district court, United States  
43 magistrate, judge of a municipal court, judge of the Superior Court,  
44 judge of a tax court, retired judge of the Superior Court or Tax  
45 Court, or judge of the Superior Court or Tax Court, the former  
46 County Court, the former County Juvenile and Domestic Relations  
47 Court, or the former County District Court who has resigned in  
48 good standing, surrogate of any county, county clerk and any mayor  
49 or the deputy mayor when authorized by the mayor, or chairman of

1 any township committee or village president of this State, and every  
2 **【minister】** member of the clergy of every religion, are hereby  
3 authorized to solemnize marriages **【or civil unions】** between such  
4 persons as may lawfully enter into the matrimonial relation **【or civil**  
5 **union】**; and every religious society, institution or organization in  
6 this State may join together in marriage **【or civil union】** such  
7 persons according to the rules and customs of the society,  
8 institution or organization.  
9 (cf: P.L.2006, c.103, s.17)

10  
11 10. Section 94 of P.L.2006, c.103 (C.37:1-36) is repealed.

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

17  
18 12. This act shall take effect on the 60th day following  
19 enactment, except that the Commissioner of Health and Senior  
20 Services may take such anticipatory administrative action in  
21 advance as shall be necessary for the implementation of this act.

#### 22 23 24 STATEMENT

25  
26 This bill, titled the “Marriage Equality and Religious Exemption  
27 Act,” would authorize same-sex marriage in the State. The bill  
28 defines “marriage” as the legally recognized union of two  
29 consenting persons in a committed relationship.

#### 30 *Findings and Declarations*

31 The bill’s findings and declarations provide that:

32 a. Six states and the District of Columbia, together comprising  
33 35 million Americans, allow same-sex couples to marry.

34 b. In Lewis v. Harris, 188 N.J. 415 (2006), the New Jersey  
35 Supreme Court held that denying rights and benefits to committed  
36 same-sex couples that are statutorily given to their heterosexual  
37 counterparts violates the equal protection guarantee of Article I,  
38 paragraph 1 of the New Jersey Constitution. The court held that to  
39 comply with this constitutional mandate, the Legislature must either  
40 amend the marriage statutes to include those couples or create a  
41 parallel statutory structure to attempt to provide the rights and  
42 benefits enjoyed by, and burdens and obligations borne by, married  
43 couples.

44 c. The Legislature and the Governor responded to the Lewis v.  
45 Harris decision by enacting P.L.2006, c.103 (C.37:1-28 et al.),  
46 which established civil unions in this State.

47 d. In P.L.2006, c.103 the Legislature created the New Jersey  
48 Civil Union Review Commission to investigate whether

1 “provid[ing] civil unions rather than marriage” to same-sex couples  
2 affords them equality, and empowered the Commission to present  
3 findings and make recommendations to the Legislature. In  
4 accordance with P.L.2006, c.103, the Governor, the President of the  
5 Senate, and the Speaker of the General Assembly appointed  
6 members to the Commission.

7 e. Through testimony and overwhelming evidence, the New  
8 Jersey Civil Union Review Commission found that numerous  
9 employers in New Jersey have denied equal benefits to civil union  
10 partners because of the deprivation of marriage equality, and that  
11 numerous hospitals in New Jersey have denied visitation and  
12 medical decision rights to civil union partners because of the  
13 deprivation of marriage equality.

14 f. The New Jersey Civil Union Review Commission  
15 unanimously concluded that instead of ending discrimination  
16 against same-sex couples, P.L.2006, c.103 actually “invites and  
17 encourages unequal treatment” of same-sex couples.

18 g. The findings of the New Jersey Civil Union Review  
19 Commission were confirmed by testimony before the Senate  
20 Judiciary Committee in 2009, in which civil union couples  
21 described their difficulty in getting employers and hospitals in New  
22 Jersey to accept their civil unions as equal to marriage, thus  
23 perpetuating inequality and hardship.

24 h. Both the New Jersey Civil Union Review Commission and  
25 the Senate Judiciary Committee heard overwhelming evidence that  
26 the separate and inferior label of civil union stigmatizes children  
27 and parents in civil unions, at school and in other settings, and  
28 causes psychological harm.

29 i. The civil union enactment invades the privacy of same-sex  
30 couples and invites discrimination against them when they are  
31 forced to disclose in job interviews, on forms, and in other settings  
32 a civil union status available only to same-sex couples.

33 j. New Jersey enacted the strongest possible civil union law in  
34 order to comply with Lewis v. Harris, and therefore cannot  
35 strengthen the civil union law as an alternative to marriage equality  
36 in order to provide equality to same-sex couples.

37 k. Civil marriage is a legal institution recognized by the State  
38 in order to encourage stable relationships and to protect individuals  
39 from discrimination, and the State has an interest in encouraging  
40 stable relationships and protecting individuals from discrimination.

41 l. It is the intent of the Legislature in enacting this bill to end  
42 the pernicious practice of discrimination in civil marriage in New  
43 Jersey.

44 m. It is the intent of the Legislature in enacting this bill to leave  
45 decisions about religious marriage to religions, and to uphold the  
46 free exercise of religion guaranteed by the First Amendment to the  
47 United States Constitution and by Article I, paragraph 4 of the New  
48 Jersey Constitution.

1 n. Therefore, this bill includes a religious exemption stating  
2 that no member of the clergy of any religion authorized to  
3 solemnize marriage and no religious society, institution or  
4 organization in this State shall be required to solemnize any  
5 marriage in violation of the free exercise of religion guaranteed by  
6 the First Amendment to the United States Constitution or by Article  
7 I, paragraph 4 of the New Jersey Constitution.

8 o. This bill includes another religious exemption stating that no  
9 religious society, institution or organization in this State serving a  
10 particular faith or denomination shall be compelled to provide  
11 space, services, advantages, goods, or privileges related to the  
12 solemnization, celebration or promotion of marriage if such  
13 solemnization, celebration or promotion of marriage is in violation  
14 of the beliefs of such religious society, institution or organization.

15 p. In addition, this bill includes a religious exemption stating  
16 that no civil claim or cause of action against any religious society,  
17 institution or organization, or any employee thereof, shall arise out  
18 of any refusal to provide space, services, advantages, goods, or  
19 privileges. No State action to penalize or withhold benefits from  
20 any such religious society, institution or organization, or any  
21 employee thereof, shall result from any refusal to provide space,  
22 services, advantages, goods, or privileges pursuant to this  
23 exemption.

#### 24 *Marriage*

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

#### 32 *Religious Exemptions*

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

37 The bill specifically provides that no member of the clergy of  
38 any religion authorized to solemnize marriage and no religious  
39 society, institution or organization in this State would be required to  
40 solemnize any marriage in violation of the free exercise of religion  
41 guaranteed by the First Amendment to the United States  
42 Constitution or by Article I, paragraph 4 of the New Jersey  
43 Constitution. The bill also provides that no religious society,  
44 institution or organization in this State serving a particular faith or  
45 denomination shall be compelled to provide space, services,  
46 advantages, goods, or privileges related to the solemnization,  
47 celebration or promotion of marriage if such solemnization,  
48 celebration or promotion of marriage is in violation of the beliefs of  
49 such religious society, institution or organization.



1 In addition, the bill provides that no civil claim or cause of  
2 action against any religious society, institution or organization, or  
3 any employee thereof, would arise out of any refusal to provide  
4 space, services, advantages, goods, or privileges pursuant to the  
5 bill. Under the bill no State action to penalize or withhold benefits  
6 from any such religious society, institution or organization, or any  
7 employee thereof, would result from any refusal to provide space,  
8 services, advantages, goods, or privileges.

9 The bill also provides that nothing in the act would be construed  
10 to limit the effect of section 2 of P.L.1979, c.428 (C.18A:35-4.7).  
11 This section provides that any child whose parent or guardian  
12 presents to the school principal a signed statement that any part of  
13 the instructions in health, family life education or sex education is  
14 in conflict with his conscience, or sincerely held moral or religious  
15 beliefs shall be excused from that portion of the course where such  
16 instruction is being given and no penalties as to credit or graduation  
17 shall result therefrom.

18 *“Member of the Clergy” Language*

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

24 *Civil Unions*

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

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

36 Under the bill, partners who have previously established a civil  
37 union may apply for a marriage license and would receive the  
38 license immediately, without the usual 72-hour waiting period  
39 between application for, and issuance of, the license. The usual  
40 fees for a marriage license would apply to same sex couples.

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

1       The bill also provides that civil union partners may apply for a  
2 marriage license and solemnize their marriage at any time, without  
3 a waiting period for the license. However, civil union partners who  
4 choose not to solemnize their marriages would nonetheless be  
5 deemed married as of the effective date of the act unless their civil  
6 union has been dissolved within the 60-day period set out in the  
7 bill.