

SENATE, No. 1

STATE OF NEW JERSEY

215th LEGISLATURE

INTRODUCED JANUARY 10, 2012

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Assemblyman REED GUSCIORA

District 15 (Hunterdon and Mercer)

Assemblywoman SHEILA Y. OLIVER

District 34 (Essex and Passaic)

Assemblywoman CONNIE WAGNER

District 38 (Bergen and Passaic)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman JASON O'DONNELL

District 31 (Hudson)

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblyman TIMOTHY J. EUSTACE

District 38 (Bergen and Passaic)

Assemblyman RUBEN J. RAMOS, JR.

District 33 (Hudson)

Co-Sponsored by:

Senators Codey, Gill, Beck, Cunningham, Pou, Ruiz, 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

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

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

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

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

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

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

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

45
46 6. (New section) On and after the effective date of this
47 amendatory and supplementary act, no civil unions shall be
48 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

1 or the deputy mayor when authorized by the mayor, or chairman of
2 any township committee or village president of this State, and every
3 **【minister】** member of the clergy of every religion, are hereby
4 authorized to solemnize marriages **【or civil unions】** between such
5 persons as may lawfully enter into the matrimonial relation **【or civil**
6 **union】**; and every religious society, institution or organization in
7 this State may join together in marriage **【or civil union】** such
8 persons according to the rules and customs of the society,
9 institution or organization.

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

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

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

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

23 24 25 STATEMENT

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

31 *Findings and Declarations*

32 The bill’s findings and declarations provide that:

33 a. Six states and the District of Columbia, together comprising
34 35 million Americans, allow same-sex couples to marry.

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

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

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

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

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

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

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

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

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

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

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

46 m. It is the intent of the Legislature in enacting this bill to leave
47 decisions about religious marriage to religions, and to uphold the
48 free exercise of religion guaranteed by the First Amendment to the

1 United States Constitution and by Article I, paragraph 4 of the New
2 Jersey Constitution.

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

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

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

26 *Marriage*

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

34 *Religious Exemptions*

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

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

1 celebration or promotion of marriage if such solemnization,
2 celebration or promotion of marriage is in violation of the beliefs of
3 such religious society, institution or organization.

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

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

21 *“Member of the Clergy” Language*

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

27 *Civil Unions*

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

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

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

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

1 deemed married, and that all civil union licenses and certificates of
2 civil union issued on their behalf would be deemed to be marriage
3 licenses and certificates of marriage.

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