

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)

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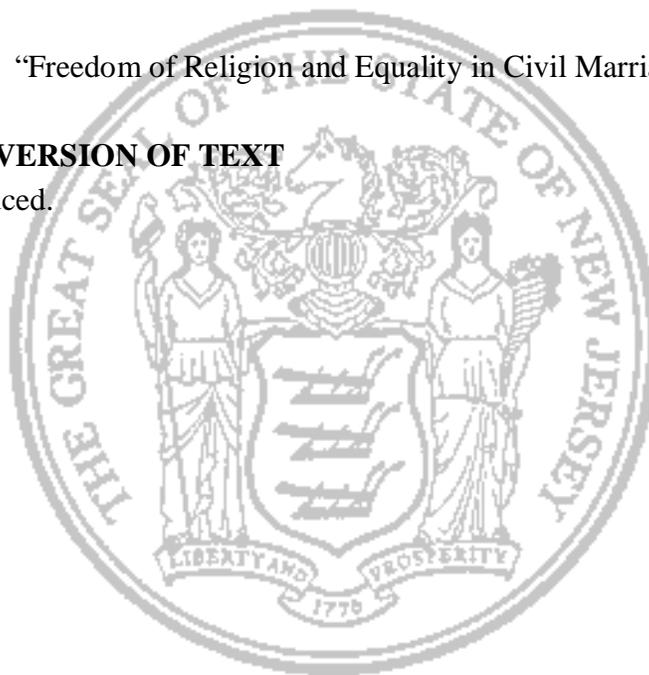
**Assemblywomen Wagner, Spencer, Lampitt, Quigley, Pou, Watson
Coleman, Assemblymen Ramos and Johnson**

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)

A2978 GUSCIORA, VAINIERI HUTTLE

2

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.