

[First Reprint]

ASSEMBLY, No. 5367

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 23, 2021

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SYNOPSIS

Codifies same-sex marriage in the statutes.

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on December 9, 2021, with amendments.



(Sponsorship Updated As Of: 12/20/2021)

1 AN ACT concerning marriage, amending R.S.37:1-1, repealing
2 section 94 of P.L.2006, c.103, and supplementing Title 37 of the
3 Revised Statutes.

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

7
8 1. (New section) The Legislature finds and declares:

9 a. On September 27, 2013, Hon. Mary C. Jacobson, A.J.S.C.
10 ruled in Garden State Equality v. Dow, 434 N.J. Super. 163 (Law
11 Div. 2013) that New Jersey's exclusion of same-sex couples from
12 civil marriage violated the equal protection guarantee of the New
13 Jersey Constitution. The New Jersey Supreme Court declined to
14 issue a stay of the lower court's order. Same-sex couples have been
15 getting married in New Jersey since October 18, 2013, the day the
16 State withdrew its appeal in the case.

17 b. Seven years before Garden State Equality, the New Jersey
18 Supreme Court had ruled unanimously in Lewis v. Harris, 188 N.J.
19 415 (2006) that same-sex couples are entitled to all of the rights,
20 privileges, and obligations of marriage as opposite-sex couples. In
21 response to the Lewis v. Harris decision, the Legislature enacted
22 P.L.2006, c.103 (C.37:1-28 et al.), which established same-sex civil
23 unions in New Jersey.

24 c. The New Jersey Civil Union Review Commission created by
25 the Legislature concluded in 2008, after significant public hearings
26 and discussion, that same-sex civil unions provided unequal
27 treatment to same-sex couples in the State. In addition, under
28 federal law, same-sex civil union couples did not have access to
29 federal benefits available to married couples.

30 d. Section 2 of P.L. , c. , amending N.J.S.37:1-1 (pending
31 before the Legislature as section 2 of this bill) is intended to bring
32 New Jersey statutory law into conformance with the 2013 decision
33 in Garden State Equality as well as the 2015 United States Supreme
34 Court decision in Obergefell et al. v. Hodges, Director, Ohio
35 Department of Health, et al., 576 U.S. 644 (2015). Obergefell held
36 that same-sex marriage is a fundamental right and that all states are
37 required to allow same-sex couples to marry.

38 e. This Legislature, in recognition of the New Jersey Supreme
39 Court's unanimous holding in Lewis v. Harris; the New Jersey
40 Superior Court's ruling in Garden State Equality v. Dow; and the
41 United States Supreme Court's decision in Obergefell v. Hodges,
42 and recognizing that New Jersey same-sex couples' right to marry
43 has never been codified and made more secure by the enactment of
44 a statute, finds that it is necessary to enact this legislation.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted December 9, 2021.

1 2. R.S.37:1-1 is amended to read as follows:

2 37:1-1. ~~【Certain marriages】~~ Marriages ~~【or】~~ and civil unions
3 ~~【prohibited】~~.

4 a. ~~【A man shall not marry or enter into a civil union with any~~
5 ~~of his ancestors or descendants, or his sister or brother, or the~~
6 ~~daughter or son of his brother or sister, or the sister or brother of his~~
7 ~~father or mother, whether such collateral kindred be of the whole or~~
8 ~~half blood.】~~ (Deleted by amendment, P.L. , c.) (pending before
9 the Legislature as this bill)

10 b. ~~【A woman shall not marry or enter into a civil union with~~
11 ~~any of her ancestors or descendants, or her sister or brother, or the~~
12 ~~daughter or son of her brother or sister, or the sister or brother of~~
13 ~~her father or mother, whether such collateral kindred be of the~~
14 ~~whole or half blood.】~~ (Deleted by amendment, P.L. , c.)
15 (pending before the Legislature as this bill)

16 c. Laws concerning marriage and civil union shall be read with
17 gender neutral intent.

18 d. No person shall marry or enter into a civil union with any of
19 the person's ancestors or descendants, or the person's sister or
20 brother, or the daughter or son of the person's brother or sister, or
21 the sister or brother of the person's father or mother, whether such
22 collateral kindred be of the whole or half blood.

23 e. A marriage or civil union in violation of ¹~~【any of the~~
24 ~~foregoing provisions】~~ subsection d. of this section¹ shall be
25 absolutely void.

26 (cf: P.L.2006, c.103, s.6)

27

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

29

30 4. This act shall take effect immediately.