

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5367

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2021

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 5367.

This bill would codify same-sex marriage in the statutes. Same-sex marriage has been authorized in New Jersey by judicial decision since 2013.

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

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

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

This bill is intended to bring New Jersey statutory law into conformance with the 2013 decision in Garden State Equality as well as the 2015 United States Supreme Court decision in Obergefell et al. v. Hodges, Director, Ohio Department of Health, et al., 576 U.S. 644 (2015). Obergefell held that same-sex marriage is a fundamental right and that all states are required to allow same-sex couples to marry.

The bill also repeals section 94 of P.L.2006, c.103 (C.37:1-36), which established the New Jersey Civil Union Review Commission. Pursuant to that statute, the commission has expired.

COMMITTEE AMENDMENTS

Clarify that only a marriage or civil union in violation of subsection d. of R.S.37:1-1 concerning the prohibition on marriages or civil unions to ancestors, descendants, or certain other family members shall be absolutely void.