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)

Co-Sponsored by:
Senators Codey, Gill, Beck, Cunningham, Pou and Ruiz

SYNOPSIS
Enacts the “Marriage Equality and Religious Exemption Act.”

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 1/31/2012)
AN ACT concerning marriage, revising various parts of the statutory law and supplementing Title 37 of the Revised Statutes, and repealing section 94 of P.L.2006, c.103.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) This act shall be known and may be cited as the “Marriage Equality and Religious Exemption Act.”

2. (New section) The Legislature finds and declares that:
   a. Six states and the District of Columbia, together comprising 35 million Americans, allow same-sex couples to marry.
   b. In Lewis v. Harris, 188 N.J. 415 (2006), the New Jersey Supreme Court held that denying rights and benefits to committed same-sex couples that are statutorily given to their heterosexual counterparts violates the equal protection guarantee of Article I, paragraph 1 of the New Jersey Constitution. The court held that to comply with this constitutional mandate, the Legislature must either amend the marriage statutes to include those couples or create a parallel statutory structure to attempt to provide the rights and benefits enjoyed by, and burdens and obligations borne by, married couples.
   c. The Legislature and the Governor responded to the Lewis v. Harris decision by enacting P.L.2006, c.103 (C.37:1-28 et al.), which established civil unions in this State.
   d. In P.L.2006, c.103 the Legislature created the New Jersey Civil Union Review Commission to investigate whether “provid[ing] civil unions rather than marriage” to same-sex couples affords them equality, and empowered the Commission to present findings and make recommendations to the Legislature. In accordance with P.L.2006, c.103, the Governor, the President of the Senate, and the Speaker of the General Assembly appointed members to the Commission.
   e. Through testimony and overwhelming evidence, the New Jersey Civil Union Review Commission found that numerous employers in New Jersey have denied equal benefits to civil union partners because of the deprivation of marriage equality, and that numerous hospitals in New Jersey have denied visitation and medical decision rights to civil union partners because of the deprivation of marriage equality.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


Each judge of the United States Court of Appeals for the Third Circuit, each judge of a federal district court, United States magistrate, judge of a municipal court, judge of the Superior Court, judge of a tax court, retired judge of the Superior Court or Tax Court, or judge of the Superior Court or Tax Court, the former County Court, the former County Juvenile and Domestic Relations Court, or the former County District Court who has resigned in good standing, surrogate of any county, county clerk and any mayor
or the deputy mayor when authorized by the mayor, or chairman of
any township committee or village president of this State, and every
member of the clergy of every religion, are hereby
authorized to solemnize marriages between such
persons as may lawfully enter into the matrimonial relation; and every religious society, institution or organization in
this State may join together in marriage such
persons according to the rules and customs of the society,
institution or organization.
(cf: P.L.2006, c.103, s.17)


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

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

STATEMENT

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

Findings and Declarations

The bill’s findings and declarations provide that:

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

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

c. The Legislature and the Governor responded to the Lewis v.
Harris decision by enacting P.L.2006, c.103 (C.37:1-28 et al.),
which established civil unions in this State.
d. In P.L. 2006, c.103 the Legislature created the New Jersey Civil Union Review Commission to investigate whether “provid[ing] civil unions rather than marriage” to same-sex couples affords them equality, and empowered the Commission to present findings and make recommendations to the Legislature. In accordance with P.L. 2006, c.103, the Governor, the President of the Senate, and the Speaker of the General Assembly appointed members to the Commission.

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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Member of the Clergy” Language

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

Civil Unions

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

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

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

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

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