

AN ACT concerning marriage, revising various parts of the statutory law and supplementing Title 37 of the Revised Statutes.

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 Act.”

2. (New section) The Legislature finds and declares that:

a. On June 26, 2013 the United States Supreme Court ruled in U.S. v. Windsor, No. 12-307, 133 S. Ct. 2675; 186 L. Ed. 2d 808; 2013 U.S. LEXIS 4921 that the federal government must grant federal benefits to same-sex couples who are lawfully married in states that have granted these couples the right to marry.

b. On September 27, 2013 a judge of the New Jersey Superior Court ruled in Garden State Equality et al. v. Dow, Docket No. L-1729-11, 2013 N.J. Super. LEXIS 169, that same-sex couples would have the right to marry in New Jersey beginning on October 21, 2013.

c. On October 18, 2013 the New Jersey Supreme Court unanimously refused to issue a stay of the Superior Court order, holding that “the State has not shown a reasonable probability it will succeed on the merits.” On October 21, 2013 the State withdrew its appeal.

d. The first same-sex marriages in the State took place on October 21, 2013, pursuant to the Superior Court order.

e. Including New Jersey, 16 states and the District of Columbia currently allow same-sex couples to marry.

f. Same-sex marriage in this State would have been authorized by Senate Bill No. 1 of 2012-2013, which passed both Houses of the Legislature in February 2012 and was conditionally vetoed by the Governor. The conditional veto would have eliminated the same-sex marriage provision and would have created a new State office to increase awareness and enforcement of the civil union law.

g. However, increased awareness and enforcement of the civil union law are inferior to marriage equality. Civil unions were established by the Legislature by P.L.2006, c.103, in response to a 2006 decision of the New Jersey Supreme Court. In Lewis v. Harris, 188 N.J. 415 (2006), the court had ruled 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

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.

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and obligations borne by, married couples. The civil union law was the Legislature's attempt to create this "parallel statutory structure."

h. The New Jersey Civil Union Review Commission was established by P.L.2006, c.103 to investigate whether "provid[ing] civil unions rather than marriage" to same-sex couples afforded them equality.

i. The commission unanimously concluded that the civil union law, instead of ending discrimination against same-sex couples, "invite[d] and encourage[d] unequal treatment." The commission found that employers had denied civil union partners equal benefits and hospitals had denied civil union partners equal rights to visitation and medical decision-making. The commission also found that the children of same-sex couples would benefit by society's recognition that their parents are married, because the separate and inferior label of civil union stigmatized these children.

j. Because civil unions are available only to same-sex couples, the civil union enactment invades their privacy and invites discrimination when these couples are forced to disclose their civil union status on forms, in job interviews, and in other settings.

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. In enacting this bill to grant same-sex marriage statutory recognition, it is the intent of the Legislature to codify the ruling of the Superior Court in Garden State Equality et al. v. Dow and the public policy of this State.

m. It is also 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 specifies 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 specifies 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

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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) A marriage of two persons of the same sex entered into outside this State which is valid under the laws of the jurisdiction in which the marriage was entered shall be valid in this State.

5. (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.

6. (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 shall, other than when providing a place of public accommodation as defined in section 5 of P.L.1945, c.169 (C.10:5-5), 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, other than when providing a place of public accommodation as defined in section 5 of P.L.1945, c.169 (C.10:5-5). 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.

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7. (New section) On and after the effective date of this amendatory and supplementary act:

a. no new civil unions shall be established under P.L.2006, c.103 (C.37:1-28 et al.); and

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.

8. Partners in a civil union couple who enter into marriage with each other on or after October 21, 2013 shall be deemed to have been married beginning on the date they entered into their civil union.

9. 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)

10. (New section) For a period of one year following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), partners in a civil union established pursuant to P.L.2006, c.103 (C.37:1-28 et al.) who apply for a marriage license pursuant to subsection b. of R.S.37:1-4 shall not be required to pay any fees for the issuance of such license, including but not limited to the fees imposed by R.S.37:1-12 and section 1 of P.L. 1981, c.382 (C.37:1-12.1).

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

37:1-13. Authorization to solemnize marriages [and civil unions].

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

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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 **【minister】** member of the clergy of every religion, are hereby authorized to solemnize marriages **【or civil unions】** between such persons as may lawfully enter into the matrimonial relation **【or civil union】**; and every religious society, institution or organization in this State may join together in marriage **【or civil union】** such persons according to the rules and customs of the society, institution or organization.

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

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

13. (New section) The Commissioner of Health, 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.

14. This act shall take effect on the 60th day following enactment, except that the Commissioner of Health may take such anticipatory administrative action in advance as shall be necessary for the implementation of this act. Section 10 of this act shall expire one year following the date of enactment.

STATEMENT

This bill, the “Marriage Equality Act,” would codify same-sex marriage, which was recently authorized in New Jersey by a judicial ruling.

Findings and Declarations

The bill’s findings and declarations provide in part that:

a. On June 26, 2013 the United States Supreme Court ruled in U.S. v. Windsor, No. 12-307, 133 S. Ct. 2675; 186 L. Ed. 2d 808; 2013 U.S. LEXIS 4921 that the federal government must grant federal benefits to same-sex couples who are lawfully married in states that have granted these couples the right to marry.

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f. Same-sex marriage in this State would have been authorized by Senate Bill No. 1 of 2012-2013, which passed both Houses of the Legislature in February 2012 and was conditionally vetoed by the Governor. The conditional veto would have eliminated the same-sex marriage provision and instead create a new State office to increase awareness and enforcement of the civil union law.

g. However, increased awareness and enforcement of the civil union law are inferior to marriage equality. Civil unions were established by the Legislature by P.L.2006, c.103, in response to a 2006 decision of the New Jersey Supreme Court. In Lewis v. Harris, 188 N.J. 415 (2006), the court had ruled 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. The civil union law was the Legislature’s attempt to create this “parallel statutory structure.”

h. The New Jersey Civil Union Review Commission was established by P.L.2006, c.103 to investigate whether “provid[ing] civil unions rather than marriage” to same-sex couples afforded them equality.

i. The commission unanimously concluded that the civil union law, instead of ending discrimination against same-sex couples, “invite[d] and encourage[d] unequal treatment.” The commission found that employers had denied civil union partners equal benefits and hospitals had denied civil union partners equal rights to visitation and medical decision-making. The commission also found that the children of same-sex couples would benefit by society’s recognition that their parents are married, because the separate and inferior label of civil union stigmatized these children.

j. Because civil unions are available only to same-sex couples, the civil union enactment invades their privacy and invites discrimination when these couples are forced to disclose their civil union status on forms, in job interviews, and in other settings.

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l. In enacting this bill to grant same-sex marriage statutory recognition, it is the intent of the Legislature to codify the ruling of the Superior Court in Garden State Equality et al. v. Dow and the public policy of this State.

m. It is also 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.

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,” “man,” “woman,” “husband” or “wife” occurs 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 shall, other than when providing a place of public accommodation as defined in the Law Against Discrimination (section 5 of P.L.1945, c.169 (C.10:5-5)), 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, other than when providing a place of public accommodation as defined in the Law Against Discrimination. 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.

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“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 the word “minister” to “member of the clergy.” This change is intended only to modernize the language of the statute and not to have any substantive effect.

Civil Unions

The bill also provides that on and after its effective date, no new civil unions could be established. Existing civil unions would not be affected by the bill and would continue unless dissolved by the parties.

In addition, the bill repeals section 94 of P.L.2006, c.103 (C.37:1-36), which had established the now-defunct New Jersey Civil Union Review Commission. The function of the commission was to evaluate the operation and effectiveness of the civil union enactment.

Under the bill, civil union partners who wish to apply for a marriage license would receive the license immediately upon application, without the statutory 72-hour waiting period. For a period of one year following the effective date of the bill, civil union partners would not be charged a fee for the issuance of a marriage license. After expiration of the one-year period, civil union partners who wish to marry would be charged the usual fees, which currently total \$28. Marriage license fees are set out in R.S.37:1-12 and section 1 of P.L. 1981, c.382 (C.37:1-12.1).

Retroactivity for Civil Union Partners

Finally, the bill grants retroactivity for civil union partners who wish to enter into marriage. Under the bill, partners in a civil union couple who enter into marriage with each other on or after October 21, 2013 would be retroactively deemed to have been married as of the date they entered into their civil union.

The “Marriage Equality Act”; recognizes same-sex marriage.

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